



***Response to the ART public consultation
on the review of fixed telephony markets***

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Executive Summary

- ◆ BT France welcomes the opportunity to comment on ART's review of the fixed telephony markets.
- ◆ This review depicts a market which is in very large measure dominated by the incumbent operator, in which there is a clear need for continued *ex ante* regulation at both the wholesale and retail levels.
- ◆ BT believes that ART should act swiftly to introduce to effective measures at the wholesale and retail level, and is disturbed that some of the measures proposed are contingent upon further, separate consultations which may yet take many months to bring to fruition.
- ◆ BT supports ART's intention to introduce a form of wholesale line rental.

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1. Introduction

- 1.1. BT France welcomes the opportunity to comment on ART's review of the fixed telephony markets.
- 1.2. This review depicts a market which is in very large measure dominated by the incumbent operator, and indeed it is clear that, following a brief period of competitive market entry, in many market segments the share of the market controlled by France Telecom (FT) has begun to grow. Under these circumstances there is a very clear need for continued ex ante regulation at both the wholesale and retail levels, and in general BT welcomes the measures proposed to counter the degree of market power exposed in the review.
- 1.3. BT supports the range of remedies proposed in this market review, although we have certain reservations which are detailed in the following paragraphs. However, a major concern is that some of the more important remedies proposed depend on further consultations, which means that the process of introducing effective regulation in this most important of markets will extend over many months.
- 1.4. The following numbered paragraphs provide our comments on the respective Chapters in the ART consultative document.

2. Retail market boundaries

- 2.1. ART asks respondents in paragraph A-4 to comment on the opportunity to sub-segment the market on the basis of the underlying technology, particularly in view of the current spotlight on VoIP technology. In BT's view it is premature to consider such a segmentation. VoIP services have only recently reached the market, and there is a current debate in a number of fora on the relationship between traditional telephony, VoIP services and publicly available telephone services (PATS). Once these relationships are clearer there may be scope to take decisions on a sub-segmentation.
- 2.2. ART also asks respondents, in paragraph A-6, to comment on whether it is appropriate to consider a sub-segmentation of the non-residential market. BT's view is that in theory there can be a case to consider a segmentation between very large business customers on the one hand, and smaller and medium business customers on the other. However, this should only apply when the incumbent's share of the business market overall is sufficiently low to justify a sub segmentation, and in view of FT's current share of the business retail market this is not the case.
- 2.3. As regards the issue of segmenting the market on a geographical basis, raised in paragraph B-5, BT's view is that here also there are circumstances

when, in order to reflect differing competitive conditions, it will be necessary to conduct a segmentation of this type. However, BT agrees with ART that given FT's market share of over 95% across this market as a whole, there is at present no justification to consider geographic segmentation.

- 2.4. BT agrees with ART's view in paragraph C-3 that although the competitive conditions on individual international routes may vary, it is reasonable to treat international calls as a single market, given the ability of operators to use transit suppliers who provide access to all routes. Of course, Ofcom in the UK has not taken the same view in the UK market, and persists in classifying international routes as competitive or non-competitive on the basis of specific factors. BT would like to see a much greater harmonisation between national regulatory authorities on this point, as the differences in approach are not justifiable by any objective measures.

3. Identification of operators with market power in the retail market

- 3.1. BT agrees with the proposed classification of the retail markets in this section, and with ART's conclusion that FT exercises a significant influence over the ten markets identified.

4. Wholesale market boundaries

- 4.1. ART invites comments on the proposal to structure the market for calls to the French overseas territories into ten separate sub-markets. BT is content with the proposal as it stands. BT is similarly content with the proposal in Chapter 5 section E to group these sub-markets into three separate groups with shared characteristics.
- 4.2. As regards the question in paragraph G, BT agrees with ART that the market for international transit calls is competitive and does not need to be made subject to ex ante regulation.

5. Identification of operators with market power in the wholesale market

- 5.1. As regards the market for traffic between tandem exchanges, BT agrees with the ART conclusion that there is no case at present for the removal of ex ante controls. A particular issue for BT in relation to this market is that we have sought the option to accept BT terminating traffic from FT via a third operator. FT refuses to implement this form of routing, citing ART decisions. We urge ART to clarify FT's obligations in this regard. Finally as a general comment in relation to inter-tandem traffic, BT finds it difficult to understand the ART calculation that FT retains only 39% of this market. It is evident from Chapter 3 paragraph B-3 that FT retains very high retail shares: 72.5% of residential local and national calls and 74.5% of non-residential local and national calls; 71.8% of residential calls to mobiles and 74% of non-residential calls to mobiles; 70.2% of residential international calls, and 59.1% of non-residential calls to mobiles. Given that the wholesale market shares calculated include own use, and accepting the point made by ART that more of the traffic carried by alternative operators is classified as inter-tandem traffic than is the case for FT, nevertheless it seems difficult to us to believe that the figure of 39% can be accurate, and we urge ART to explain this calculation further.

6. Wholesale market obligations

- 6.1. In section D-1.4 ART invites specific comment from respondents on the inclusion of calls to non-geographic numbers in the fixed network. In the UK the "all call" category defined in BT's carrier pre-selection offer includes calls to non-geographic numbers, with the sole exception of calls to numbers providing unmetered internet access. In BT's view there is no reason why this should not also apply in the case of the carrier pre-selection offer from FT.
- 6.2. BT welcomes the initiative by ART to launch a separate consultation on "slamming". BT believes that customers should be in a position to change operator in a simple and uncomplicated fashion, but equally should have proper protection from unscrupulous forms of customer acquisition. Mis-selling remains a persistent problem in many markets, not least the UK.
- 6.3. ART describes in section E its intention to introduce a form of wholesale line rental. BT supports this measure. As regards the issue of calls to non-geographic numbers, we have already said that in our view the FT carrier pre-selection service should be modified to include such numbers, and thus we are in favour of option 2 in paragraph D-4.4.4.
- 6.4. As regards the issue of call by call selection, raised in paragraph D-4.4.5, we note that the solution adopted in the UK is to remove the obligation to provide call by call access in the case of lines taken over by a competitor to the incumbent, and we believe this solution would be similarly appropriate in France.
- 6.5. ART invites comment in paragraph F-8.2 on its proposal that the price control applied to wholesale access should be based on cost orientation. Given that this requirement is introduced as a remedy to counteract the very high levels of the incumbent's market share, BT agrees with ART's proposal.

7. Retail market obligations

- 7.1. In paragraph D-1 ART invites comments on its proposal to require FT to notify ART of all new prices and price changes. Since it seems it would be impossible for ART to take any action in the event of anti-competitive prices, unless such a notification system were in place, it seems clear that ART must impose this requirement. Equally, FT should be required to give public notice of any price changes, and it is not clear from Chapter 7 of the consultation that FT is under such an obligation.
- 7.2. The proposal, described in paragraph D-3, for ART to provide FT with a notice of whether it intends to proceed to a full investigation, seems to BT to offer a practicable methodology for the exercise of ART's responsibilities with respect to pricing. However, in the interests of proper transparency, it is critical that FT should also be required to give public notice of price changes, enabling competitors to respond, or where necessary to raise their own concerns with ART, in accordance with Article 21 of the Universal Service Directive. In order to allow sufficient time for this, ART should extend its notice period from 7 days to at least 14 days, to allow it to take account of any concerns raised by FT's competitors.

- 7.3. In paragraph E-2 ART invites comments on its proposal to conduct a further consultation on a possible price control framework. Once again, given the high level and growing retail market share of the incumbent, it is clear that there will be an incentive to subsidise prices in the more competitive segments of the market from profits in the least competitive segments. It is therefore very important that the retail price control system adopted by the ART should take full account of this possibility, and ART should proceed with this consultation at the earliest opportunity.
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