

Decision no. 01–135 of Autorité de régulation des télécommunications dated 8 February 2001 requesting that France Telecom modify its reference offer for access to the local loop

The Telecommunications Regulatory Authority (Autorité de Régulation des Télécommunications–ART), having regard to:

Regulation (EC) no. 2887/2000 of the European Parliament and Council dated 18 December 2000 regarding the unbundling of access to the local loop;

The Post and Telecommunications Code, and in particular articles D.99–23 to D.99–26 thereof;

The order dated 12 March 1998 authorising France Telecom to establish and operate a public telecommunications network;

Decision no. 00–813 of Autorité de régulation des télécommunications dated 28 July 2000 establishing the list for 2001 of operators having significant market power on the fixed telephone service market;

Decision no. 00–1067 of Autorité de régulation des télécommunications dated 11 October 2000 establishing the return on capital for 2001 according to article D.99–24 of the Post and Telecommunications Code;

Decision no. 00–1171 of Autorité de régulation des télécommunications dated 31 October 2000 established in application of article D.99–24 of the Post and Telecommunications Code;

Decision no. 00–1176 of Autorité de régulation des télécommunications dated 31 October 2000 adopting the guidelines for the verification of cost-oriented pricing for access to the local loop;

France Telecom's reference offer for access to the local loop dated 22 November 2000;

The letters sent by ART to France Telecom dated 21 December 2000, 9 January 2001 and 2 February 2001;

The letters sent by France Telecom to ART dated 16 January 2001, 29 January 2001 and 6 February 2001;

And after having deliberated on 8 February 2001,

## **1. On the legal framework**

Article D. 99–25 of the Post and Telecommunications Code states: "The operators mentioned in the first paragraph of Article D. 99–23 are required to publish a reference offer for access to the local loop, including a description of the benefits as well as associated conditions and prices".

The first paragraph of article D. 99–23 states that these measures are applicable to those "operators named on the list established pursuant to paragraph 7 of Article L. 36–7" of the Post and Telecommunications Code. By decisions no. 99–767 dated 15 September 1999 and no. 00–813 dated 26 July 2000 of Autorité de régulation des télécommunications, France Telecom was included in this list for the years 2000 and 2001.

In accordance with these provisions, France Telecom published a reference offer on 22 November 2000.

Regulation (EC) no. 2887/2000 of the European Parliament and Council dated 18 December 2000 regarding unbundled access to the local loop took effect on 2 January 2001.

The first paragraph of article 3 of this regulation states that "Notified operators shall publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities, which shall include at least the items listed in the Annex".

Article 2 states that notified operators are "operators of fixed public telephone networks that have been designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Annex I, Part 1, of Directive 97/33/EC or Directive 98/10/EC".

Article 4 states that "the national regulatory authority is authorised to impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified".

## **2. On the process initiated prior to the adoption of this decision**

Because access to the local loop is of prime concern in the development of telecommunications in France, ART initiated a major dialogue process two years ago.

This process began with a public consultation in 1999 which highlighted the importance of access to the local loop and identified the ways in which it should be implemented.

The consultation showed that the technical, operational and pricing conditions for implementation were of key concern. In order to better understand the difficulties, ART established a working group chaired by Alain Bravo which has met more than sixty times since February 2000, and which includes the various concerned players, and in particular, France Telecom.

The work performed by this group has been essential; France Telecom and some thirty operators have conducted several trials since July 2000, which have addressed all of the operational and technical concerns.

In light of this work, ART published recommendations in October 2000 on how access to the local loop should be implemented and guidelines on how to verify the cost-orientation of prices.

Through various written and oral exchanges, ART has obtained additional information from France Telecom on its reference offer, published on 22 November 2000; ART has also shared its observations with France Telecom.

In addition, a number of players, and in particular operator associations have submitted to ART their analysis of the offer. They consider the offer unsatisfactory in that it does not allow for the development of competitive and innovative offers on the high-speed access market. They believe that ART should request the offer be modified.

For the reasons presented below, ART considers that, at this stage, France Telecom must modify the reference offer it has published, in order to ensure that the provisions of the abovementioned regulation are respected.

Discussions held in the weeks preceding the adoption of this decision have shown that France Telecom has already decided to amend certain points of its reference offer.

## **3. On requests for modifications to the services defined in the reference offer**

While France Telecom has—to a certain degree—taken into account ART's recommendations on the technical and operational conditions of implementing access to the local loop, certain key elements of the offer do not allow the provision of access under the conditions of objectivity, transparency and non discrimination required by both the European regulation and by the Post and Telecommunications Code. ART considers that it is justified in requesting that France Telecom modify its offer on these points.

ART emphasizes that the requests it is making in this decision are not excessive with regard to the offers published by notified operators abroad, and in particular in the United Kingdom and in Germany.

#### **4. On the scope of access to the local loop**

##### a) Access to available network capacity and the creation of new pairs

According to article 2 of the abovementioned European regulation, the "local loop means the physical twisted metallic pair circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network". This local loop is composed of three parts: transport, distribution and drop wire.

Article D.99–23 of the Post and Telecommunications Code states in particular that: "the operators named on the list established pursuant to paragraph 7 of Article L. 36–7 are required to respond in accordance with objective, transparent and non discriminatory criteria to reasonable demands for access to the local loop, for the metallic part of their network situated between the main distribution frame and the termination point located on subscriber premises, issued by holders of the authorization provided in Article L. 33–1."

Full unbundled access to the local loop consists in either the transfer of existing end-to-end twisted metallic pairs which support a telecommunications service or which still have continuous metal wire, or in the creation and transfer of new twisted metallic pairs. The creation of these new pairs is done by joining existing sections and may require the deployment of additional customer drop cable for .

In its reference offer published on 22 November 2000, France Telecom states that only those pairs which are already used to provide France Telecom services or which have existing continuous metal wire may be requested for access to the local loop. Accesses which require creating pairs are not mentioned.

The implication here is that when requesting services from another operator, subscribers would systematically be required to terminate the services they receive from France Telecom which are supported by the pairs arriving at their premises or to ensure that a pair, whose number they would have to know, already exists and is linked to their premises.

This situation would create a major barrier to the emergence of new offers, since operators want to offer their customers cheaper leased line services or higher speeds than those offered by France Telecom. These services can be provided today with SDSL or HDSL technologies which require at least 2 pairs to reach significant bit rates. In its current state, for the reference offer to provide such offers on a given sector, the operators would have to ensure that their potential clients are willing to terminate the services they receive from France Telecom or that they have sufficient available and identified pairs. It is likely that under these conditions, such offers could not be made. Therefore, the requests for access to new pairs are of a reasonable nature under article 3.2 of the regulation.

In its letter dated 29 January 2001, France Telecom states that it is prepared to offer operators a new service consisting in the creation of a new pair only when said creation requires joining existing sections of the network, and does not require the deployment of a new customer drop, distribution or transport cable.

In order to meet the stated goal, the service must not be limited to creating pairs by joining existing elements on the network; it must also include the laying of customer drop cable whenever necessary. It would seem that this service does not constitute an "entirely new local network infrastructure".

Indeed, if creation simply involved joining existing sections, the operator would not know whether it needs to extend the pair to the subscriber until the pair has been delivered. Thus, it would be unable to predict the delivery date for service nor the cost it would incur, and it would have to contact all of the building managers of its potential clients in order to extend its delivered pairs to the subscribers' premises. Under these conditions, operators would not be able to create competing offers.

The second paragraph of article 3 of the regulation states that "Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. [...] Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time-scales". France Telecom cannot justify refusing to provide access to the local loop comprising sections of existing pairs or which do not require the deployment of connection capacity on the basis of technical feasibility, since it already does this to meet its own needs. Therefore, in its current state, the reference offer does not conform with the abovementioned European regulation on this point.

As a result, with regard to the consequences for competition, and in particular for services to corporate clients and for the provisions of the European regulation, ART is justified in requesting that France Telecom include in its reference offer an access service to newly created pairs between the main distribution frame and the network terminating point at subscribers' premises. The creation of these new pairs by joining existing sections may require the deployment of additional customer drop cable.

In accordance with point A.2 of the annex of the abovementioned European regulation, France Telecom must provide "Information concerning the locations of physical access sites(1), availability of local loops in specific parts of the access network".

#### b) Ineligible lines and allowed usage

The list of lines which are ineligible for access to the local loop is given in the offer published on 22 November 2000.

These include:

- lines included in PBX groups
- lines serving temporary terminal installations
- lines serving terminal installations established for a public service other than public telephone services involving telephone boxes
- lines consisting in additional external lines which are intrinsic components of a terminal installation

Moreover, according to the reference offer, access is provided solely for the purpose of providing telephony or data transfer services. Services supported by access must be intended for the end user and many not include:

- shared services involving several end customers
- services established between devices belonging to a single operator
- services established by the operator joining links inside the co-location room

ART reminds operators that the second paragraph of article 3 of the regulation states in particular that: "Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need

to maintain network integrity. [...] Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time-scales".

## **5. On order, delivery and after-sales service**

### **a) Transmitting the order**

In its offer, France Telecom requests that the operator transmit the customer authorisation given by the subscriber when ordering access. The operator must present the original of the authorisation before France Telecom will process the order. The order will be compared with the authorisation for verification of certain elements and to prevent fraud.

ART and all operators have always maintained that the subscriber must give the operator a customer authorisation, in order to allow the operator to order access services. However the prior, systematic transmission of the authorisation to France Telecom constitutes a guarantee which has not been proven necessary and which is not required for pre-selection.

Prior, systematic transmission is a cumbersome procedure for operators and is not compatible with indirect or Internet sales, as the operator would have to collect all the original customer authorisations from all of its distributors or subscribers before it could transmit them to France Telecom and all within a very short amount of time.

However, it is necessary to distinguish between requests for full unbundled access to the pair which provide subscriber telephone services and those for shared access or access to a newly created pair.

In the first case, the conditions for providing telephone service could be degraded if access were improperly implemented; the transmission of an element proving to France Telecom that the subscriber explicitly requests access would effectively limit this risk and France Telecom's proposal could be considered pertinent. However, an electronically transmitted copy of the customer authorisation would be sufficient for France Telecom to make the desirable verifications.

In the second case, it is highly improbable that fraudulent orders will be made since the implementation of access almost always requires that an operator's technician be present on the subscriber's premises. Moreover, the services provided by France Telecom to the client are not modified. Therefore, the transmission of the customer authorisation serves no purpose.

Thus, ART considers that transmission of the customer authorisation, prior to order processing, is justified only for requests for full unbundled access to the pair used for the provision of the subscriber's telephone services. Otherwise, a copy of the authorisation sent electronically is sufficient. For other access requests (access through pair creation or shared access), the order process must be similar to that which already exists for pre-selection.

In its letter dated 6 February 2001, France Telecom stated that the subscriber's customer authorisation could be scanned and sent on line.

### **b) After-sales service**

The reference offer states that service restoration times are two days following receipt of the operator's request for full unbundled access, and one day for shared access.

These lead times are too long for the offers that operators propose to their corporate clients, given that France Telecom offers guaranteed restoration times of just four to six hours to its corporate clients. This means that the operators would be unable to make similar offers given the times proposed by France Telecom.

Therefore, the reference offer must propose specific methods when accesses are used for corporate clients in order to allow the operators to commit to restoration times comparable to those France Telecom offers its own clients.

## ***6. On co-location conditions***

### **a) Physical co-location**

The co-location of operator equipment in France Telecom's buildings is an essential condition to the implementation of access to the local loop.

The working group chaired by Alain Bravo has suggested a technical solution which would take into account France Telecom's concerns regarding the security of its buildings by recommending the co-location of operator equipment in a specifically equipped room which would be financed by the operators. France Telecom has chosen to include this in its offer. Thus, the provision of rooms has become a crucial element for the proper functioning of operations. Therefore, ART wishes that the offer be amended in order to create conditions under which the rooms can be quickly and efficiently built.

### **b) Conditions for financing the fitting-out of the rooms**

The preparation of the rooms is financed by those operators having placed firm orders upon delivery of the room (according to the number of bays ordered).

To allow financing under satisfactory conditions, it is necessary that:

- the operators be provided with the detailed technical specifications of the works and associated costs before committing to their financing. They must have at least one month to confirm their order and be permitted to monitor the progress of works and any changes to the specifications.
- the requirement to refund the first operators by those later wishing to co-locate on the site must be mentioned and France Telecom must be responsible for managing financial flows

The offer's provisions must be amended on these points.

In its letter dated 6 February 2001, France Telecom states that it is prepared to mention in its reference offer the obligation for operators to refund the first operators present in the room.

In accordance with points B.7 and B.8 of the annex of the abovementioned European regulation, the reference offer must moreover be completed to define the:

- "Rules for the allocation of space where collocation space is limited;
- Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity".

### **c) Technical conditions**

The services proposed by France Telecom do not allow for the use of the most commonly sold DSLAMs which France Telecom uses for its own needs; i.e. the energy supply is limited to 220 V and no air conditioning is proposed. The offer must therefore be modified to allow for a 48 V power supply and for air

conditioning when requested by the operators.

The connection offer for operator equipment to their network via a transmission link supplied by France Telecom is limited to throughput of 2 Mbit/s, which is not suited to the provision of the planned services and in particular the DSLAM output speeds. France Telecom must extend its offer to higher speeds.

In its letter dated 6 February 2001, France Telecom mentions these possibilities.

d) Delivery lead times

In accordance with point D.1 of the annex to the European regulation, the maximum delivery lead times for the co-location rooms, tie cables for physical or distant co-location, and for filters for shared access must be included in the offer, and late penalties must be determined where necessary. The delivery lead time for rooms cannot exceed four months and the tie cable and filter supply times must not exceed one month.

In its letters dated 29 January 2001 and 6 February 2001, France Telecom states that it is prepared to commit to a deadline of four months for the construction of rooms.

e) Distant co-location

Point B.2 of the annex to the European regulation states that the reference offer must contain a description of "Collocation options at the sites indicated under point 1 (including physical collocation and, as appropriate, distant collocation and virtual collocation)".

It is probable that for a number of sites in high demand, distant co-location may be necessary when there is insufficient space inside France Telecom's buildings. Therefore, it is important that it be implemented under good conditions.

This form of co-location requires the deployment of a tie cable between France Telecom's distribution frame and the operator's building which may be located near the distribution frame site. In its offer, France Telecom states that it will lay the tie cable to chamber 0, and that from there, the operator will have to deploy the cable to its own premises.

In cities, the time required to obtain permission for road works is long and the procedures complex, and France Telecom already has available cable ducts. In order to facilitate the use of this type of co-location and to limit the difficulties related to co-location in France Telecom's buildings, France Telecom must also envisage the deployment of the tie cable to the operator's building when it is within a reasonable distance from the distribution frame.

As concerns access to the local loop, this service would give operators a choice comparable to that which exists for interconnection where France Telecom offers three physical interconnection services to its network (provision of interconnection links, co-location of operator transmission equipment and in-span interconnection).

f) On the techniques and equipment used

The first paragraph of article 1 of the European regulation states : "This Regulation aims at intensifying competition and stimulating technological innovation on the local access market, through the setting of harmonised conditions for unbundled access to the local loop, to foster the competitive provision of a wide range of electronic communications services."

The second paragraph of article 3 of the regulation states: "Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity."

For the technologies or the equipment which might be used by the operators, the implementation of access to the local loop must not introduce constraints which are not justified by the need to protect network integrity.

In its reference offer, France Telecom lists the technologies which might be deployed by the operators for full unbundled access or shared access. It plans to suspend service if operators do not respect these provisions.

Moreover, the offer limits the types of equipment which might be installed in the co-location rooms.

#### g) Approved technologies

The coexistence of several services on the same cables can create disruptions. The working group chaired by Alain Bravo felt it useful to introduce provisions to limit these risks. A method based on the definition of power spectral density (PSD) mask was chosen because it makes it possible to avoid having to examine each individual technology and it provides visibility to operators and industry. This PSD mask, which will be recommended by ART, allows operators to select an acceptable technique to deploy broadband services on France Telecom's local loop. A standardised technique, compatible with the techniques already in use, will be accepted if it respects the range of frequencies, regardless of its throughput configuration. This method makes it possible to objectively define the basis on which access may be refused.

In its offer, France Telecom provides a limited list of acceptable technologies without providing any objective criteria which show that other available technologies might threaten the integrity of its network. Moreover, this provision restricts the range of services which operators can propose to just those offered by France Telecom without any chance of innovation. On this point, the provisions of the reference offer do not conform with the European regulation.

Therefore, the offer must be modified and must include the principles listed above.

Should an operator wish to deploy a technology which has not yet been standardised but which respects the PSD mask, trials must be held on France Telecom's network, under its supervision and in the presence of the concerned operator's teams. A joint analysis must indicate whether the technology can be deployed while protecting network integrity. The procedure allowing for these trials must be described in the offer.

Should an operator wish to introduce a new technology which does not meet the conditions specified by the PSD mask, the offer must describe the procedure which will be used to objectively evaluate the consequences of its deployment on network integrity. This procedure could be based on the one described by the working group chaired by Alain Bravo based on the submission of a technical file which is examined by a group of experts including those players using France Telecom's local network.

#### h) Approved equipment

The primary functions of the equipment which can be installed by the operators in the physical co-location rooms must be specific to implementing access to the local loop.

This equipment cannot include other functions except in an accessory fashion (e.g.: DSLAMs having IP routing and ATM switching features). In its letter dated 6 February 2001, France Telecom accepts the principle of their installation in its rooms.

In any case, no equipment installed in the co-location rooms may, *de facto*, perform the general functions of an operator point of presence.

These principles must be described in France Telecom's reference offer.

## 6. On requests for modifications to tariffs in the reference offer

### 6.1 On the monthly rental for access

The tariff set by France Telecom is FRF 112 per fully unbundled line per month.

France Telecom calculated this price based on a cost breakdown of the line into investment costs, operating costs, drop wire costs, after-sales service costs and costs specific to unbundling.

France Telecom estimated its investment costs using the "replacement cost" model. This model estimates how much it would cost to build France Telecom's copper local loop network today. France Telecom's local network is divided into network elements (cables, civil engineering, and distribution elements). For each of these network elements, France Telecom estimates a volume of cost drivers and the unit investment cost of each cost driver. The product of the two terms represents the total investment, which is then depreciated over the lifetime of the network element: the monthly investment cost per line is FRF 68, including the contribution to common costs.

To these investment costs are added operating costs, drop wire costs and after-sales service costs, as well as certain unbundling costs. The price is then FRF 112 per month.

#### a) Civil engineering costs

In determining the tariffs of its reference offer, France Telecom estimated the unit civil engineering cost at FRF 376 per metre of ducted cable and FRF 104 per meter of directly buried cable. France Telecom then decreased the duct civil engineering costs by 15% to take into account the transfers it receives free of charge.

These estimates seem high given the data provided by the BIPE agency which estimates for 2001—for ducted civil engineering in particular—values of:

– urban and semi-urban: FRF 230 to FRF 368 per meter

– rural: FRF 135 to FRF 203 per meter

These data include the cost of laying cable in ducts including, regardless of the area (urban, semi-urban, rural) surface demolition, trenching, the provision and laying of pipes, filling, surface finishing and the placement of cable chambers.

Since these are internal engineering and works supervision costs, European references found by ART show that costs (including subscriber identification) generally do not exceed 5% of the contract amount for network construction using modern equipment.

As a result, and supposing that France Telecom is exposed to costs higher than those generally found, ART considers that an evaluation of engineering and works supervision costs equal to 15% of civil engineering costs, which are themselves evaluated on the basis of values at the upper end of the ranges of actualised figures found by BIPE, are an admissible valuation of civil engineering costs.

#### b) Drop wire

In evaluating the tariffs of its reference offer, France Telecom values the drop wire cost at FRF 6 per month (including the contribution to common costs). France Telecom has explained that it arrived at this valuation

by annualising a fixed drop wire cost estimated at FRF 474 excluding VAT per pair.

ART considers that drop wire costs must be repaid, but given that they are operating costs, they must be repaid as they are incurred.

Since the service in the reference offer is a simple line transfer which does not include drop wire, it is not legitimate to charge this cost, even annualised, to the operator using unbundling, if the drop wire is not done specifically to meet an operator's request. Moreover, this cost, historically paid by France Telecom, has been recovered by FT from its subscribers. To charge it once more would be prejudicial to consumers.

#### c) Civil engineering lifespan

Given France Telecom's observations, ART accepts a lifespan of 20 years for directly buried civil engineering elements and 30 years for ducted elements.

#### d) The number of poles

ART accepts France Telecom's information according to which, in addition to the 10 million distribution poles, its network includes 8 million drop wire poles.

However, it considers that it is not legitimate to charge the cost of drop wire poles, even annualised, to the operator using unbundling, given that these are not included in the capital cost evaluation method set by ART decision no.00-1171 dated 31 October 2000.

#### e) Repair costs

France Telecom estimates the repair costs at FRF 20 per line per month for an unbundled line including FRF 11 for actual repair costs, with the balance for processing at the branch and at the order platform.

France Telecom estimates the cost of an intervention on its local loop network on average at FRF 7 per line per month for its own lines. It decreases this value by 25% in order to exclude unnecessary interventions, since these interventions are invoiced separately by France Telecom in unbundling. A multiplier of 2 is then used by France Telecom which contends that no distant diagnosis can be done on a fully unbundled line, whereas it can on its own lines.

ART accepts the greatest complexity of intervention for an unbundled line but uses a coefficient of 1.3 instead of 2.

Given all these elements, the monthly rental price for the provision of full unbundled access cannot exceed FRF 95 francs for 2001.

### 6.2 On the monthly rental for shared access

Article D. 99-24 of the Post and Telecommunications Code states that the monthly price for shared access to the local loop cannot be less than the difference between the monthly price for full unbundled access and the monthly subscription.

In its reference offer dated 22 November 2000, France Telecom suggests a monthly rental for shared access to the copper pair of FRF 60. In estimating this, France Telecom subtracted from the monthly rental for full unbundled access FRF 52 francs excluding VAT, which it represents the share of the subscription for the copper pair.

This analysis is questionable since the Post and Telecommunications Code mentions the subscription and not a fraction of the subscription. Moreover, there is no economic justification for establishing a strict correspondence between the tariff of the subscription and the cost of the subscriber line, and *a fortiori*, to associate by rule of three a fraction of the subscription to a fraction of the line costs. If such a convention were chosen, just the price of the main subscription should not be used, but all revenues for other forms of subscription (such as professional), to the costs of access to the service or additional services to telephone service.

By setting a minimum price for this use, the provisions of the Post and Telecommunications Code has pragmatically set a rule which protects France Telecom against the possible risk that subscribers will make their telephone calls using IP technology via shared access while keeping their telephone subscription with France Telecom: in this situation, France Telecom would be forced to maintain the telephone line while receiving in exchange only the subscription and the shared access tariff. Therefore, the provisions of the Code ensure that France Telecom continues to receive fixed revenues as it would for a fully unbundled line.

However, ART considers that might be prudent at this point to protect France Telecom against the additional risk of lost margins by allowing it to recover all the specific costs it incurs for unbundling, i.e. FRF 4, and part of the margins lost on telephone calls. ART has chosen the amount of the margin for local calls, estimated at FRF 36, since it seems legitimate not to take account of the margins on long-distance calls, given the competitive nature of this market.

Given this analysis, the price of the monthly rental for the provision of shared access cannot exceed FRF 40 for 2001.

### 6.3 On connection charges

In its reference offer, France Telecom proposes a connection tariff of FRF 1,067. This tariff includes FRF 862 for order and carrier activation costs, which include jumpering, administrative processing and the platform, and FRF 205 for the contribution to information system adaptation costs.

#### a) Order and carrier activation costs

ART considers that the jumpering and administrative processing costs proposed by France Telecom represent a complete cost (personnel costs, indirect costs and contribution to common costs) of 80 and 60 minutes respectively of technician and sales agent time. These times seem excessive given that, in most cases, carrier activation will involve simply slotting a single jumper on the main distribution frame and recording this operation in administration.

France Telecom states that the order and carrier activation costs it has provided are taken from its audited production costs for 1998 and that the implementation process for unbundling is complex. It claims that 3 or even 5 jumpers might be needed to provide a single unbundled pair.

ART accepts that the values are taken from France Telecom's audited production costs for 1998. However, it observes that these are average costs calculated on all production operations that France Telecom performs when activating a new line: thus, this average takes into account costs incurred by France Telecom in varied circumstances, which can involve agents travelling outside France Telecom's premises, and therefore cannot be directly applied to the specific case of unbundling.

ART is aware of the complex nature of the unbundling process and of the number of people concerned. Still, when transferring pairs, only a jumper will need to be slotted onto the main distribution frame since the client cancelling its subscription with France Telecom will choose another operator at the same time. However, some of France Telecom's observations do need to be taken into account for shared access where several

jumpers may be needed and where unbundling requires many interventions. This is why ART estimates at 45 and 30 minutes the average times for the technical and administrative operations for carrier activation and connection.

Thus, ART estimates order and carrier activation costs for one pair at FRF 58 for the order platform, FRF 178 for administrative processing and FRF 267 for connection, for a total of FRF 503.

#### b) Adaptation costs for France Telecom's information system

Taking into consideration the arguments made by France Telecom, ART chooses an amount of FRF 205 per pair to recover information system adaptation costs, which corresponds to depreciation over 4 years of FRF 180 million.

Given all of these elements, the tariff for connection cannot exceed FRF 708 for 2001.

#### 4.4 On disconnection charges

In its reference offer, France Telecom proposes a tariff of FRF 474 for terminating full unbundled access or shared access to the copper pair. These expenses are not due by the operator when cancellation is done at the same time as access transfer to another operator.

These cancellation expenses correspond to the costs of removing the jumpers on the distribution frame. They are identical to the jumpering costs used in the service access tariffs.

Thus, as explained in the previous section, these cancellation expenses cannot exceed FRF 267 for 2001.

#### 4.5 On the annual bay provision tariff

In its reference offer, France Telecom values the annual co-location expenses based on a pricing grid with five scaled prices of between FRF 11,050 per bay (in urban areas of less than 20,000 inhabitants, in rural areas and in DOM/TOM) and FRF 22,370 per bay (in Paris, Neuilly, Boulogne, La Défense and Levallois).

ART considers that co-location tariffs should be consistent with those chosen for interconnection.

Indeed, the concept of market price cannot be used since this is a non-commercial offer, which is mandatory and strictly restricted by France Telecom to the presence of the equipment needed to provide access to the local loop.

France Telecom considers that the co-location tariffs for interconnection cannot be used as a reference, because, in its opinion, these tariffs are under-estimated and the service provided is significantly different given the total immobilisation of a room in the case of unbundling.

ART feels that it is reasonable to take into account the differences in services between co-location offers for unbundling and co-location for interconnection: a multiplier of 2 will be used for interconnection tariffs in order to take into account the additional constraints generated by unbundling on France Telecom's premises. The surface area of 4 square metres (value provided by France Telecom) is also chosen as the surface area immobilised per bay.

On this basis, the annual tariff for the provision of a bay for 2001 cannot exceed FRF 10,300 per bay in zone 1 (Paris, Neuilly, Boulogne, La Défense, Levallois), FRF 5,350 per bay in zone 2 (Val de Marne, Hauts-de-Seine, Seine Saint-Denis excluding cities in zone 1), FRF 4,400 per bay in zone 3 (urban areas of more than 200,000 inhabitants excluding cities in zones 1 and 2), FRF 2,760 per bay in zone 4 (urban areas of

between 20,000 and 200,000 inhabitants excluding cities in zones 1 and 2), FRF 2,580 francs per bay in zone 5 (urban areas of less than 20,000 inhabitants, rural areas and DOM/TOM).

#### 6.6 On the tariff for the co-location offer feasibility study and estimate

In its reference offer, France Telecom proposes a price of FRF 30,000 francs to perform a feasibility study and an estimate for the co-location of an operator's equipment. This sum will be deducted from the expenses of preparing the premises paid for by the operator, but is not refunded if the operator decides not to co-locate.

ART considers that the tariff of FRF 30,000 proposed by France Telecom is reasonable. However, since the initial feasibility study for fitting-out is done just once, this study should not be billed to every operator requesting it.

As a result, the tariff for the co-location offer feasibility study and estimate cannot exceed FRF 30,000 per site for all operators. This amount is to be divided among all operators requesting a feasibility study and will be considered an advance on the co-location expenses for the operators who effectively co-locate. These expenses must follow the cross-charging principle defined in the reference offer for sharing fitting-out costs in the co-location room.

#### 6.7 On the tariff for the tie cable feasibility study

The reference offer states that "France Telecom will invoice the corresponding study expenses for requests for a feasibility study, and for which the operator does not confirm with a firm order". **(version anglaise pas disponible, donc la citation n'est peut-être pas exact)**

By nature, this service is shared by all operators wishing to co-locate on a distribution frame. As a result, this service cannot be invoiced more than once for any given distribution frame.

Moreover, it would be rare that a feasibility study never result in any order being placed by any operator, and the service is not very costly. For these reasons, the price for the feasibility study cannot be charged until a firm order has been received for a tie cable. This study can be charged only to the first operator requesting the tie cable.

As a result, the tie cable feasibility study on any given distribution frame can be charged only to the first operator ordering it. These expenses will follow the cross-charging principle in force for sharing fitting-out costs in the co-location room.

Decides:

Article 1 – It is requested that France Telecom modify the services defined in the reference offer for access to the local loop which it published on 22 November 2000 as follows:

##### a) – Pair creation service for full unbundled access to the local loop

The full unbundled access provision service must allow an operator to order one or more new twisted metallic pairs when so ordered by its subscribers. The creation of new pairs is done by joining existing sections and may require the deployment of additional customer drop cable, provided the rights of the owners of the networks inside the buildings are respected (if the networks are not owned by France Telecom). These pairs are provided between the main distribution frame and the network terminating point at the subscribers' premises.

The delivery lead time for pairs may not exceed 8 days from the time the request is made.

b) – Order and after-sales service process

A customer authorisation from the subscriber is transmitted prior to order processing only when the request is for full unbundled access to the twisted metallic pair on which subscriber telephone service is provided. In this case, a copy of the customer authorisation—sent electronically—is sufficient. For other access requests (access through creation of pairs or shared access), the order process must be similar to that for pre-selection.

After-sales service must include an offer allowing operators to make commitments to their corporate clients on restoration times comparable to those France Telecom offers its own clients.

c) – Physical co-location and distant co-location services

Physical co-location

The detailed technical specifications of the fitting-out works for the rooms as well as their corresponding costs must be provided when the estimate is sent by France Telecom following the completion of the feasibility study. The lead time between the transmission of these elements and confirmation of the order by the operator must be extended to one month. The operator will be permitted to monitor works and will be consulted on any modifications to the specifications during works.

The obligation of operators wishing to co-locate on a site to refund the first arrivals must be mentioned. France Telecom manages financial flows among operators.

France Telecom must define the space distribution rules applied when co-location space is limited and the conditions under which the beneficiaries are permitted to inspect the sites on which physical co-location is possible or those for which co-location has been refused due to insufficient capacity.

When operators so desire, the rooms must be equipped to provide secure 48 V power. Air conditioning must also be available.

The connection offer for co-located equipment to the operator's network must be extended to include higher speeds.

The construction time of a co-location room will not exceed four months, or late penalties will be applied.

The delivery lead times for tie cables and provision of filters will not exceed one month.

Distant co-location

The service must include the provision of the tie cable between the distribution frame and the operator's premises as long as these premises are no more than 500 metres from the distribution frame. This service must have a lead time of one month maximum.

d) – Approved technologies and equipment

Technologies

The techniques which may be deployed by the operators must be within the PSD mask to be recommended by ART. They must be standardised and compatible with technologies already in use.

Should an operator wish to deploy a technology which has not yet been standardised but which respects the defined PSD mask, trials must be performed on France Telecom's network, under its supervision and in the presence of the concerned operators' teams. A joint analysis must determine whether the technology can be deployed while respecting network integrity. The procedure for these trials must be described in the offer.

Should an operator wish to introduce a new technology which does not meet the conditions covered by the ranges, the offer must describe the procedure which will be used to objectively evaluate the consequences of its deployment on network integrity. This procedure can be based on the one described by the working group chaired by Alain Bravo based on the submission of a technical file which is examined by a group of experts composed of those players using France Telecom's local network.

## Equipment

The main features of the equipment which can be installed by the operators in the physical co-location rooms must be specific to the implementation of access to the local loop.

When this equipment includes other accessory features such as DSLAMs which have IP routing or ATM switching functions, operators must be permitted to install it.

In no case can equipment be installed in the co-location rooms which, *de facto*, perform the general functions of an operator point of presence.

**Article 2** – It is requested that France Telecom modify the reference offer of 22 November 2000 for access to the local loop under the following conditions (2001 tariffs):

- the monthly rental (per access) for the provision of full access, as it appears on page 17 of the reference offer, must not exceed FRF 95;
- the monthly rental (per access) for the provision of shared access, as it appears on page 23 of the reference offer, must not exceed FRF 40;
- the tariff covering service access expenses for the provision of full and shared access, as it appears on pages 17 and 23 of the reference offer, must not exceed FRF 708;
- cancellation expenses (per access), as they appear on pages 17 and 23 of the reference offer, must not exceed FRF 267;
- the annual tariff for the provision of bay space, as it appears on page 31 of the reference offer, must not exceed FRF 10,300 per year in zone 1 (Paris, Neuilly, Boulogne, La Défense, Levallois), FRF 5,350 per year in zone 2 (Val de Marne, Hauts-de-Seine, Seine Saint-Denis excluding cities in zone 1), FRF 4,400 per year in zone 3 (urban areas with more than 200,000 inhabitants excluding cities in zones 1 and 2), FRF 2,760 per year in zone 4 (urban areas of between 20,000 and 200,000 inhabitants excluding cities in zones 1 and 2), FRF 2,580 per year in zone 5 (urban areas of fewer than 20,000 inhabitants, rural areas and DOM/TOM);
- the tariff for the co-location offer feasibility study and estimate, as it appears on page 32 of the reference offer, must not exceed FRF 30,000 per site for all operators. This amount is to be divided among all operators requesting a feasibility study, and is considered to be an advance on the co-location expenses for the operators which will co-locate on the site. These expenses will follow the same cross-charging principle as that explained in the reference offer for the sharing co-location room fitting-out expenses;
- the tie cable feasibility study on a given distribution frame must be charged only to the first operator ordering it. These expenses will follow the same cross-charging principle as that explained in the reference offer for the co-location room fitting-out expenses.

**Article 3** – It is requested that France Telecom publish a new reference offer respecting the conditions described in articles 1 and 2 by 23 February 2001.

**Article 4** – The chairman of ART will France Telecom of this decision which will be published in the *Journal officiel* of the French Republic.

Delivered at Paris, on 8 February 2001

The Chairman

Jean-Michel Hubert