

I. Introduction

1. This response addresses BT France views on ARCEP draft proposals related to the market analysis related to wholesale broadband and fast-broadband access (Analyse des marchés pertinents du haut débit and très haut débit) published on the 27th of July 2010. This relates to the analysis of market 4 and market 5 listed under the EU Recommendation on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation (2007/879/EC).

Description of BT

3. *British Telecommunications plc is a UK headquartered provider of telecommunications services. Its principal activities include the provision of local, national and international telecommunications services, Internet products and services and certain IT solutions. Its services are provided on a worldwide basis. In the last audited financial year ended March 2010, BT achieved a worldwide turnover of approximately UK£21 billion.*
4. BT principally comprises four lines of business: BT Retail, BT Wholesale, Openreach and BT Global Services. BT Retail, BT Wholesale and Openreach operate almost entirely within the UK, addressing the consumer, small and medium sized enterprise, major corporate, business and wholesale markets, and offering a broad spectrum of communications products and services. BT Global Services is BT's provider of Global Telecommunications Services ("GTS") to multinational companies. The provision of GTS includes, in part, IT services. BT Global Services does not generally provide services to residential customers.
5. For further information on BT's activities on a global basis and in France, please see the company's website www.bt.com or its 2010 annual report that can be found on its website.

III. Description of BT in France

6. BT France is the subsidiary of BT Global Services in France. BT France sells telecommunications and IT services only to French large business customers and multinational companies ("MNCs") that have sites in France. It does not sell services to residential customers.

7. In order to address the needs of MNCs in France BT has heavily invested in IT systems, service platform and its core network to support the provision of telecommunications services and ICT services and solutions.
8. To connect the customers' sites to BT own network in France BT France requires access (direct or indirect via a third party) to FT's wholesale access products including broadband and capacity services products.
9. As very well known to ARCEP, contrary to providers that provide telecommunications services to residential customers, LLU is of no use to providers of telecommunications services to business customers (such as BT France). LLU in fact is economically viable only in those cases where a very significant number of customers can be expected to be connected by an alternative operator to a given local exchange.
10. Providers of telecommunications services to business customers service a small number of customers that each have a limited number of sites that are widely dispersed over the territory, very rarely reaching a sufficient density of customers and lines located on a given local exchange to justify acquiring LLU.
11. This is a major difference with providers of telecommunications services to residential customers as these providers service a very large number of smaller value, single site customers who are concentrated in very dense areas.
12. In many cases, the access technology that BT uses to provide services to its business customers is DSL.
13. In order to provide a retail "DSL" connection to an end user in competition with FT, an alternative operator has two choices i.e. (a) it can build the retail service based on an LLU wholesale input purchased from FT or (b) it can build the retail service based on a Bitstream access brought from either FT or another alternative operator that itself relies on LLU.

IV. Unsuitability of LLU as remedy for providers of services to business customers and the proposed removal by ARCEP of the non-eviction rule

14. For the reasons stated above it is clear that providers that are specialised in the provision of services to MNCs, such as BT France, cannot rely on LLU as the building block of their access connectivity but rely instead on Bitstream as the critical input.
15. As also noted in paragraph 20 (c) below, an access component that is required by BT from France Telecom is MAN Ethernet but France

Telecom does not currently make available an wholesale equivalent of this product.

15. For all the above reasons BT is therefore very supportive of ARCEP's findings and proposals included in the consultation document as ARCEP finally appears to have accepted that:
 - a. Under the current ARCEP's non-eviction rule policy it is not possible for an alternative operator (and in particular an operator that specialises in the provision of services to business customers) to compete against France Telecom on an equal footing. The reason for this is that the non eviction rule has the indirect effect to artificially put a high price on bitstream to the detriment of telecommunications providers to business customers and who use bitstream as a key access component.
 - b. LLU is not a suitable wholesale remedy for providers that focus exclusively on business customers.
16. As ARCEP is aware BT France has long been arguing for the non-eviction rule to be removed given the negative effects this has been having on our ability to compete in the French market.

V. A critical and very important step in the right direction but issues and potential issues still remain.

17. Whilst we think ARCEP proposals are going in the right direction, we think that its proposals fall short of providing a complete solution and answer to France Telecom's dominance in the relevant access market(s).
18. In particular BT France is concerned that
 - a. No clear indications have been given on the timing of the lifting of the non-eviction rule. It is BT France view that this should be removed immediately as otherwise this will continue to act as an artificial barrier to competition to the benefit of France Telecom.
 - b. No proposals have been put forward by ARCEP for the introduction of an active remedy such as bitstream over France Telecom's NGA. Indeed ARCEP appears to be willing to continue to rely on passive remedies such as access to ducts for the foreseeable future. This for us represents an extension of the non eviction rule in the NGA world and we would therefore invite ARCEP to carefully reconsider the logic of its stance over this issue in the full knowledge that

- i. Such passive remedies are not fit for purpose for providers of services to business users. As noted already in the case of LLU providers of services to business customers very rarely reach a sufficient density of customers located on a given area to justify acquiring duct access to roll out a separate fiber access network. The same issues that ARCEP has rightly highlighted in the case of LLU also apply in this case.
 - ii. The take up of access to ducts has been slow and we understand has been also hampered by varied operational and non operational issues, making it therefore in our view not fit for purpose if it is left as the sole access remedy available to alternative operators.
- 19. It is therefore important in BT France's view that ARCEP fully recognises the need to equally apply its reasoning and conclusions that are at the basis of the proposed removal of non eviction rule also when considering other remedies such as access remedies in an NGA/fibre environment. Absent this France Telecom monopoly position in the access market will be re-inforced and the ability of alternative operators to compete on an equal footing once again artificially restricted going forward. This is particularly important obviously for providers of services to business users such as BT France, but not only.
- 20. There are other proposals by ARCEP in its consultation document that BT also supports such as the introduction of a requirement for France Telecom to offer Ethernet interconnection at regional level rather than local level. However the suitability of these requirements is heavily dependent upon the details of the wholesale offer that will be made available to BT. At the moment, as ARCEP is aware, it remains extremely difficult for alternative business operators to replicate France Telecom Ethernet offers to business customers. BT France in particular is concerned that
 - a. The current proposals by France Telecom for a business grade Ethernet interconnect offer, called Core Ethernet Enterprise¹, are insufficient to address the needs of competing business operators. This layer 3 offer present us with a large number of interoperability issues and will restrict competing operators to France Telecom's own technical and architectural design. These issues make the product also from a regulatory remedy point of view not fit for purpose from a BT perspective.
 - b. The complementary layer 2 Ethernet interconnect offer, called Wholesale Enterprise LAN, will be more suited to fulfil the needs of competing carriers as it would provide a transparent LAN to LAN connectivity environment that allows flexibility and enables

¹ This is aimed at replacing the current ATM based wholesale DSL Enterprise product.

competing carriers to run own services without undue artificial technical restrictions. Sadly the work on this wholesale offer has not been duly prioritised by France Telecom, whilst we would expect ARCEP to push for this second offer to be reprioritised so that it can be offered at a much earlier date than what currently planned by France Telecom.

- c. Last but not least we would like to point out that recent changes proposed by ARCEP in the market for capacity services have failed to fully address issues associated with replicability of France Telecom's MAN Ethernet offer. We see this as integral part of the wider overall Ethernet access issues in France. The current commercial offer by France Telecom to BT where its MAN Ethernet retail product is offered to BT on a volume discount basis remains insufficient to address the competitive gap in a market. The same logic that is now behind the removal of the non eviction rule should clearly drive ARCEP to seriously consider the need for the introduction of a wholesale MAN Ethernet offer under non discriminatory terms and conditions as it is clear that current alternative passive remedies (such as access to civil works for the deployment of fibre) are also in this case not a suitable answer in the case of providers of services to business users.

VI. Economic viability of unbundling for providers of business services. ARCEP's own economic model.

- 21. ARCEP at page 27 of its document (para 4.1.2) states that

"La progression des offres entreprises dégroupées a essentiellement été le fait des opérateurs mixtes résidentiel/entreprises, qui équipent cartes SDSL des NRA initialement dégroupés pour adresser le segment résidentiel. A contrario, la dynamique de dégroupage semble s'essouffler chez les opérateurs intervenant uniquement sur le segment professionnel. La déclinaison du modèle de non éviction mis en place sur le bitstream destiné in fine à une clientèle professionnelle visait à encourager l'extension du dégroupage notamment par des opérateurs présents uniquement sur le marché professionnel. La zone de couverture optimale pour ces opérateurs a été évaluée dans ce modèle à 125 NRA et cette couverture est désormais atteinte. "

Whilst we welcome the fact that ARCEP has looked into the economic viability of LLU from a provider of business services perspective in order to justify its position, we note that

- a. It is not known what assumptions have been made to achieve these final results.

- b. It is unclear whether ARCEP would intend to use the model for other purposes, such as for instance guide its approach to replicability analysis of France Telecom's offer to business customers.
22. BT France would welcome the opportunity of discussing more in detail with ARCEP its findings briefly highlighted in this paragraph because of the potential wider implications that these may have going forward.

VII. Conclusions

24. BT France is extremely pleased to see through the consultation document that ARCEP has finally accepted that the requirements of operators that are specialised in the provision of the services to business users are different and that in return these require and justify a different regulatory approach from a remedy perspective.
25. However ARCEP has failed to apply the same logic and considerations across the wider access spectrum where ARCEP continues to insist in support access remedies that are equally not appropriate for providers of services to business customers.
26. BT France therefore invites ARCEP to carefully re-consider its position on key services such as MAN Ethernet and Ethernet interconnect services in general in the light of the considerations that are behind the proposed removal of the non eviction rule so that the competition issues that we have noted and/or continue to note in relevant wholesale access markets are ultimately addressed.
