



14th October 2004

Dear M. Laganier,

Supplementary response to the ART public consultation on the broadband market

Thank you for your communication of 8th October, and for the opportunity to offer further comments on the subject of broadband access services offered at the national level.

I would like to offer the following comments relating to the specific topics you have raised.

Market boundary

We believe that the broadband competitors to France Telecom (FT) will fall into three main categories: firstly, operators who build networks with a high level of network reach, and who exploit local loop unbundling products; secondly, operators who have national trunk networks but need to buy bitstream access from FT at the regional level; thirdly, operators with limited network capability who wish to buy bitstream access at a highly aggregated level. These may be internet service providers, who are essentially not in the business of network operation, or operators like BT who are increasing their network coverage, and who have a strong commitment to network competition but who rely on other operators for their national bitstream carriage.

In terms of widening the definition of the market, the major requirement is for a service which is suitable for the business user, that is to say one that includes guaranteed bit rate and throughput performance, as opposed to a service suitable only for the domestic end user.

We believe there is an important distinction to be drawn between broadband services in the residential market and in the business market. Operators, like BT France, who provide services predominantly to the business market, are unlikely to have a business model that justifies building network reach uniformly across all parts of France. This leads to an important requirement of

the regulatory regime, that it should acknowledge geographic differences. In those regions where customers are clustered, operators will invest in network. In residential and rural areas, operators will still need broadband access, but will be more reliant on acquiring access services from FT. This is especially true for network operators who are focussing on the business market. For this reason it is inappropriate at this stage to consider basing regulatory obligations in the broadband market entirely on unbundled local loop obligations.

Position of FT own-use services within the market definition

This issue is critical to the debate, and we disagree entirely with the FT view that their own use of their broadband access is not part of the relevant market.

We are aware of European jurisprudence in relation to merger regulation - in particular we are aware of the "single economic entity" argument in relation to EC merger regulation, under which it may be appropriate to exclude inter-company transactions when considering the impact of a merger or acquisition. This argument is not, however, relevant in relation to the definition of markets for the assessment of significant market power and the subsequent potential application of regulatory remedies to entities found to have significant market power in a relevant market.

If the calculation of market share *excludes* use made of the incumbent's network by its own downstream operations, then it seems the incumbent can never have market power. By FT's logic, if they had 100% of the retail market, they still would not have market power because they claim not to use their own wholesale products. This demonstrates the fallacy of FT's argument. Market power assessments must include all usage.

BT's purchase of Broadband Access.

BT France does not currently buy broadband access from FT. As ART make clear in their consultation document, FT's IP/ADSL service at the national level is designed to permit operators to offer a retail service to residential customers. This is not a product which is designed for use in the business market.

Conclusions for the regulatory approach

In its consultative document ART notes that FT has high share of the market for broadband access delivered at a national level (approximately 80%). ART then focus their attention on ensuring that competitors to FT are not excluded from competing with FT in this market. BT's focus, however, is different. BT wishes to be able to buy bitstream services, and we believe that whilst FT enjoy market power they should be obliged to provide the forms of interconnection required by other operators. We therefore return to the

requirements of the EC regulatory regime. If significant market power exists (and this must include consideration of the share of the market attributable to the incumbent's downstream operations), then it is appropriate to apply remedies. Those remedies should be proportionate and should include the normal access obligations, including non-discrimination, transparency, cost orientation and accounting separation. This is particularly important in view of the degree of vertical integration within FT. Only if and when FT's market power at each stage in the value chain has been eroded sufficiently through competition such that they do not have significant market power at that stage will it be appropriate to consider relaxation of the regulatory controls.

Yours sincerely,

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