Acquisition of SFR by Altice: the Autorité de la concurrence will not renew the commitments and maintains certain injunctions

Published on October 28, 2019

Given changes to the markets, the *Autorité de la concurrence* will not renew the commitments made by Altice upon acquiring SFR.

However, the injunctions with penalty payments ordered by the *Autorité* in 2017 for the agreement on co-deployment of the fibre optic network executed with Bouygues Telecom ("Faber" agreement) are upheld.

The Autorité's two decisions governing the behaviour of Altice since the acquisition of SFR

- Decision of 30 October 2014 giving conditional clearance to the acquisition of SFR (14 DCC 160) see press release

On 30 October 2014, the *Autorité de la concurrence* gave clearance for the exclusive acquisition of SFR by Altice, subject to the implementation of several commitments. Multiple commitments were made for a period of five years starting on 30 October 2014. These commitments have now expired, but could have been renewed once if justified by the market conditions.

-

Decision of 8 March 2017 (17-D-04) fining Altice for failing to honour commitments made in 2014 concerning the co-deployment of an optical fibre network executed with Bouygues Telecom/see press release

Given Altice's cumulated delay in connecting fibre-ready buildings in the zone covered by the "Faber" agreement to the network co-financed by Bouygues Telecom, despite having made a commitment that set out the conditions of this connection, the *Autorité* fined Altice €40 million and required it to comply with a new calendar for completion, and associated penalty payments. On 23 January 2019, Altice requested these injunctions be lifted. The *Autorité* therefore analysed the competitive context in the zone covered by the agreement.

Changes to the markets since 2014 mean that the Autorité will not extend the commitments made by Altice for an additional five years. However, it shall uphold the injunctions with penalty payments ordered in 2017.

- **On the opening of the cable network to competing operators**

The existence of the Numericable network (owned by Altice) led the *Autorité* to identify a risk of Altice pre-empting very high-speed internet customers in the zones where cable was deployed but fibre optic internet was not yet available. Altice therefore committed to providing all telecom operators with access to its cable network (via two reference offers) and to refrain from using information that it receives as an operator deploying a fibre optic network to sell very high-speed internet offers on the cable network in buildings eligible for fibre optic internet.

Commitment lifted

Retail operators, especially Orange, have significantly deployed their fibre optic network, such that the risk of pre-emption in cabled zones has been significantly reduced.

The *Autorité* consequently considered it unnecessary to renew commitments relating to cable network access and information received by Altice.

- **On the ban on selling cable offers in post offices**

Altice also committed to refrain from selling very high-speed cable network offers in branches of Le Groupe La Poste, with whom SFR had executed an exclusive distribution agreement.

Commitment lifted

The *Autorité* has noted changes to the internet access distribution market and the end of the exclusivity clause in the distribution contract executed between La Poste and SFR. It has therefore not renewed the commitment relating to the distribution of cable offers in post offices.

-

On dark fibre offers for telecom operators and offers to access its optical local fibre loops via dedicated optical local loop (DOLL) offers (upstream business market)

The *Autorité* had identified a risk of withdrawal from the market or price increases for SFR dark fibre offers after the transaction. These offers enable telecom operators to build or supplement their core network. Altice committed to maintaining offers on the dark fibre supply markets, under conditions at least as beneficial as before the transaction.

The *Autorité* had also identified a risk of price increases or market withdrawal for wholesale capacity services on the terminal segment on dedicated optical local loops (DOLL) in the upstream business market. These offers allow telecom operators to build business solutions and to compete with “integrated” operators such as Orange and Altice. Altice committed to maintaining wholesale DOLL offers, under conditions at least as beneficial as before the transaction.

Commitments lifted

The *Autorité* has observed that since 2014, credible alternatives to Altice offers have emerged, such that it no longer has the capacity to lock access to its wholesale DOLL or dark fibre offers for telecom operators. The *Autorité* consequently considered that it was unnecessary to extend the DOLL and dark fibre commitments.

- **On connecting buildings in the zone covered by the “Faber” agreement to the fibre network co-financed by SFR and Bouygues**

After this transaction, Altice could have prevented Bouygues Telecom from accessing very high-speed internet customers across a significant part of this very dense zone. Bouygues Telecom was dependent on SFR to connect fibre-ready buildings to the shared network deployed by SFR and Bouygues Telecom. Altice therefore committed to connect the fibre-ready buildings in this zone to the network deployed by SFR and Bouygues Telecom. This commitment would have allowed Bouygues Telecom to use the network in which it had invested with SFR and to promote competition in this zone. These connections were meant to be carried out within the timeframe and under the terms set out in the commitments.

Altice did not honour this commitment and was fined by the *Autorité* in 2017 (see press release of 9 March 2017). At the same time, it issued injunctions to ensure that Altice would effectively connect the fibre-ready buildings in the zone covered by the Faber agreement. These injunctions identified two situations: for the fibre-ready buildings which had not been connected as of the date of the 2017 decision, Altice had one additional year to connect them (injunctions with penalty payments). For buildings that would be made fibre-ready from the date of the decision, Altice was to connect them under the conditions set out in the initial commitments (injunctions without penalty payments).

The injunctions without penalty payments are lifted

Given that these injunctions relate to the Faber agreement and the associated commitments, the *Autorité* has observed that the Altice group has changed its strategy and now promotes the deployment of fibre optic internet. Its interests are consequently now aligned with those of Bouygues Telecom in connecting the buildings in the “Faber” zone. Furthermore, the *Autorité* has taken into account changes made to the Faber agreement via an amendment executed between Altice and Bouygues Telecom in December 2018. These changes incorporate into the agreement itself mechanisms similar to those implemented for the commitments made in 2014, and reiterated by the injunctions ordered in 2017. The *Autorité* therefore considers it unnecessary to uphold these injunctions for the future as these changes guarantee that the buildings that are fibre-ready from the date hereof will be effectively connected by Altice to the network co-financed by Bouygues Telecom.

The injunctions with penalty payments are upheld

However, the *Autorité* upholds the injunctions with penalty payments ordered in 2017, as they were intended, within the given timeframes, to offset the direct consequences of Altice’s failure to honour its commitments (i.e. a number of fibre-ready buildings not connected before 2014 or between 2014 and 2017). The *Autorité* will rule on whether they should be liquidated and lifted as part of a separate ongoing investigation, which should give rise to a decision in the first half of 2020.

BACKGROUND

30 October 2014 (Decision no. 14-DCC-160): The *Autorité* gave clearance for the exclusive acquisition of SFR by the Altice group, subject to structural and behavioural commitments

19 April 2016 (Decision no. 16-D-07): The *Autorité* fined the Altice group €15 million for failing to honour certain commitments related to the divestiture of the mobile telephone business of Outremer Telecom, pursuant to Decision no. 14-DCC-160.

8 November 2016 (Decision no. 16-D-24): The *Autorité* fined the Altice group €80 million for the premature completion of two transactions notified in 2014, including the transaction cleared by Decision no.14-DCC-160.

8 March 2017 (Decision no. 17-D-04): The *Autorité* fined the Altice group €40 million for failing to honour its commitments related to the "Faber" agreement, pursuant to Decision no. 14-DCC-160. It also ordered several injunctions, including some with penalty payments.

- ***See full text of the decision 19-DCC-199 reviewing the commitments of decision 14-DCC-160 and the injunctions of decision 17-D-04***

Contact(s)

Bertille Gauthier
Communications Officer

+33155040039
Contact us by e-mail