

BROADBAND ROLL-OUT IN PARIS SUBURBS

On September 28th, 2009, further to a 16-month review, the European Commission (“EC”) eventually gave the green light to the public financing of a fiber-optic network to be rolled out all over the Hauts-de-Seine “Departement” (Administrative territory - Paris close western suburbs).

This colossal project, called THD Seine (THD stands in French for Very High Speed) will be conducted over six years and will lead, at a total cost of 422 millions Euros, to the creation of 827 900 individual connections to the benefit of Hauts-de-Seine residents.

“Thanks to this EC decision, the Hauts-de-Seine will become the first French “Departement” to benefit from very high-speed broadband access. This is a considerable move forward for the economy of the “Departement”, and to the supply of innovating services to our citizens”, declared Patrick Devedjian, the President of the General Council of Hauts-de-Seine.

Despite the enthusiasm of elected representatives, this project remains controversial in particular regarding the attribution of its implementation and its financing conditions.

The implementation of the project and the management of the network attributed to a single operator

The future THD Seine network will be rolled out thanks to a public procurement contract concluded for 25 years with one single company.

On December 21, 2007, the General Council of Hauts-de-Seine chose Sequalum to perform this service, an industrial consortium between Numericable (80%), Eiffage (15%) and LD Collectivités (5%).

Some major telecom companies, such as France Telecom, Colt Telecom and Free

rebelled against the project, arguing that it was useless in a dense and wealthy area (qualified as “zone 1” by ARCEP, the French telecom NRA, and as a “black zone” by the European Commission) where broadband projects had already been implemented.

For example, Free initiated the roll out of its own fiber network within the “Departement”.

Besides, France Telecom considered that the decision of the European Commission was inconsistent, and reminded that “ARCEP had suggested a detailed regulation for very dense areas where there is no doubt that there will be competition between operators through infrastructures up until the buildings”.

Such position is understandable, knowing that the roll out of fiber networks will make France Telecom and Colt Telecom lose their monopoly on copper cable networks.

Protestations also rose from the political opposition (French Communist Party and Ecologist Party) who denounced the risk of multiplication of such projects, which would, on the one hand, burden the “Departements” budget, and, on the other hand, would generate too much uncertainty for operators which would be willing to invest in new infrastructures independently.

The General Council of Hauts-de-Seine claims that the conditions set by the European regulation were taken into account since the beginning of this project.

According to the General Council, the project does abide by all ARCEP rules stating that the “Departement” public financing shall only apply to non-profitable areas.

Lastly, responding to the operators’ worries about the monopoly of the consortium managing the network, the General Council reminds it is dark fiber which will be rolled out, i.e. fiber which is rolled out and

commercialised, but is not yet plugged. As a result, any telecom company may use it and the market remains open to everyone.

Financing the project

The project will be mainly financed by the consortium benefiting from the procurement agreement (about 363 millions Euros out of the 422 millions necessary to the project). The remainder (about 59 millions) will be financed by the “Departement”.

This is the financial contribution of the “Departement” which caused the more venomous reaction from the consortium’s competitors. In December 2007, the operator Colt Telecom had opposed to such public financing of the project, and lodged a complaint with the European Commission. The said complaint led to the decision of September 28th, which approved the project.

According to the shared opinion of the opponents to the project, the General Council choice for the head of the project did not respect all criteria set by the famous Altmark case pertaining to public contributions to public services. The lack of transparency in the definition of the public service procured to the consortium was blamed on the General Council. The opponents were thus claiming that the public contribution was nothing more than state aid, and not at all a simple contribution to a public service.

On that point, the EC position is very precise. The Commission reminds that the public funds do not constitute a state aid, and “will only be used to compensate the costs related to the fulfilment of obligations related a public economic interest service”. One may nevertheless recall that a few days before, the Commission had declared that the intervention of public authorities in very dense areas was useless.

The Commission legitimates this inconsistencyby reminding that the

compensation does not exceed the costs of the service in non-profitable zones.

Is it therefore necessary to systematically distinguish between the profitable and non-profitable areas within the black (dense and wealthy, as defined by the EC and ARCEP) areas? Or was this argument merely used as a justification of this specific decision and shall not be considered a principle?

The question remains unsolved.

Development of fiber optic and right to broadband access for all citizens

This project is a cornerstone in fiber roll out in France. Indeed, if this technology has been spread for many years in France, this project is one of the first projects which has not been only financed by private companies, but jointly financed by public funds and private companies. This initiative has been followed by about twenty public authorities who launched FFFH roll-out projects.

This project also fits the agreement found by the European Parliament and the European Council about the 138th amendment to the telecom package, promoting a right to broadband access for everyone. Through this agreement on the telecom reform, the European institutions recognise the existence of a fundamental right to Internet access. The EC President, Mr. Barroso recently declared that “*every European citizen shall have access to broadband networks*”. The adoption of the telecom package reform by the European institutions will compel all member-states to transpose within their national legislations this fundamental right, and to give to this right the required authority. Who could now denied that we have entered the information era.

(You may also wish to refer to our article related to the telecom reform).

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