

30 July 2015: Deployment of fibre optic networks/Orange/Numericable-SFR co-financing agreement

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The Autorité will not grant any additional extension for further discussions between Orange and Numericable-SFR on the exchange of deployment areas.

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In its decision **14-DCC-160** of 30 October 2014 (**see press release**), the Autorité de la concurrence cleared the acquisition of sole control of SFR by the Altice group, the parent company of Numericable-SFR, subject to the implementation of several commitments. The Altice group in particular committed to renegotiate with the Orange group the scope of the municipalities in which SFR was awarded deployment of the fibre optic network (FttH), under the terms of a co-financing agreement entered into between SFR and Orange on 14 November 2011.

The competition risk identified by the Autorité

As part of its competitive analysis of the transaction, the Autorité noted that the new entity might be in a position to freeze FttH (Fibre-to-the-home) deployments in the low-density area awarded to SFR under the co-financing agreement entered into with Orange on 14 November 2011.

Under this agreement, SFR and Orange both committed to participating in the co-financing of deployments made by the other. The contract allocated exclusive deployment areas to each party.

As Numericable's cable network covers part of the areas awarded to SFR, the

Autorité considered that the new Numericable-SFR group had little incentive to deploy an FttH network in these areas, which might lead to a freeze in deployments.

The Altice group's commitment

In order to remedy this, the Altice group committed to negotiating in good faith with Orange with a view to swapping municipalities from the cable area in which SFR enjoys exclusive deployment for an identical number of outlets – at a comparable deployment cost – located in Orange's exclusivity area. If no swap agreement was reached regarding the municipalities in the cabled area by the end of the term set out in the commitment, Numericable-SFR would allow Orange to carry out deployments in this area, notwithstanding any clause to the contrary that may appear in the contract.

The Autorité has noted the lifting of the exclusivity clause prohibiting Orange from deploying its FttH network in the municipalities of the cabled area awarded to Numericable-SFR

In a letter sent to Orange on 22 July 2015, copied to the Autorité, Numericable-SFR reported stalemate in the negotiations that had been taking place since February 2015, and stated that it would not therefore oppose the deployment of fibre by Orange in the areas that were previously reserved for Numericable-SFR.

The Autorité, which does not intend to call for an extension of discussions between the two operators, takes note of the lifting of the exclusivity clause prohibiting Orange from deploying its FttH network in the municipalities within the area awarded to Numericable-SFR. The immediate lifting of this prohibition is such that it is likely to accelerate the deployment of Very High-Speed FttH in these municipalities by Orange.

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