



***Response to the ART public consultation
on the review of broadband markets***

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Executive Summary

- ◆ **BT welcomes the opportunity to respond to this consultation by ART on its review of the Broadband market. For alternative network operators in the French market this is a key segment, and decisions made in this segment will have far reaching consequences for the development of sustainable competition.**
- ◆ **BT supports the measures proposed by ART to ensure that local loop unbundling is provided by France Telecom (FT) on a non-discriminatory, transparent and cost orientated basis.**
- ◆ **However, local loop unbundling will not be the only form of service required by FT's competitors in the medium term. FT should also provide regional and national bitstream, meeting all reasonable requirements for broadband access.**
- ◆ **Given the current state of competitive supply of bitstream services in the French market, ART should require FT to respond to all reasonable requests for bitstream services, at prices based on a long run incremental cost methodology.**
- ◆ **FT's downstream operations should be based, in a transparent way, on wholesale inputs which are made available to FT's competitors, including the same commercial terms, technical arrangements and quality of service levels.**
- ◆ **ART should impose rigorous requirements for security of customer information between FT's upstream and downstream operations.**
- ◆ **BT supports the use of margin squeeze tests, but believes they can only be effective when the test can be simply and readily applied and when it provides a strong measure of predictability to FT's competitors.**
- ◆ **ART should minimise its efforts to dictate the form which competition will take. Combinations of local loop unbundling, bitstream and leased circuit solutions are likely to be needed by many competitors to FT. Competitors' decisions to build or buy networks should be based on transparently produced cost oriented component prices, not on attempts to control the nature of competitive entry. In particular ART, whilst effectively regulating markets in which the incumbent has market power, should not attempt to predetermine technologies or outcomes.**
- ◆ **BT strongly supports the requirements proposed by ART for accounting separation relating to the markets covered by this review.**

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1. Introduction

- 1.1. BT welcomes the opportunity to respond to this consultation by ART on its review of the Broadband market. For alternative network operators in the French market this is a key segment, and decisions made in this segment will have far reaching consequences for the development of sustainable competition.
- 1.2. BT currently offers network coverage in more than 120 countries across five continents. In Europe, our IP-enabled network is one of the largest in Europe, with 46,000kms of fibre across 19 countries, connecting more than 250 cities and 21 hosting centres. In France, BT is a relatively new entrant to the market, but brings its considerable expertise in serving the needs of enterprises for networks and solutions, and has plans to become a major market player. The success of these plans will inevitably be linked to a properly applied regulatory regime
- 1.3. There is a clear focus in the ART consultation on the need to foster the development of network competition, and it therefore puts a great deal of emphasis on the need to maintain the financial viability of competitors to France Telecom (FT) who are building out regional networks. This emphasis is entirely appropriate in the context of the development of competition in broadband services, and of fostering the creation of a set of vibrant, low-priced internet access services for the residential market.
- 1.4. However, the provision of broadband services to the business community is equally important, and there should be an equal focus by ART on bringing the benefits of global integration and global applications to the French business market. For this reason, ART should make its primary goal the creation of a set of remedies which are appropriate to the level of market power which they find in the French market, rather than any attempt to micro-manage outcomes through an overly interventionist approach to competition.

2. Broadband Retail Markets

- 2.1. The ART Market Review confirms that FT retains considerable market power. Wanadoo retains 50% of the ADSL retail customer base (as at March 2004), whilst Transpac retains between 70 and 75% of business DSL lines (as at end 2003). The fact that FT continues to enjoy such market power at the retail level underlines the importance of continued ex ante regulation at all levels of the wholesale market. The need is all the greater given that cable network competition to FT is so undeveloped. Equally important is the requirement for a proper separation of FT's retail operation from its wholesale operation, to ensure that FT's retail competitors are not placed at a competitive disadvantage.

3. Local Loop Unbundling

- 3.1. BT welcomes the proposed remedies laid out in Chapter 3 Section E of the ART Market Review.
- 3.2. The proposed obligations set out in Chapter 3 paragraphs E1 to E5 related to access, non-discrimination, transparency, cost orientation, and accounting separation are all fully justified.
- 3.3. The non-discrimination obligation set out in paragraph E2 is particularly important. FT must be even handed in its treatment of all customers of its unbundling products, whether they be competitors or FT owned downstream operations, and FT must be in a position to demonstrate this even-handedness.
- 3.4. Similarly, the requirement for accounting separation set out in paragraph E5 is a critical requirement, and BT welcomes the guidance offered in Annex 2 to the Market Review on the form of accounting separation required of FT.

4. Wholesale Broadband Market Offerings at the Regional Level

- 4.1. Metropolitan France has a relatively low population density and for an operator serving business customers across France, with a requirement to interconnect in 39 ATM zones for national coverage, FT's *ADSL Connect ATM* wholesale offering represents an expensive solution.
- 4.2. FT's *Turbo DSL* retail product reduces the minimum number of interconnect points to 21 (one for each DSL region), but in order to receive the best prices it is necessary to interconnect at 115 points.
- 4.3. FT's *IP/ADSL régionale* wholesale product, launched in February 2004, provides an IP bitstream service, designed for residential broadband customers, and like *ADSL Connect ATM*, requires 39 interconnection points for coverage of metropolitan France.
- 4.4. For an operator providing services to business customers, who may be geographically highly dispersed, these regional offerings do not, at this stage of network evolution, offer an optimal solution.
- 4.5. As ART observes in paragraph E3.1 of the Market Review, FT is in the process of fully integrating its Wanadoo operation into the parent company. It is vitally important with vertically integrated companies, especially where the vertical integration includes fixed, mobile and cable interests, that downstream retail operations should gain no unfair advantage in terms of prior access to product or network plans, customer identity or expenditure information, or pricing and cost information. Equally, it is vital that FT be in a position to demonstrate this even-handedness. The Review goes some way towards dealing with this issue, but in BT's view there should be explicit requirements placed on FT to ensure that its retail internet arms, Wanadoo, Transpac and Equant, operate at arm's length from the parent wholesale

network provider. This must include specific requirements relating to trading arrangements between the parent and subsidiaries, transparently equal quality of service arrangements between FT subsidiaries and competitors, and detailed, published accounting separation requirements.

5. Wholesale Broadband Market Offerings at the National Level

- 5.1. BT does not believe that the current FT offerings in this area respond to competitors' needs, nor that the ART proposals are sufficient. In BT's view the regional and national wholesale broadband products form part of the same offer, and should not be separated in the way ART propose.
- 5.2. As the ART review makes clear, there is no FT wholesale offering at the national level providing a guaranteed bit rate service. Given the current state of competition in the market place this omission should be remedied provided there is demand from alternative operators.
- 5.3. ART says that it regards the obligation on FT to provide IP/ADSL at the national level as a transitory obligation, that the purpose of this regulation is to permit the development of regional offers, and, further, that ART propose to conduct a review 12 months after the notification to the Commission of the results of the present review, with the intention of removing ex ante regulation if sufficient competition is in place. In BT's view there is no justification to signal an expectation of relaxed ex ante regulation at this stage.
- 5.4. Whilst FT exercises power in the wholesale broadband market, it should respond to the legitimate requirements of all operators, and should provide a business quality, nationally delivered bitstream service, where legitimate demand exists. Indeed, FT should be required to extend the range of offerings, where demand exists, for example by offering additional bit rates, service levels and service level agreements.
- 5.5. Overall, BT agrees wholly with FT's view stated in its response to the Ofcom Telecommunications Strategic Review in the UK: "It is not the regulator's role to substitute itself for operators in making investment decisions. Its role is to create conditions that favour development of the market, rather than to decide when to invest, or in which parts of the network, or even less using which technology."¹
- 5.6. This view is supported by the analysis in ART's Review which shows that the FT IP/ADSL product accounts for more than 80% of the wholesale ADSL market in France. We believe that ART should tailor remedies to the degree of market power, and it is therefore premature to consider relaxation of the ex ante regulation in this market segment. Again, BT believes that FT's view in relation to BT, expressed in their response to the Telecommunications Strategic Review, applies to FT: "...unless and until compelling evidence exists that LLU is acting as a material competitive

¹ Response of the FT Companies in the UK to the Ofcom Strategic Review of Telecommunications, 21 June 2004, paragraph A4

constraint on BT in the relevant markets, there will be little room for significant reduction in regulation in these wholesale markets."²

- 5.7. BT welcomes the proposal (Chapter 5 paragraph G4.1) to require FT to give four months' notice of any price changes in its national bitstream prices.
 - 5.8. Far from proposing any requirement on FT to offer cost oriented prices in this market segment, ART plans only to require FT not to offer exclusionary prices, such as would provide a disincentive to alternative network operators to invest. BT believes that it remains appropriate, given the current state of competition in the market, to specify an obligation on FT to offer cost orientated prices. Moreover, in BT's view ART should require FT to offer prices which are based on its relevant long run incremental costs.
 - 5.9. ART refers in the consultation to the possibility of a price squeeze if there is insufficient margin between FT's regional bitstream and local loop unbundling prices on the one hand, or between FT's national bitstream and regional bitstream prices on the other hand. BT supports the use of a price squeeze test. However, BT strongly believes that any test process must be simple to operate, such that it can offer the market participants a strong measure of forward looking certainty.
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² Same response, paragraph A3