

• **France: The Autorité de la concurrence issues its first Opinion on the Telecom Sector, taking into account the recently published European Commission's NGA Recommendation**

On 8 March 2011, following a request by the French telecom sector regulator (ARCEP), the Autorité de la concurrence (the Autorité) issued a landmark opinion taking into account for the first time the European Commission's Next Generation Access (NGA) recommendation of 20 September 2010 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010H0572:EN:NOT>). In its opinion, the Autorité recommends both alleviating existing sector-specific regulation regarding access to the incumbent operator's local loop for providing wholesale broadband internet services in very densely populated areas, as well as caution regarding access to optical-fibre networks for very high speed broadband internet.

First, after a careful assessment of recent evolutions in the wholesale broadband internet services market, the Autorité recommends alleviating sector-specific regulation in densely populated areas, such as the biggest cities in France. In such areas, unbundled access to the local loop of the incumbent operator, imposed by regulation, allowed competition to grow significantly in recent years, guaranteeing innovative offers to emerge, alternative operators to secure a wide customer base, as well as lower prices for consumers. In this context, the Autorité considers that, in the densest zones, competition is by now effective, and that sector-specific regulation, imposing obligations on the wholesale internet broadband activities of the incumbent operator, could be repealed and satisfactorily replaced by competition law enforcement exclusively.

Second, regarding the deployment of very high speed internet network in France (NGA network through optical fibre), no obligation on NGA network holders has been enacted yet in order to give access to the wholesale market for very high speed internet services. Such obligation was nevertheless identified by the Commission's NGA recommendation, as a possible way to avoid the creation of upstream bottleneck hindering the development of very high speed internet retail offers. As NGA networks are currently being deployed in France, rather than regulating services markets including wholesale activities, the telecom regulator preferred, in a first phase, putting emphasis on infrastructure-based competition through fostering the deployment of competing NGA networks or of mutualised ones. The Autorité acknowledges this policy choice based on a balanced approach to maximize the economic incentives to invest in NGA networks, but also recommends in its opinion that the actual level of investments undergone by operators be checked upon on a regular basis (every 18 months) in order to adapt in the future the regulatory framework, if necessary. In case of actual lack of investments by operators in NGA networks, the Autorité considers that regulating the wholesale market would become necessary.

Third, in the context of NGA network deployment, the Autorité invites the sectoral regulator to review all the tools at its disposal to regulate adequately their deployment, including assessing the potential necessity to require operators to functionally separate their wholesale and retail activities in order to promote competition, such a power being recently entrusted to the sector regulator pursuant to the transposition of the most recent EU Telecom Directive into French law.

See further: <http://www.autoritedelaconcurrence.fr/pdf/avis/11a05.pdf>