

Notice n° 01–548

Telecommunications Regulatory Authority as of June 19, 2001 on tariff decision n° 2001482, regarding the evolution of Netissimo 1 and Netissimo 2 services and n° 2001480, regarding evolution of IP ADSL access offers and IP ADSL routing

The Telecommunications Regulatory Authority,

given the codes regarding telecommunications and postal services, notably article L. 36–7;

given article 17 of France Télécom brief approved by decree n° 96–1225 of December 27, 1996;

given the France Télécom request received April 13, 2001;

given the questionnaire submitted by the Authority to France Télécom as of April 30, 2001;

given France Télécom answers received by the Authority May 18 and June 6, 2001;

after having deliberated on June 19, 2001,

the following tariff decisions concern ADSL services supplied by France Télécom:

– To end customers, residential and business: high–speed Internet access services identified as Netissimo 1 and Netissimo 2.

– To Internet service providers (ISP): ADSL traffic routing service identified as Collecte IP/ADSL (formerly Turbo IP), allowing ISPs to offer their services to ADSL subscribers, and Netissimo access resale offering identified as IP/ADSL, allowing IAPs to offer their customers Netissimo type services under their own brand.

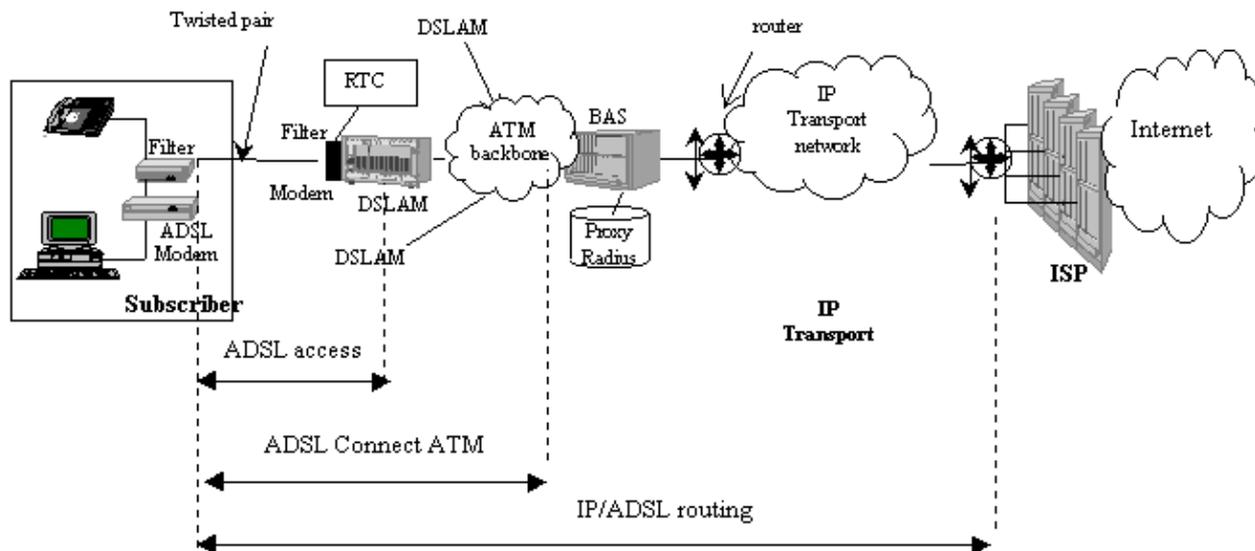
The Authority would like to draw attention to the fact that it has dealt with Netissimo and Turbo IP offerings with notice n° 99–582 dated July 7, 1999. In this notice, the Authority expressed its reserves regarding the roll–out of such offerings without maintaining control of the deployment time–line given the market context, particularly the non–availability of offers allowing operators to properly supply ADSL services.

In the context of the current notice, the Authority will cover the evolutions proposed by France Télécom (I), the market context that these offerings are a part of (II) and the analysis that stems from these elements (III and IV).

## **I. Overview of France Télécom’s proposed evolutions to ADSL offerings**

### **I.1. Review of ADSL supply chain components**

High speed Internet access on ADSL proposed by France Télécom leverages existing components of the operator’s local network as well as specific equipment, as schematized below:



## I.2. Proposed evolutions

With the current tariff decisions, France Télécom proposes changes to the supply terms of ADSL offerings as follows.

### a) Netissimo

Netissimo is the offer supplied to end customers allowing them access to high-speed Internet access. It includes an ADSL line, data transport and IP service to an ISP connected to this system. Evolutions proposed by tariff decision n° 2001482 involve two versions of this offering.

- Netissimo 1 with access to peak streams of 500 kbit/s in download (from IP network to subscriber) and 128 kbit/s in upload (from subscriber to the IP network). Access charges to the service remain unchanged: 642,62 francs before taxes (768,57 francs tax included) including installation of filter, ADSL modem and subscriber service activation, or 350 francs before taxes (418,60 francs tax included) not including these services. Regarding the monthly subscription price, France Télécom proposes to bring the price, currently set at 219,82 before taxes (263 francs tax included), to 165,55 francs before taxes (198 francs tax included).

- Netissimo 2 with access (in single station or local network configuration) to peak streams of 1 Mbit/s in download and 256 kbit/s in upload. Access charges remain unchanged: 900 francs before taxes including filter and ADSL modem installation and service activation, or 350 francs without these services. The monthly subscription price no longer includes modem rental, allowing customers who so desire to purchase one outright. France Télécom proposes to lower the monthly price, currently set at 700 francs before taxes (837,20 francs taxes included) to 600 francs before taxes (717,60 francs tax included).

### b) Collecte IP/ADSL (new name for Turbo IP)

The Turbo IP offering is the traffic routing offering targeted to ISPs to allow them to render their IP services accessible to subscribers with ADSL access (supplied by France Télécom via its Netissimo offering or by a third-party subscribing to the IP/ADSL resale offering). Through tariff decision n° 2001480, France Télécom proposes to change the identification of this offering to "Collecte IP/ADSL" and make the following changes:

#### i) Technical architecture

Firstly, France Télécom proposes to create two new connection streams on top of its current streams (2 Mbit/s, 34 Mbit/s and 155 Mbit/s). New streams of 1,5 Gbit/s and 2,5 Gbit/s will be made available, short distance technical feasibility not withstanding.

Secondly, France Télécom proposes to evolve its architecture, currently based on "ADSL plates" (41 in metropolitan France – one for a whole number of departments), to 17 "ADSL regions", corresponding to the transit zones defined by the interconnection framework (except for the Ile-de-France region which corresponds to two transit zones).

Finally, France Télécom proposes to create a national routing offering allowing an Internet access supplier to have France Télécom handle its traffic routing from ADSL access points across the entire national territory towards a single concentration point.

ii) Tariff terms

The current Turbo IP offering tariffs include billing per hook-up in addition to a billing for the gathering and routing of traffic.

The connection tariffs include service access charges that vary depending on throughput rate and a monthly subscription in function of the throughput rate and distance (d) between the France Télécom point of presence ("heart of the region" in the framework of the IP/ADSL offering) and the point of presence of the ISP. The tariff evolutions proposed by France Télécom are summarized in the following chart:

In francs before taxes	Turbo IP current rates		Collecte IP/ADSL proposed rates	
	Service access charges	Monthly subscription	Service access charges	Monthly subscription
2 Mbit/s	40 000	19 000 + 1000 (d-10)	29 518,07	19 678,71 + 983,94 (d-10)
34 Mbit/s	80 000	40 000 + 3000 (d-10)	39 357,42	29 518,07 + 2951,81 (d-10)
155 Mbytes/s	80 000	80 000 + 4500 (d-10)	39 357,42	39 357,42 + 2951,81 (d-10)
1 Gbit/s			65 595,70	78 714,84
2,5 Gbit/s			98 393,55	118 072,26

The traffic gathering and routing portion is priced based on bandwidth made available to the ISP. In the case of the Turbo IP offering, France Télécom billed this service by 500 kbit/s portion, with sliding scale pricing going from 6000 francs per month per Mbit/s between 0 and 2 Mbit/s to 4 400 francs per month above 34Mbit/s.

The Collecte IP/ADSL offering includes two versions, regional and national. Proposed rates are as follows:

Collecte – regional		Collecte – national
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Throughput caps (Mbit/s)	Monthly price (in francs before taxes per Mbit/s)		Throughput caps (Mbit/s)	Monthly price (in francs before taxes per Mbit/s)
2 à 4	5378,85		0 à 20	7674,70
4 à 16	4854,08		20 à 40	6821,95
16 à 32	4394,91		40 à 80	6231,59
32 à 64	4001,34		80 à 320	5772,42
64 à 128	3673,36		320 à 640	5444,44
128 à 256	3345,38		640 à 1280	5247,66
256 et +	3148,59		1280 et +	5116,46

### c) IP/ADSL

IP/ADSL is a resale offering of France Télécom's Netissimo services, proposed by this company since 1999, allowing ISPs to market Netissimo type ADSL access under their own brand. Contrary to the aforementioned offerings, the IP/ADSL offering has never been subject to certification.

Under these tariff decisions, France Télécom submits for certification tariff evolutions on this resale offering. The Authority recognizes that this France Télécom offering has no competitor on the market and therefore this procedure is applicable.

Two versions of this offering are marketed: IP/ADSL 1, for resale of Netissimo 1 service, and IP/ADSL 2, for resale of Netissimo 2 service. Rates currently include access activation charges equal to those of the Netissimo offering and a monthly subscription that varies based on the number of access points the ISP subscribes to according to a yearly commitment (3 000, 10 000 or 20 000 net subscriptions). Thus for a yearly commitment total of 20 000 subscriptions (IP/ADSL 1 + IP/ADSL 2), monthly access prices is currently 186,77 francs before taxes per IP/ADSL 1 type access and 563,29 francs per IP/ADSL 2 type access. This represents a decrease of 15% versus the current public price for Netissimo.

Under tariff decision n° 2001480, France Télécom proposes to replace annual commitment levels by a billing minimum of one million francs per year as well as maintain a single subscription rate, amounting to 140 francs before taxes for IP/ADSL 1 and 510 francs before taxes for IP/ADSL 2. This corresponds to an unchanged discount rate of 15% in relation to the abovementioned new public prices for Netissimo proposed by France Télécom. Access activation charges remain unchanged.

France Télécom has indicated that some 85% of ADSL access points should be marketed under the IP/ADSL offering. Most ISPs should thus resell Netissimo offerings under their own brand, particularly as packs that comprise Netissimo subscription and Internet service subscription per se. Selling such services on separate basis would represent a small portion of the market.

France Télécom proposes that the new rates covered by these tariff decisions apply retroactively from the filing date. It should be mentioned up front that such retroactivity would be contrary to elements of article 17.2 of the France Télécom specifications brief, which foresees these rates applying 8 days after their certification. Irregardless of this analysis, this request cannot be accepted.

Finally, France Télécom does not wish to publish in their entirety the pricing terms of offers proposed to

ISPs. The Authority underlines that the terms of fair competition on the ADSL market implies equal treatment for ISPs, meaning that all ISPs benefit from the same tariff and technical terms. In this perspective the Authority views the complete publication of such terms as basic respect of such terms, ensuring fair competition in this market. It appears therefore indispensable that France Télécom publishes in a detailed manner the terms of these offerings.

## II. ADSL market context

### II.1. ADSL deployment status

High-speed Internet access via ADSL offers strong potential for development, complementary to other modes of access to high-speed service such as cable networks and local radio loop. The advantages of ADSL technology lie particularly in its ease of deployment using normal telephone lines (except with very long lines) allowing incumbent operators the possibility of leveraging their existing infrastructure. From a geographic standpoint, ADSL thus offers superior potential over cable networks, which are limited to urban areas. Offers based on the local radio loop currently being rolled-out are at this point essentially targeted to business customers. These elements entail that the ADSL market be subject to specific analysis.

Since the November 1999 market launch, *France Télécom has moved quickly to roll-out ADSL offerings geographically*: at the end of year 2000, ADSL technology covered 11 million lines (500 nodes), and should cover 16 million by the end of this year, given France Télécom's objective of covering two thirds of its lines by the end of 2002. ADSL was thus accessible to approximately one third of the population by end of 2000 and should be to half the population by the end of this year. In terms of customer numbers, France Télécom has publicly stated a figure of 64 000 lines in service at the end of the year 2000 and has set an objective of 600 000 lines for the end of this year.

On the consumer market, *retail offerings have recently seen a significant drop in prices*: the launch of ADSL packs (including Netissimo 1 service subscription and ISP service subscription) since January 2001 has led to residential customer offerings of 300 francs tax included per month compared to over 400 francs tax included in 2000. These offerings which require no technical intervention on the customer's part are designed to encourage a roll-out of ADSL across the entire territory. Wanadoo has announced sales of 800 packs a day.

These numbers can be compared to those of cable operator offerings. As of December 31, 2001, there were 121 911 cable Internet subscribing customers (53% Noos subscribers and 25% France Télécom Câble subscribers<sup>1</sup>) out of a total of more than 3 million subscribers to a cable network service and a potential of 8,4 million usable hook-ups. The rates offered by cable operators for Internet access are comparable to ADSL offers currently marketed. They vary in function of throughputs offered and propose download volumes from 199 francs tax included (for up to 50 hours on-line) to 600 francs tax included per month.

Finally, it may be noted that *most incumbent European operators are engaged in the rolling out ADSL offerings*. According to a market review conducted by the European Commission<sup>2</sup>, some 400000 lines were equipped with ADSL technology in Germany at the end of the year 2000, 70 000 in Spain, 60 000 in Belgium and the Netherlands, and 50 000 in Italy and the U.K. Based on the Authority's information, tariffs offered by France Télécom are within the European average. Wanadoo X-Tense pack costs approximately 45 euros (not including modem and access charges) compared to, for similar services, a rate ranging from 20 to 45 euros in Germany, 46 euros in the Netherlands, 55 euros in Italy and 65 euros in the U.K.

### II.2. ADSL market competitive growth climate : current situation

Given the current state of ADSL deployment, France Télécom's tariff proposals mainly targeted at Internet service providers raise sensitive issues. With this notice, the Authority would like to ensure the greatest transparency in regards to its analysis of issues raised for the benefit of the market as a whole.

The Authority has first evaluated the current situation in view of adopting a position that *benefits the consumer over both short and mid terms, taking into account the concerns of various categories of players, notably telecommunications operators and Internet service providers which should be able to stimulate market competition by introducing diversified offers.*

Generally speaking, ADSL growth has accelerated since the beginning of 2001, notably due to the marketing efforts of France Télécom and its affiliate Wanadoo. Other players, mainly access providers, have entered the market under precarious economic conditions, notably Club–Internet, Mangoosta, Liberty Surf, and Infonie. Meanwhile, operators are not in a position to tangibly intervene in this market given operational timeframes required to implement unbundling and the effective availability of an access offering specifically targeted to them.

#### a) The France Télécom group situation

Analysis of conditions under which Wanadoo is currently pursuing deployment highlights that *Wanadoo is benefiting from advantageous France Télécom terms compared to those offered to other ISPs under the current Turbo IP offering.* In particular Wanadoo benefits from a national routing offering functionally identical to the one France Télécom is proposing to submit for certification. From an economic standpoint, the terms offered to Wanadoo are causing the company to assume heavy losses given residential market price levels since the introduction of packs. This situation could reveal predatory behavior carried out by France Télécom and its affiliate Wanadoo on the consumer ADSL market.

As to the situation of France Télécom itself, inspection of cash flows supplied as part of these tariff decisions highlights that revenues collected from Netissimo 1 and 2 end customers and IP/ADSL offering ISP customers are leading to a negative margin in 2001, made up for the following year supposing constant rates. France Télécom justifies this situation by the heavy investments engaged during the equipment deployment phase<sup>3</sup>.

#### b) The situation of Internet service providers

While certain service providers have decided to enter the ADSL market, it would appear that the economic conditions for the launch of their offerings are particularly precarious. *Currently, given the terms proposed by France Télécom to ISPs on the intermediary segments of routing, offering ADSL packs at a price level comparable to Wanadoo leads service providers to endure heavy losses.*

#### c) The situation of third–party operators

The Authority has been working since 1998 to define ADSL market development conditions that would allow third–party operators to tangibly engage in this market, offering services similar in nature to France Télécom’s Netissimo and Turbo IP, while maintaining control of technical and business components of these services.

The pursuit of this objective has led to the definition of two essential strategies, currently being implemented:

- *Unbundling of the local loop*, under its two components, totally unbundled access and shared access, as per the terms set out in the decree dated September 12, 2000 and the European ruling of December 18, 2000. Since the publishing of these texts, the Authority has been working to remove operational barriers to this implementation through concertation and by carrying out several sanctioning procedures. From a tariff standpoint, the Authority has imposed that France Télécom reduce its initial rates to 95 francs per month for totally unbundled access and 40 francs per month for shared access. Today certain operators have launched their deployment by taking customer orders but within very limited geographic areas.

- On a *complementary level* and taking into account investment ramp-up time for infrastructures linking operators to France Télécom's local nodes, all operators underlined the necessity of an *ATM driven virtual private network offering, known as unbundling option 3*. This is a data transport offering which allows a third-party operator to connect users (served via a telephone line) to its point of presence within a single ADSL plate.

In this perspective, in a request for conservatory measures filed by 9 Télécom Réseau, the Competition Council, in a decision dated February 18, 2000 had France Télécom make available to third-party operators within eight weeks an ATM permanent virtual circuit offering corresponding to the abovementioned option 3, or to an equivalent offering allowing operators to supply ADSL service competitive to France Télécom both in terms of price and services offered. Following this injunction, ADSL Connect ATM offering was designed by France Télécom who announced its availability for the end of the year 2000. Then following a arbitrage request by Liberty Surf Télécom, the Authority was led, in decision n° 01-253 of March 2, 2001, to set pricing terms of the ADSL Connect ATM offering for the year 2001 at 210 francs per access per month and 1330 francs per Mbit/s per month. The France Télécom offering conforming to this decision has been transmitted to the Authority in the framework of the current dossier dated June 6, 2001.

*However, the current implementation conditions of these two strategies are such that operators cannot fully enter the marketplace and market offerings comparable to those of France Télécom.* This deepens a serious gap in the market, a gap attributable to France Télécom, considering the delay taken in making a type 3 operator offering available.

### III. The Authority's analysis of France Télécom proposals

The Authority has analyzed the impact of France Télécom's tariff proposals giving the most careful consideration to the market terms described previously and expectations expressed by the industry.

In this framework, the Authority has analyzed these proposes on the basis of, on one hand, their impact on ADSL retail market competitiveness and, on the other, their compatibility with third-party operator supply of competitive offerings on the basis of ADSL Connect ATM.

#### III.1. Impact of France Télécom proposals on the ADSL retail market and ISP entry conditions situation

Offers proposed by France Télécom to ISPs present *several characteristics that would significantly improve the retail market situation as described above*, for the following reasons:

- Firstly, the geographic nature of the regional routing offering is extended from the current concept of ADSL plate (41 in total) to the concept of ADSL region (17 in total). This division allows so called regional ISPs to extend the geographic territory of their marketing at a lower cost.
- Secondly, France Télécom's proposed tariffs on the regional routing offering represents a reduction of 23% against current Turbo IP tariffs.
- Thirdly, concerning the IP/ADSL resale offering, France Télécom proposes a significant price drop on the residential segment : the 25% decrease of Netissimo 1 rates proposed by France Télécom leads to a reciprocal decrease in resale prices under IP/ADSL.
- Furthermore, France Télécom replaces the sliding scale, based up until now on annual customer commitment levels, with a minimum annual billing of one million francs, which corresponds to approximately 600 access points. The sliding scale structure is however maintained on the Collecte IP/ADSL offering, both in terms of connections and throughput. This type of tariff can be a source of discrimination in itself, in that it tends to benefit larger France Télécom customers, notably Wanadoo. However the Authority has noted that price scaling is less felt at the higher throughput levels, helping to reduce this risk. This scaling may also appear to be economically justified by scale economies that can happen in terms of bandwidth.

- In addition, *France Télécom extends to service providers the national routing offering currently exclusive to Wanadoo*. This offering is designed to respond to ISP demands in that they would not be required to deploy points of presence in each ADSL region nor would they have to carry out or have carried out traffic routing across the entire territory. It is designed to rectify a discrimination currently in favor of Wanadoo.

*In sum, the offerings proposed by France Télécom are designed to allow ISPs to launch offerings competitive to Wanadoo under technical and economic terms that appear more satisfactory. For Wanadoo, they lead to a situation of better cost recovery given revenues gained on a retail level.*

In general, these offerings should help to significantly improve the current conditions of the ADSL retail market. This said, the implementation of aforementioned strategies allowing the effective supply of competitive offerings by operators must be carried through.

III.2. Analysis of France Télécom proposals in light of competitive supply conditions for operators on the basis of ADSL Connect offering.

The Authority has conducted an analysis designed to evaluate the conditions under which a third-party operator might propose to ISPs routing offerings comparable to those of France Télécom using ADSL Connect ATM as per the outcome of decision n° 01-253 of March 2, 2001.

In this framework, the Authority has focussed its reasoning on the intervention conditions of an operator on the residential market, given its specific characteristics.

The Authority considers in effect that while the aforementioned decision involved an analysis based on market hypothesis of a third-party operator made up of 80% residential customers and 20% business customers (a hypothesis stemming from the contradictory exchange between parties preceding this decision) such a hypothesis cannot be carried forward as such, given that this analysis extends beyond the field of arbitration of a disagreement between two operators.

The characteristics specific to the residential ADSL market warrant that it be analyzed in its own right. Supply terms are different in terms of proposed throughputs and France Télécom prices for residential offerings are substantially lower than those destined to the business market. This tends to suggest that business customer demand is focussed on higher stream offerings for which they are willing to pay higher prices. Given its technical characteristics, ADSL Connect ATM should be essentially used for residential segment offerings. Business and particularly corporate customers expect high service quality with guaranteed throughput levels which ADSL Connect ATM does not allow. In this perspective it is worth reminding that France Télécom proposes a resale version of Turbo DSL service on which operators can offer business customers services adapted to their needs.

These reasons justify specific analysis on the residential ADSL market.

This analysis involved the development of an economic model for an operator, taking into account its specific operating terms. Beyond the base prices resulting from the March 2, 2001 decision (210 francs per month per access and 1330 francs per month per Mbit/s) such a model must consider connection costs, costs of modifying the local routing pipelines included in the offering as well as operator offerings over the years 2001-2003.

Following this analysis, the Authority has found that an operator's ISP revenue potential and cost structure is incompatible with those of France Télécom's ISP offerings, compromising the possibility for a third-party operator to sustain a long term development strategy on the residential market.

### III.3. The Authority's position

Overall analysis of offering proposed by France Télécom leads the Authority to seek a balanced solution that avoids the traps of two opposite paths :

- A position that would force France Télécom to seriously re-evaluate its proposed rates. Considering the preceding evaluation which tends to show the incompatibility of such rates with a sustained development of mass market ADSL strategy by an operator on the basis of ADSL Connect ATM.
- A position leading to the approval of prices as proposed, to favor short term deployment by competitive service providers of alternative offerings to those offered by Wanadoo.

Analysis conducted under the first option would lead to forcing France Télécom to significantly re-evaluate the price levels it proposes. Given market conditions described previously, the real outcome would compromise ISP supply of alternative residential ADSL offering over the short term and even threaten the pursuit of this activity by players already involved. Under this hypothesis, the Authority would be led to notice the prejudice to competition by the Wanadoo deployment policy and carry out procedures to stop such deployment.

This stated, as the preceding analysis has highlighted, *the offerings proposed by France Télécom should significantly improve the competitive situation on the ADSL retail market* by allowing short term supply of retail offerings competitive to Wanadoo and thus contributing to the development of mass-market ADSL. This development would generate positive spin-offs for players as higher volumes drive down costs. This effect is particularly warranted on the specific market of ADSL which uses a technology with a supply cost structure that is highly dependant on equipment usage rates, which in turn are dependant on offerings made available.

As for third-party operators, a major portion of them are seeking to enter the market with routing offerings competitive to those of France Télécom. Most of them already have an ISP customer base developed in the framework of low speed switched Internet based routing offerings and would like to enrich their offering to these customers by offering a high speed traffic routing service.

However, the current situation, substantiated by the economic evaluations conducted by the Authority, is such that it would not appear to allow operators to tangibly develop such activity over the short term using the ADSL Connect ATM offering, which was initially targeted to them as complementary to unbundling and in line with the pace of its development. Some operators, lagging behind France Télécom on both a technical and a business level, seem forced to put a priority on rapid entry in the marketplace, focusing on a solution based on the subscription to France Télécom IP-based routing offerings in parallel to their deployment through unbundling and delaying the launch of offerings based on ATM platform initially foreseen.

Under these conditions, the Authority believes that following a path that would lead to a real short term slow-down of mass-market ADSL by re-evaluating the France Télécom's pricing terms does not seem to be the appropriate solution to conciliate the contradictory issues at stake in the best way for the consumer and the development of the Internet.

Never-the-less, the Authority underlines that this situation, due largely to France Télécom's delay in supplying a type 3 option compatible with the effective entry of third-party operators on the market, must not lead to an unconditional authorization to France Télécom.

In this perspective, and in the interest of ensuring that players have a certain idea on their entry conditions, the Authority is led to describe below the supply terms that ADSL Connect ATM must satisfy by January 1, 2002 at the latest so as to be compatible with the supply of competitive routing offerings by operators.

## IV. The conditions that routing offerings to ISPs and ADSL Connect ATM must satisfy

### IV.1. Regarding the supply conditions by France Télécom of routing offerings to ISPs

In the first place, the Authority wanted to ensure that the deployment conditions of routing offerings did not jeopardize the capacity for a third-party operator to propose competitive offerings to ISPs once the ADSL Connect ATM would be effectively operational. The Authority has thus taken particular care in examining the technical and contractual conditions under which an ISP subscribing to France Télécom IP/ADSL offerings would be able to migrate to a third-party routing offering.

From a contractual standpoint, the Collecte IP/ADSL and IP/ADSL offerings not appear to include in their contractual terms clauses that restrict ISPs from subscribing to a competitive offering, a possibility which must be ensured. While the proposed contracts supplied by France Télécom to the Authority involve an initial duration of one year, service termination remains possible with the reserve, in the case of IP/ADSL of a three month notice, and, in the case of Collecte IP/ADSL, by paying subscription charges corresponding to the connections subscribed to for the current year.

Technically, irregardless of the operator chosen by the ISP for routing services (France Télécom or a third-party operator using ADSL Connect ATM), the customer line is physically connected to the same DSLAM supplied and managed by France Télécom. This DSLAM is connected by a local routing pipeline to either the France Télécom BAS ensuring connection hosting or to the ATM equipment of a third-party operator. Migration thus involves a technical operation on France Télécom's part to switch the local routing access from one pipeline to another, an operation carried out by reconfiguration accesses on the DSLAM. Thus *it is necessary that France Télécom plan this operation procedure so as to ensure minimal service downtime for the subscriber.*

### IV.2. Regarding the ADSL Connect ATM offering

The Authority wishes to precisely describe the structural components that affect the supply of the ADSL Connect ATM offering in conditions that allow effective market competition.

#### a) The ADSL Connect ATM offering of June 1, 2001 and France Télécom's long term commitment contract

In the scope of complementary elements supplied June 6, 2001, France Télécom has transmitted to the Authority a new version of the ADSL Connect ATM offering dated June 1, 2001. This offering includes as an option a long term commitment ADSL Connect contract (CELDAC) allowing operators that commit to a three year term to benefit from a 20% discount on monthly subscription prices for subscriptions corresponding to local routing pipelines related to ADSL Connect ATM contracts set up as CELDACs.

Under this option, the operator commits to a local routing pipeline<sup>4</sup> network attached an ADSL contract corresponding to a region or ADSL plate and can terminate up to 20% of these routing pipelines. This option offers real interest to operators working to deploy their infrastructure in a local loop unbundling framework. It allows them to accompany this deployment by terminating the local routing pipelines corresponding to nodes that they will use more and more.

The Authority underlines that this commitment appears to be constraining by its duration of three years and its geographic area. In a strategy founded as a priority on deployment in dense areas, for example Ile-de-France, an operator could go over the 20% of the region in question before the three years. This effect is even greater if the geographic field considered is limited to the ADSL plate. Furthermore, local loop unbundling should allow operators to propose operators without a capillary network offerings competitive to France Télécom's ADSL Connect ATM in the areas they are physically present. In this perspective, operators may see not interest in committing to France Télécom for this length of time.

Consequently, the Authority considers that it is not relevant to take into account the effect of the CELDAC in evaluating entry conditions for operators on the market. Therefore it has focused on examining the structure and price levels of ADSL Connect ATM.

b) Structure and levels of the ADSL Connect ATM offering: necessary conditions for January 1, 2001.

The Authority reminds that it has adapted in the framework of a dispute between France Télécom and Liberty Surf Télécom a position that accepts that France Télécom gain a certain profit in supplying this offering considering both the legal qualification of this offering and the commitment limited to one year which may imply a low usage rate of DSLAMs. Thus as a precaution the Authority has conceded to France Télécom a 29% margin linked to the non alignment of rates to costs and including a mark-up related to eventual risks associated to one-year limited commitments.

The Authority considers that *the new market context resulting from France Télécom's IP offerings justifies a significant revision of ADSL Connect ATM rates*, to ensure effective competition and to take into account the costs of faster market growth. It sees as necessary that this revision take effect by January 1, 2002 at the latest.

The revision of these terms should happen on both a structural and a price level basis, as follows :

- Concerning the structure of the offering, the operator using the ADSL Connect ATM offering as it currently exists assumes, on an access level, an indiscriminate cost of 210 francs per month. In comparison, resale offerings IP/ADSL 1 and IP/ADSL 2 are highly differentiated according to the market targeted and France Télécom proposals lead to the reinforcement of such differentiation over current rates. The proposed tariffs are 140 francs a month for IP/ADSL 1 (a decrease of 25%) and 510 francs a month for IP/ADSL 2 (a decrease of 10%). This situation forces operators to take on the burden of price differentiation by linking their supply of competitive residential market offerings to the supply of business market offerings which generate higher revenues.
- The Authority considers this situation as unjustified and *necessitates a differentiation in the ADSL Connect ATM offering itself on the access portion*. It appears that from a technical standpoint, this offering is already divided into two distinct types of access. On the basis of the current level of 210 francs per access, such a differentiation would lead to the application of monthly rate of 140 francs for a residential type access and 510 francs for a business type access.
- These differentiated tariff levels remain however incompatible with those offered by France Télécom to ISPs. Therefore *it is necessary for France Télécom to carry out a minimum reduction of 15% on its ADSL Connect ATM offerings regardless of the duration of operator commitment. This reduction may be obtained by a minimum reduction of 20% on the access component*.

It is clear that this reduction is based on an analysis of price conditions that can be observed in the market today, in particular those proposed by France Télécom to ISPs. Thus any future reduction of these parameters would require an evaluation of the impact on the resulting revision of pricing terms for ADSL Connect ATM.

The Authority deems that *these revisions to France Télécom's ADSL Connect ATM offering be presented within a practical timeframe so that operators who so wish be able to launch their own offerings on this basis on January 1, 2001 at the latest*. The Authority underlines that the implementation of this demand is indispensable to effective competition in the ADSL market. In this respect, it considers that *a commitment by France Télécom to respect these conditions to be a prerequisite to offerings submitted for certification*.

V. Overall conclusions

The Authority considers the development of high speed services to be a priority. In parallel to other modes of access, ADSL offers high potential in this respect and thus justifies actions taken to open this market up to competition and contribute to its growth.

It has applied itself over the last two years to put in place the conditions allowing third-party operators to tangibly take part in this market under conditions equivalent to those under which France Télécom was able to offer its own services.

The analysis of current competitive conditions on this market leads the Authority to a worrying observation, particularly in terms of mass-market ADSL growth conditions. The current situation is in fact dominated by a broad-scale roll-out strategy by Wanadoo, without having assured entry conditions for competitive service providers. Furthermore, at the current time, operators are not really able to enter the market on the basis of unbundling or the ADSL Connect ATM offering. Some of them are led to adopt a short term solution different from what they had initially planned.

It is in this spirit and taking into consideration this situation that tariff proposals of France Télécom have been examined by the Authority.

The Authority was in fact confronted by a delicate alternative:

- Propose to significantly re-evaluate the tariff levels of offerings proposed by France Télécom, taking into account their incompatibility with the supply of competitive offerings by operators based on the ADSL Connect ATM offering as it exists today. Adopting this line of analysis would tangibly lead service providers (even certain operators) to enter the retail market by proposing offers competitive to Wanadoo under economically viable conditions.
- Propose to accept France Télécom's proposed offerings in light of the advantages that they would offer the mass-market over the short term, for the consumer and for the development of the market, but also to improve the competitive conditions in terms of Internet access. Taking this stance would lead necessarily to considering the need to allow operators who so wish to put together competitive offerings based on an ADSL Connect ATM type offering.

The Authority, having examined the issues and implication of these two distinct paths, is led to give priority to the second one.

It considers however that the current situation is in part due to France Télécom's delay in offering operators a means to allow effective entry of competitive operators in parallel to local loop unbundling which can inherently require a longer lead time to implement. In these conditions, it sees the implementation of France Télécom's offerings to ISPs as requiring a firm commitment to revise, by January 1, 2002 at the latest, the structure and pricing levels of the ADSL Connect ATM offering according to the abovementioned terms. This commitment is a prerequisite to the approval of the current tariff decisions.

Under the explicit reserve of this prerequisite commitment, the Authority gives a favorable evaluation to tariff decisions n° 2001480 and 2001482.

This notice will be transmitted to the Ministry of Economy, Finance and Industry, to the Secretary of State for Industry, as well as to France Télécom for information. It will be mentioned in the *Journal officiel* of the French Republic.

Paris, June 19, 2001

The President

<sup>1</sup> AVICAM source

<sup>2</sup> "Local loop unbundling: progress on implementation in Member States" – European Commission, Directorate General Information Society, May 15, 2001

<sup>3</sup> The Authority admits this reasoning: being a market in early growth phase, costs evaluated on the short term may lack relevance as an economic price reference

<sup>4</sup> These local routing pipelines are billed according to two distinct subscriptions, based on dedicated access and throughput respectively