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1. Please provide your contact details below.

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Organisation Represented	Colt
Location (country)	Presence in 12 EU countries + Switzerland, HQ in UK
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2. Do you represent an SGEI provider?

Yes No

If yes, what kind(s) of SGEI(s) do you provide and in which sector?

3. Do you represent a local authority?

Yes No

If yes, what kind(s) of SGEI(s) have you entrusted, if any?

4. Are you working for an organisation representing SGEI users?

Yes No

5. Do you belong to the academic community?

Yes No

6. Are you representing another kind of stakeholder?

Yes No

If yes, please give details:

Colt Technologies S.A. is a privately owned operator of electronic communications networks and services, as well as other IT and Information Society Services.

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its [Code of Conduct](#).

If you are a **registered organisation**, please indicate the name and address of your organisation and your register ID number on the first page of your contribution:

Your contribution will then be considered as representing the views of your organisation.

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Responses from organisations not registered will be published separately.

SECTION A: QUESTIONS CONCERNING THE NOTION OF SGEI

1. Is it clear to you which activities may be considered as an SGEI?

Yes No Partially

If not, please explain why, possibly by giving concrete examples:

In the telecommunications sector, after decades of pre-eminence of State-owned monopolies, markets have progressively been opened to competition and as a result the free play of market forces is now widely recognized as the main driver for the promotion of technical innovation and efficient services to customers, whether residential or businesses.

In this context, while SGEI should remain a legitimate tool for public authorities in cases where actual market failures are clearly evidenced, Colt believes that transparent and efficient safeguards are necessary to ensure that State Aid does not displace market force intervention, as is required by recitals 4 & 5 of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks:

“State aid can correct market failures” but “At the same time, it must be ensured that State aid does not crowd out market initiative in the broadband sector.” Moreover “where markets provide efficient outcomes but these are deemed unsatisfactory from a societal point of view, state aid may be used to obtain a more desirable, equitable market outcome”.

Market forces, regulated under the telecom framework and State intervention are two ways to achieve the same goal. But market intervention must prevail on State intervention, the latter being only a way to correct or amend possible failures or inefficiencies of the former, only if such failure is evidenced and to the extent strictly necessary to remedy it.

Colt considers that the way that SGEI is currently defined and financed in the telecommunications sector, in the light of the 'Altmark' criteria as applied by Member States and by the Commission, does not always provide sufficient certainty that the overriding policy goals describe above are attained.

It is important to keep this fact in mind at all times, especially in the context of interventions by local authorities, often based on a rationale which explicitly claims that:

- fibre operators left to themselves are slowly building patchy monopolies with unreliable deployment schedules; and
- the National Regulatory Authority (NRA) does not work efficiently to boost fibre deployment and make it universal.

See appendix 1 for a concrete illustration.

Where should the limit between the market and State intervention be and who should decide that State intervention should prevail?

Altmark criteria : form over substance - The Altmark ruling is silent on the substance of the definition of an SGEI and leaves it almost entirely to the discretion of Member States with insufficient safeguards (Altmark criterion # 1) and also considers wrongly that public tenders provide for a *de facto* non-rebuttable presumption of appropriate financing (Altmark criterion # 4).

While in some circumstances these two implicit policy statements may be appropriate, there are several other circumstances where the Altmark criteria fails to properly address the economic and legal issues raised by State interventions (this is further addressed in our responses to questions 2 and 5). As a consequence, it is paving the way to a political starting point for this definition instead of a clear market orientated definition. Under this current framework, any activity which is qualified by a public authority as an SGEI will be deemed a SGEI. There is no positive qualification required in terms of contribution to public welfare or general economic interest beyond that.

It must be emphasized that the limits imposed by the European Commission and applicable to the margin of manoeuvres of the public authorities to qualify fixed broadband networks as an SGEI are not sufficiently defined. Neither the EC guidelines nor the various decisions adopted in specific cases are precise enough in particular, regarding Next Generation Access (NGA) networks in dense areas.

As a private sector company involved in a very capital-intensive activity, Colt believes that there is now a major legal uncertainty hanging over the profitability of its €5bn private capital investment deployed over the last 15 years throughout the EU.

2. Do you know any services which have been qualified as SGEIs by public authorities?

Yes No

If yes, can you please describe them and indicate the public service obligations related to this SGEI?

Regarding investment in NGA networks in dense areas, three models are competing with private investments in Europe. In an order of increasing impact on competition they are as follows, the:

- infrastructure-based competition model, as per the telecom framework; this applies to Portugal (Lisbon & Porto) and to the dense areas defined by ARCEP decisions in France (148 communes).
- market investor principle where a set of public and private investors build an NGA infrastructure, with the status of a private good: this model applies to the FttH network GlasvezelNet in Amsterdam. This model was also used in the first half of the 1990s when the German city carriers were applying a similar approach, although this has not been qualified as State Aid.
- SGEI model where mutualisation extends to fibre between a concentration location and the multi-tenant building (or set of buildings): this applies to the Swedish municipal networks and to some local public networks (e.g. Hauts-de-Seine in France). Typically, such public fibre networks in dense areas, when labelled as SGEI, create the public service obligation for the contractor to design, finance (except for the subsidy), build, operate and market a FTTH network throughout a defined coverage area, and make it available to operators, with deployment and pricing constraints.

With NGA (FTTH) networks, the main regulatory measure supporting the infrastructure-based model is the opening of the incumbents' ducts to competitors. This measure is extended in France with monopolies over fibre in the terminating segment to multi-tenant buildings (or sets of single tenant housing units). The effect of these two sets of measures consists in tuning the market conditions in order to maximise private investment while preventing deployment in dense areas from being patchy.¹

In the case of NGA networks in dense areas, the existence of alternative models (i.e. private investment) should rightly take precedence over the SGEI model.

SGEIs for NGAs in dense areas introduce a bias in the electronic communications market especially for three reasons:

- the company providing the SGEI often belongs to an organisation which has a retail services offering and as a result such a company benefits from exclusivity in the market.

¹ Market 4 has been redefined to encompass duct rental in France; ARCEP has enforced this obligation on France Telecom; France Telecom have issued a set of efficient duct rental offers. Art. 109 of the French Law for Economic Modernisation of 4 August 2008 has defined last meters cabling as a monopoly with an obligation to the first operator to rent this cabling to its competitors ; ARCEP have defined this "mutualisation point" as 1 per building for buildings above 12 apartments and is proposing 1 per set of over 300 dwellings otherwise.

- the local authority usually makes it de facto compulsory to use their infrastructure to deliver an active electronic communication service to every public service (the authority itself, schools, public housing estates,...) which falls under the remit of that local authority.
- as it is difficult for an operator to switch from the use of the SGEI to the deployment of the operator's own fibre, the SGEI acts as a glass ceiling preventing the operator from continuing to climb the rungs of the investment ladder. Whereas the incumbent usually enjoys their own infrastructure, using the SGEI makes the alternative operators vulnerable to a price war because they do not own the infrastructure. The SGEI model does not therefore generate sustainable competitors.

SECTION B: QUESTIONS CONCERNING THE NOTION OF STATE AID

The Treaty rules, as they have been interpreted by EU case law, define the notion of State aid, as well as the conditions under which State aid rules apply to SGEI.

3. Have you encountered difficulties in applying the conditions of Article 107(1)² of the [Treaty on the Functioning of the European Union](#) (TFEU)?

Yes No Partially N/A

If yes or partially, on which specific condition(s)?

- Economic activity: Yes No
- Effect on trade: Yes No
- Economic advantage: Yes No
- Selectivity: Yes No
- Transfer of State resources: Yes No

4. Could you give some concrete examples?

² "Art. 107 1 TFEU. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

Economic Activity

A next-generation (fibre) access SGEI in a dense area is undoubtedly an economic activity. Each fibre, which is marketed at a given price, is a rival good, in the economic sense and as a result a good used by one user cannot be simultaneously used by another. This is quite different to a public good on the other hand as public goods must exist for the benefit of all citizens, therefore in the sense that a public road, for example, is a public good. As a consequence next-generation (fibre) access network SGEIs which are labelled as public goods will never change hands. Unlike a building, even a council estate building used to enhance public welfare, such networks are out of the asset market forever. The service providers using these networks will never be able to buy the network they use in order to climb the rungs of the investment ladder.

Economic advantage

The SGEI model for NGAs in dense areas is highly questionable and should be re-qualified as State Aid because the other two models (i.e. infrastructure-based competition and State intervention under the market investor principle) exist. The substitution of the SGEI model must be limited to those circumstances when it can be evidenced that private initiative is unable to deliver the expected results in the overall General Interest.

Competition between public and private undertakings can be an unequal one that ultimately can prove unfair. One of the main reasons for this, is that the roll-out of a SGEI (a public good network) is a rigid decision (a mandatory roll-out in a given time frame with a fixed subsidy for the company awarded the SGEI), while private investment follows a much more subtle decision process. Private investment can be attracted where the incentives to invest are credible. As a result, there is a strong risk that one of the following scenarios may occur:

- infrastructure market pre-emption by the SGEI (as in the Swedish case), or
- granting of a fixed-price subsidy no matter whether the company in charge of the SGEI crowds out the market (including pre-existing investment and possible investment going forward) or does not sell anything (eg the Hauts-de-Seine SGEI in France which fails to sell its service in the cities where major ISPs such as Free and SFR prefer to lay down their own cables in the incumbent's ducts, rather than using the SGEI).

Selectivity

Colt has no comment to make on the difficulty to appreciate the selectivity of an SGEI.

Effect on trade

As local loop telecoms are a necessary component to deliver an international electronic communication service, NGA SGEIs twist intra-EU trade. They also affect investment

decisions, and could cause an investor from one Member State to refrain from investing in another Member State, whereas this hurdle would not have been relevant in a private investment.

Transfer of State resources

Any SGEI implying the payment of a subsidy or the free allocation of public resources that are paid for when allocated to competitors benefits from a transfer of State resources.

SECTION C: APPLICATION OF THE ALTMARK RULING

In its judgment in the case of Altmark Trans GmbH, the European Court of Justice held that public service compensation does not constitute State aid within the meaning of Article 107(1) of the TFEU provided that four cumulative conditions are met.

- Firstly, the recipient undertaking must actually have clearly defined public service obligations to discharge.
 - Secondly, the parameters for the calculation of the compensation at stake must be established in advance in an objective and transparent manner.
 - Thirdly, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.
 - Fourthly, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the bidder capable of providing those services at the least cost to the community, the level of compensation needed must be established on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred.
5. Have you encountered difficulties in the application of the Altmarm conditions, especially in respect of the 4th one?

Yes No Partially N/A

If yes, please explain these difficulties. If possible, please give concrete examples:

Public service obligation

These comments are focused on the telecommunications sector, in particular NGA

networks.

When the SGEI is a next generation (fibre) access network, the notion of a well defined public service obligation raises the following questions:

- a wholesale fibre rental service to the operator is not a service to the general public. It is a service provided to entities (service providers) which have not asked for it, and as a consequence weakens these entities in the long run (because they cannot purchase their network). Most surviving alternative operators in Europe own their networks. In the case of telecoms, not owning one's network makes it difficult for a service provider to survive in the long run. In another domain, the issue of identifying the actual beneficiary of an SGEI has had important consequences: an Administrative Court in France has cancelled a SGEI contract in France on the ground that the beneficiary of the SGEI was an intermediary and not the general public (Nice football stadium SGEI case, where the Administrative Court ruled that the beneficiary of the stadium was the OGC Nice football club and not the general public of Nice).
- recent examples across Europe are evidencing the issues arising when a public authority pre-empts the debate over the definition of public service missions at the European and National levels to create a de facto set of rules of its choosing. Whilst the European Commission, the French Parliament and NRA were in the process of defining the rules for FTTH developments that were more balanced between the various market players and more in line with other developments in Europe, the Hauts-de-Seine decided to pre-empt the process by adopting their own rules. In this precise case, the French law and ARCEP introduced a concept of mandatory mutualisation point on all (private and public) operators investing in FTTH (1 per multi-dwelling unit of more than 12 dwellings, 1 for group of 300+ dwellings otherwise). This approach is inconsistent with that adopted for the SGEI definition.

There should be limits in the application of the Altmark ruling in certain circumstances, such as highly capital-intensive industries; Member States have a legitimacy to define content of SGEI but they should bear the burden of proof of an actual market failure (no "self-fulfilling prophecy") and the European Commission should implement a robust framework which allows exertion of tighter controls.

Clear and known-in-advance parameters for calculating compensation

A key concept to determine compensation is the notion of an unprofitable area. This involves the interplay of several parameters:

- the smaller the area considered, the higher the proportion of unprofitable areas;
- such areas should be compared to the logical units of deployment of a private company: on the one hand a local authority wanting to deploy a NGA SGEI will claim that private operators will pick and choose based on their profit opportunities therefore leaving unserved areas. This in turn will result in a fragmented service coverage map, which only public intervention can remedy. On

the other hand, private FTTH operators are going to claim that the only offer that can practically be commercialised is to serve the full area served by a central office. If the main duct resources that are used are the incumbent's ducts, then the area served with fibre by a central office will be similar to the area served in DSL from the same central office. It is very important that a proper monitoring of the consequences of the respective positions is performed by the European Union to maintain a level playing field.

- compensation is often linked to overall deployment costs, no matter whether such costs are incurred for building in a profitable area or not. These profitable areas are usually built several years before unprofitable ones; as a consequence the payment of the subsidy starts years before roll out occurs in unprofitable areas. This approach in effect results in advance payments being made, which is unacceptable. Beside this fact, the situation can be made much worse in cases where the SGEI deployment is stopped before roll out to the unprofitable areas. This situation can happen if the SGEI fails to attract enough customers and runs into financial difficulties. In such a case, compensation will have been paid for building in profitable areas and unprofitable areas will be left with no coverage. As a consequence, this will unduly depress the private market.

Cost-oriented compensation

Compensation defined through responses to an initial call for tenders for a network concession of 15 to 30 years is unlikely to be effectively cost-oriented. In the case of the Hauts-de-Seine case, this competition took place before the rules of the game were defined (availability and prices of incumbents' ducts, principle and positioning of mutualisation points). Accordingly, competitors to the SGEI had to decide their prices in the dark without any possible foresight. This is far removed from the concept of cost-orientation.

Another method is used to determine the compensation for the net cost of delivering Universal Service Obligations (USO) – where such compensation is warranted (which has been found to be the case in a small minority of EU Member States). The NRA defines what has been delivered in a given year and what the net cost of this USO has been and making corrections necessary to input the benefits resulting from being the Universal Service provider. The NRA acts after holding public consultations on the methodology used to calculate the compensation. Despite its flaws, which we have separately criticised, this is a much more accurate and reliable method than the one used for the SGEIs submitted to the Commission for approval.

Competitive procurement

One of the problems with the competitive procurement of SGEI is that competition takes place over a 15 to 30 year period. Any further amendment is made with the company initially selected, under an uncompetitive process. Today the 4th Altmark criterion is applied in the following way: the presence of an initial formal call for tenders is enough for the European Commission to consider that there is no over-compensation. Actually

when competition takes place once for 15 to 30 years, so many factors are unknown at the time when bids are submitted that the exact amount of the compensation cannot be precisely defined in advance. Public tenders should not create a de facto non-rebuttable presumption of validity, especially in capital-intensive projects whose roll-out spans over a very long period of time and such processes should be transparent.

6. Are you aware of examples where the Altmark ruling has been applied by national courts or national public authorities?

Yes No

If yes, you are welcome to provide information:

Through decision N 331/2008, the Commission has approved the Hauts-de-Seine subsidy for an NGA SGEI in a dense area.

Colt has challenged this decision before the General Court of the Court of Justice of the European Union in Luxembourg.

SECTION D: CONDITIONS OF THE DECISION AND THE FRAMEWORK

In order to provide legal certainty in the financing of SGEI, while ensuring a level playing field between all undertakings in the single market, the Commission adopted in 2005 the "SGEI Package", to define under which conditions public service compensation that constitute State aid can still be granted for the fulfilment of public service missions. In particular, the Decision defines the conditions under which public service compensation is compatible and is exempted from notification to the Commission, while the Framework explains how the Commission will assess all remaining public service compensation that has to be notified to the Commission.

These conditions consist in the existence of an act of entrustment containing a precise and correct definition of the service of general economic interest, the definition of the parameters to establish the appropriate amount of the compensation, the absence of overcompensation and the safeguards to avoid any overcompensation.

D.1: ENTRUSTMENT

QUESTIONS REGARDING THE ACT OF ENTRUSTMENT:

7. Are you aware of the legal instruments (contracts, laws, concessions, etc.) that have been used to entrust SGEI to SGEI providers in your sector/region?

Yes No

If yes, you are welcome to provide information on these forms of legal acts:

Decisions to entrust a company with an SGEI are usually taken by local authorities. The legal instruments used to select the SGEI are very often obtained from the local authorities themselves with serious delays or difficulties. Obtaining them usually requires a formal request to access administrative documents. Depending on the EU Member States and the legislations enacted to promote transparency and access to administrative documents, communication of the decisions adopted and their basis can take a significant number of months. This should be monitored to ensure that information disclosure becomes a transparent and efficient process.

8. Do you know if the act of entrustment, or any other relevant legal basis relevant for your sector/region, gives a precise and correct definition of the service of general economic interest to be provided?

Yes No Partially N/A

If no or partially, please explain and provide example(s):

Since the act of entrustment is a long term contract, it often fails to reflect the subsequent changes in the regulation which impact the definition of the SGEI. See first part of answer to question 5 (public service obligation).

9. Do the legal instruments, of which you may be aware, contain all the elements required by Article 4 of the Decision, such as:

- the nature and duration of the public service obligations: Yes No Partially

- the undertaking(s) and territory concerned: Yes No Partially

- the nature of any exclusive or special rights assigned to the undertakings:

Yes No Partially

- the parameters for calculating, controlling and reviewing the compensation:

Yes No Partially

- the arrangements for avoiding and repaying any overcompensation:

Yes No Partially

10. Have some of these elements raised difficulties in your opinion?

Yes No

If yes, please explain why and provide concrete examples:

Nature and duration of public service obligations

When approving an SGEI, the European Commission should exercise a transparent and

effective assessment on the existence of an actual market failure (as opposed to the hypothetical prospect of a future market failure, as it is the case when NGA networks are considered as SGEIs).

Undertaking and territory concerned

The contract may specify that the SGEI will be provided by an ad hoc company with specified equity and shareholder characteristics. However such conditions are often not respected afterwards.

The exact definition of the territory may be a concern especially where the SGEI provider can claim that the demand is insufficient for him to be obliged to build.

Exclusive or special rights assigned to the undertaking

A lot of the difficulties in building a private network lie in the administrative relationships with local authorities (obtaining rights-of-way, planning, delivery of as-built maps in specific formats, specific police authorisations for digging works, etc.). Local authorities do not deny such difficulties. They even make it an open advantage for the SGEI provider to benefit from smoothed administrative relationships with the local authority.

Parameters for calculating, controlling and reviewing the compensation

Regarding the parameters to calculate, control and review the compensation, the main questions are as follows:

Whereas the amount of the compensation is defined beforehand for the relevant period through a single initial call for tenders, is it acceptable that this amount is not re-examined:

- when the national regulation modifies the exact limit of the service (as it is the case in France with the ARCEP decisions on the location of mutualisation points)?
- when it is based on unknown third party costs (e.g. incumbents' ducts before duct rental was included in Market 4³) which are defined years after the competitive process set up to define this compensation took place?
- when the size of the areas, for the purpose of defining unit deployment and of calculating area profitability, has not yet been defined?
- if the major potential customers consider it better for them not to use the SGEI and to build out their private networks, what is the economy of scale of the SGEI? More generally, what is its purpose?

³ Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location.

Arrangements for avoiding and repaying any overcompensation

Usually such arrangements are ex post. They assume that annual accounts show that an excessive profit has been recorded. Between the ex ante for 25 years compensation and the ex post arrangement for avoiding overcompensation, a middle ground should be found with the annual ex ante revision of pricing, based on a one year time frame.

11. Have you encountered difficulties concerning the notion of act of entrustment in the sense of State aid and internal market rules?

Yes No N/A

If yes, please explain why, possibly by giving concrete examples:

Even if it raises questions, the initial act of entrustment is usually a rather well defined document. However subsequent amendments to the act of entrustment, or decisions taken on a day to day basis but in effect modifying the meaning of the act of entrustment, are to be feared most. Usually these amendments are not submitted for the European Commission's approval. In the case of the Hauts-de-Seine, an amendment lowering the obligations of the SGEI provider were passed in July 2010, granting the same subsidy for a lower investment by the SGEI provider. This amendment has not been submitted to the European Commission.

12. Do you consider that the entrustment of local SGEI, in particular those of a social character, has raised specific difficulties?

Yes No Partially N/A

If yes, please explain why, possibly by giving concrete examples:

Colt has no comment to make on SGEI of a social character.

D.2: COMPENSATION

I) QUESTIONS REGARDING THE CALCULATION OF COSTS AND REVENUES RELATED TO AN SGEI

13. Have you faced difficulties with the calculation of costs and revenues related to an SGEI?

Yes No Partially N/A

If yes, could you describe these difficulties?

See answers to questions 5 and 10.

14. In particular, in case you represent an undertaking which carries out activities falling both inside and outside the scope of SGEI, do you have separate accounts?

Yes No Partially N/A

15. Have you faced difficulties in separating the accounts?

Yes No Partially N/A

If yes, you are welcome to give details:

16. Has guidance been provided to public service providers in order to allow for a proper allocation of costs and revenues and to avoid cross-subsidisation between SGEI and non-SGEI activities/funds?

Yes No Partially N/A

If yes, you are welcome to give details about the guidance provided:

NRAs for electronic communications are the administrations with the highest competence in the allocation of costs and revenues by electronic communication operators in order to regulate wholesale prices. However, they are not involved in validating or even auditing or even providing guidance on cost and revenue accounting of SGEI providers. Their powers should be extended to include such a mission.

17. Do you think that the variable and fixed costs referred to by the Decision and the Framework, are the appropriate categories to allocate costs between the different services?

Yes No Partially N/A

If no, could you explain why?

As a first level basic principle, the variable and fixed costs referred to by the Decision and the Framework, are the appropriate categories to allocate costs between the different services. However as the complexity of the decisions by the NRAs on the accounting methods to be used to establish regulated wholesale prices and Universal Service compensations demonstrate, there is a huge gap between the approach of the regulatory regime for electronic communications and the regime for State Aid/SGEI. More consistency of approach is required between these regimes.

18. Are any quality aspects taken into account for the calculation of the amount of compensation granted?

Yes No N/A

We refer to the Hauts-de-Seine case.

II) QUESTIONS REGARDING REASONABLE PROFIT

If you are aware of an example where an SGEI provider has received public service compensation,

19. Could you:

- please indicate whether this compensation included a reasonable profit?

Yes No

- indicate whether the reasonable profit was calculated on the basis of the rate of return on own capital as provided for by the Decision and the Framework?

Yes No

- If the reasonable profit was not calculated on the basis of the rate of return on own capital, please explain why a different type of rate was applied and give information about the chosen rate:

We refer to the Hauts-de-Seine case.

20. Have you faced difficulties with identifying what a "reasonable" profit is?

Yes No Partially N/A

If yes, please specify:

The issue is not the rate of a reasonable profit, but the sheer ex ante uncertainty of the SGEI operation at the time the competitive process takes place, depending on future legal and regulatory decisions and on the capture or not of major customers by the SGEI provider.

21. Do you know what the average rate of return on own capital in the relevant sector is?

Yes No N/A

If no, how have you identified the reasonable profit?

Yes, detailed cost of capital decisions are taken by NRAs on a recurring basis to determine dominant operators' charges for regulated wholesale services (interconnection, local loop unbundling, etc.).

Colt's own cost of capital, as used by financial analysts to evaluate the future cash flows of our company, provides another form of estimation.

22. Has the calculation of the reasonable profit in your specific case taken account of the productivity gains achieved by the provider?

Yes No N/A

If yes, please explain and, where appropriate, provide examples where the calculation of the compensation has taken into account the efficiency of the provider

This is due to the ex ante nature of the setting of the subsidy amount for the SGEI.

D.3: CONTROL OF THE OVER-COMPENSATION

23. Are you aware of the mechanisms controlling overcompensation implemented in your country?

Yes No N/A

We refer to the Hauts-de-Seine case.

If yes, has the absence of overcompensation been controlled by external auditors?

Yes No

We refer to the Hauts-de-Seine case.

24. Have you encountered cases of overcompensation?

Yes No N/A

If yes, you are welcome to provide us with information about the reimbursement:

We are aware of mechanisms controlling overcompensation:

- implemented in individual SGEI contracts, implying no external auditor
- implemented through NRA decisions for regulated wholesale charges of dominant operators, involving an external auditor.

25. Have you faced difficulties with the rules on reimbursement of overcompensation?

Yes No Partially N/A

If yes, in which cases and why?

26. Article 6 of the Decision provides that an overcompensation not exceeding 10% of the amount of the annual compensation (20% for social housing), may be carried forward to the next annual period and deducted from the amount of compensation payable in respect of that period. Have you faced difficulties with the application of this provision?

Yes No Partially N/A

If yes or partially, please explain why:

D.4. MONITORING AND ANNUAL REPORTS

Article 7 of the Decision provides that underlying elements must be kept for at least 10 years to allow the Commission to check their conformity with the Decision.

27. Is such a reporting system in place in your Member State regarding the services with which you may be concerned, and if so, does it ensure that these obligations are fulfilled?

Yes No Partially N/A

SECTION E: SPECIFIC CATEGORIES OF SGEI

The Decision exempts from notification public service compensations below certain thresholds.

28. Please explain if you have faced difficulties with the classification of the compensations in the following categories :

- Compensation of less than EUR 30 million per year granted to undertakings with less than EUR 100 million turnover:

Yes No Partially N/A

This provision could be a difficult if applied to an NGA SGEI in dense areas.

- Compensation granted to hospitals:

Yes No Partially N/A

- Compensation to social housing undertakings:

Yes No Partially N/A

- Compensation for air links to islands with less than 300 000 passengers per year:

Yes No Partially N/A

- Compensation for maritime links to islands with less than 300 000 passengers per year:

Yes No Partially N/A

- Compensation for airports with less than 1 000 000 passengers per year:

Yes No Partially N/A

- Compensation for ports with less than 300 000 passengers per year:

Yes No Partially N/A

29. What kinds of services have been financed through public service compensations in the hospital sector?

Appendix 1 – Extracts on the report submitted by the President of the Hauts-de-Seine local government to its members in December 2007 in order to approve the next-generation fire access network SGEI

This Appendix provides evidence of the motivation of a local authority against (highlighted below where appropriate):

- private operators, which are accused of using FTTH deployment to rebuild private monopolies, and
- the NRA, which is accused of failing its mission by not creating a regulated dark fibre market.

The first accusation intends to prevent a future and yet unseen behaviour and the second one is a denial of the role of the NRA to organise the market in accordance with the European telecom framework and subsequent national legislation. These two accusations are the grounds on which the NGA SGEI has been decided by this local authority.

DEPARTEMENT DES HAUTS-DE-SEINE

DELEGATION DE SERVICE PUBLIC RELATIVE A LETABLISSEMENT ET A L'EXPLOITATION D'UN RESEAU DEPARTEMENTAL DE COMMUNICATIONS ELECTRONIQUES A TRES HAUT DEBIT

**Département des Hauts-de-Seine
Département Systèmes d'information**

Rapport de présentation sur le choix du délégataire et l'économie globale du projet de contrat (Extraits)

[Décembre 2007]

1.2 Le projet THD92 et son actualité

1.2.1 Le contexte de l'intervention départementale

Annoncé par le Département lors des Etats Généraux des Hauts-de-Seine, le projet «THD92» a pour ambition de hisser le territoire départemental au niveau des grandes métropoles asiatiques, nord-américaines et des régions en pointe en Europe (Italie du Nord, Scandinavie) en matière d'accès aux services de communications électroniques à très haut débit.

Il vise à permettre la modernisation de la « desserte télécom », aujourd'hui assurée par la boucle métallique de France Télécom et dans une moindre mesure les réseaux câblés, en amenant la fibre optique jusqu'aux clients finaux. Cette modernisation favorisera l'essor de nouvelles applications et services à très haut débit auprès notamment:

- des entreprises (TPE, PME,...) dans les zones et immeubles d'activités mais également dans les principaux grands immeubles collectifs,
- des sites publics, notamment ceux dont le Département à la charge, au premier rang desquels les collèges,
- des particuliers, en ciblant notamment les différentes catégories d'habitat,

L'enjeu majeur consiste à créer les conditions techniques et économiques favorables au foisonnement d'une offre de services compétitive et créatrice de valeur ajoutée pour que le passage du cuivre à la fibre sur la boucle locale ne se caractérise pas par un retour à des situations de monopole ou d'oligopole-

L'absence de perspective claire s'agissant de la régulation de l'offre de fibre noire dans la boucle locale, au niveau européen comme national, conforte la nécessité d'une intervention des acteurs publics locaux,

Ce projet d'aménagement numérique est destiné à reproduire au niveau du très haut débit le modèle économique vertueux ayant conduit au succès de l'ADSL. la diversité des offres permise par le dégroupage qui s'est contribué la baisse des prix entraînant une démocratisation forte des usages (cf. note 4).

Le but poursuivi est de permettre aux acteurs économiques du secteur des télécoms de proposer à tous les citoyens, services publics et entreprises, une offre innovante et durablement compétitive. Le caractère public du projet permet une maîtrise politique de l'aménagement numérique des Hauts-de-Seine qui se traduit en particulier par:

- la définition des objectifs de raccordement et une planification du déploiement sous le contrôle du Département;
- une péréquation qui assurera une desserte à un même tarif de l'ensemble des immeubles connectés, quelle que soit la commune et l'éloignement de l'un des points de raccordement mis en place dans le cadre du projet départemental (Noeud de Raccordement Optique: NRO). Ces tarifs seront encadrés par le Département qui disposera d'un contrôle sur leurs évolutions et règles associées durant toute la vie du réseau
- une ouverture à tous les acteurs du marché (opérateurs télécoms, fournisseurs de services) pour permettre aux citoyens, entreprises et services publics, de bénéficier durablement d'un libre choix de prestataires de services dans le secteur des télécoms, de l'audiovisuel et de l'ensemble des offres issues de la filière TIC.

Le projet très haut débit 92 (THD92) répond ainsi à quatre objectifs majeurs:

- la performance technologique le très haut débit et la symétrie des capacités du réseau constituent une rupture technologique qui va modifier en profondeur les usages et l'offre de services en favorisant les échanges et une communication plus équilibrée entre usagers opérateurs du réseau visioconférence, « Peer to Peer », téléphonie sur IP sauvegarde en ligne...)
- l'ouverture durable et pérenne de la concurrence dans l'offre de services: l'utilisateur final doit avoir un choix équivalent à celui qu'il a sur l'ADSL (Orange, Free, Neuf Cegetel, Alice...). A ce titre, le Département ne saurait imposer le choix d'un prestataire à ses administrés, mais au contraire favoriser le foisonnement d'innovations en matière de services. Les filières 6511, multimédia, audiovisuelle et télécoms fortement implantées dans les Hauts-de-Seine seront les acteurs de ces nouveaux services;
- le foisonnement d'offres de services innovants : permettre durablement aux acteurs du marché de détail d'être plus créatifs dans leurs offres de services en s'appuyant sur des infrastructures mutualisées ouvertes à toutes ces filières, y compris de nouveaux offreurs de services émergents;

- la **coordination et la valorisation du patrimoine public**: gestion concertée et coordonnée du patrimoine d'infrastructures publiques (fourreaux, locaux techniques...) avec l'ensemble des collectivités locales et les acteurs de l'aménagement, pour exploiter et commercialiser ce patrimoine dans l'intérêt du développement du territoire.

Cette action s'inscrit enfin dans le cadre d'une politique globale « Hauts-de-Seine Numérique » qui comportera des volets relatifs au développement des services en concertation avec les communes et d'autres partenaires (Etat, Région...), visant notamment à la modernisation des services publics (E-Administration, E-Education...).

Note 4 :Le dégroupage de la boucle locale de cuivre appartenant à France Télécom s permis à tous les opérateurs de louer le support physique allant de l'abonné au central téléphonique et ainsi de déployer leurs propres équipements et gammes de services indépendamment de l'opérateur historique à un tarif neutre, non discriminatoire et orienté vers les coûts.
