**Contribution of France Telecom Group
to the Consultation
on the Report on ERG best practices
on regulatory regimes in wholesale unbundled
access and bitstream access**

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France Telecom Group welcomes the opportunity to comment on the report on ERG best practices on regulatory regimes in wholesale unbundled access and bitstream access.

The work that has been done by ERG on best practices in wholesale unbundled access and bitstream access, on the operational, functional and economic aspect, can contribute to the harmonisation of the regulatory process within Europe, even though national particularities must be taken into account for the means of implementation[1].

France Telecom Group supports the co-ordinated approach and the willingness of the European Regulatory Group to provide harmonised guidance within the European market.

Specifically, the efficiency of the regulation of wholesale offers is really dependant on the implementation processes and of their coordination.

Our general comments are related to:
- a possible enhancement of the overall process thanks to the introduction of a dynamic dimension, further guidance and the issuing of an annual benchmark on the subject,
- the fact that best practices make the functional separation unnecessary and inconsistent, because, with functional separation, there is no more entity to ensure the equivalence of output that is the base for the best practices and
- the fact that the use of the ladder of investment concept is not forward looking.

More precise comments on the best practices themselves are proposed.

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[1] Therefore, for any KPI, best practice should not be identified to an extremum value throughout Europe, but to effective non discrimination between retail and wholesale at the relevant level considering national context.

I – General comments

A - Best practices must be a dynamic process with feedback mechanisms and further guidance

1 - A dynamic process:

The comparison of practices must identify the most relevant practices. The subsequent recommendations for best practices should be based on efficiency and proportionality. This means that NRAs should be selective in order to be efficient.

The best practices' approach should be as professional and systematic as quality processes. In this respect, each "Best Implementation Practice" mentioned in this document can be again enriched, by making it more dynamic than what is presented.

So, the current report could be enhanced, as well, by stipulating the overall dynamic process for the implementation of these best practices.

The NRAs final decision concerning quality of service requirements must be well balanced with regards to the commercial relations between the SMP and the other operators, and take into account all the contextual parameters.

On the E.Deming's enhancement cycle model (plan, do, check, act), a regulatory regime implementation process can be built. The virtue of this model is that it relies on feedback and enhancement mechanisms. For this purpose, three party-meetings at the national level (NRA, SMP, and new entrants), on a regular basis, are necessary in order to analyse the KPIs and identify where improvements may be needed. The three party-meetings are an essential component of best practices in order to tackle operational subjects and plan coordinated improvements from all players. Avoiding unfounded requests (ex: erroneous fault report), specifying interfaces between information systems, improving the coordination of wholesale and retail delivery processes are typical issues for three party-meetings.

2 - Need for further guidance:

In order to avoid for the creation of important discrepancies in the implementation of the best practices which would be detrimental to the harmonisation and in relation to the possible enhancements of the overall process further guidance could be given for certain practices.
For example requests and answers could be looked at through some hierarchical methods, in terms of priority or stringency. An illustration is the best practices for fault

clearance as reported in the document that must be viewed with fault categories in mind. The 2 days mentioned (page10) could be then suitable for certain categories of problems and not for others.

3 - What has been done for this report should become a continuous process:

Today, there is a lack of neutral, relevant, and regular survey of the implementation of best practices covering all the Member States.

ERG is in the best position to edit a European Regular Best Practices review, building on this first report, and to issue an annual benchmark on the subject.

B - Effective best practices make functional separation unnecessary

Efficient best practices are the most efficient, the fastest and the cheapest way to effective non discrimination. As effective non discrimination is supposed to be the rationale for functional separation, applying these best practices makes the whole functional separation option irrelevant.
An efficient use of these best practices, with the dynamic process previously defined will provide a means of achieving the objectives of better competition and better output for the market more quickly
France is an interesting example in this respect. The strict follow-up of these practices, through constructive contributions from France Telecom and of alternative operators, under the management of Arcep, has led to this type of positive results on the French broadband market.

The separation would be detrimental in terms of motivation and references. The wholesale activity would miss the benefits of having proper internal incentives coming from the retail market for dealing with the wholesale offers.
So, functional separation would neither be able to reach, nor to check, the objectives which can be met applying efficient best practices.

C - Ladder of investment is not a relevant concept to be referred to in the context of this consultation

The use of the ladder of investment concept was intended to create conditions favourable to new entrants so that they get enough retail market shares to invest progressively in access networks. Market conditions have changed as alternative operators now have gained significant market shares and should be able and willing to invest in their own facilities. For instance, there is no point any more to impose on the incumbent SMP operator an obligation to accommodate and support all possible competing business models with several levels of wholesale offers in the same area.

Secondly, the protective character of the ladder of investment may be illusory for alternative operators that do not secure their investments in time.

The proposed best practices are relevant, but their rationale should no longer be the ladder of investment, a fortiori at a time when infrastructure competition can and must be promoted as mentioned in the following chapter.

In this respect, the reference to the ladder of investment and to the promotion of infrastructure based competition is confusing, it could even be antinomic. The concept of economic space is a proper one but it is not a guarantee for competition by infrastructure deployment, because new entrants can eventually rely for ever on the "ladder" thanks to the regulated pricing policy.

II - Comments on the Best implementation practices

When properly implemented, the use of best practices could be virtuous. On the principle, France Telecom Group has no objection to the list proposed in this report.
Our understanding is that these best practices cover the copper environment, a mature and regulated environment.
As far as regulation is concerned, for certain best practices, we have the impression that it is taken for granted the fact that the wholesale and related retail markets are both regulated. This a priori is now obsolete, as the new Recommendation has acknowledged that regulating retail markets is no longer useful, except for telephone access.
Concerning KPIs, when guidelines or comparing countries are concerned, we recommend paying attention to the indicators' scale and extent because they vary from one country to another.

Best Practice 1: Implementing SLA &KPI in WLA & WBA Reference offers
To implement indicators allows the regulator to follow the provider activities and its compliance with its commitments.
From experience, a monthly report for Access delivery times and Fault clearance times is sufficient periodicity.
For Facilities provision times, a report every three months is all right.

Best Practice 2: The minimal set of timers for SLA
An example of a set of timers is given in the annexe. The related measures are communicated once a month.

Best Practice 2a: SLA conditions on delivery time
Concerning the time between receipt of LLU installation request and sending the done message, provided the service is working, 7 working days is acceptable.
But measuring the percentage of cases in line with this criterion is not sufficient; it is preferable to give the average delay and the number of accesses in breach of this commitment.

Best Practice 2b: SLA conditions on delivery precision
The principle of compensation for non compliance to commitments is acceptable but only under certain conditions. Compensation in case of non conformity with delay commitments must be accompanied with conditions allowing the supplier to fulfil its obligations. Typically, conformity with WLA and WBA product delivery time is dependant on the availability of certain information: the supplier must know where to deliver, how much to produce in order to organize its production-delivery chain. On the top of that, it would be efficient that the new entrants smooth out the orders, command peaks lead to production disorganisation for all parties involved. If this information is not available or erroneous, no compensation should be due.

Best Practice 2c: SLA on facilities delivery time
Facilities delivery time can be part of the "Reference offers" that is public. Afterward, when necessary, the follow up of this parameter can be handled during the monthly multilateral meeting.

Best Practice 2d: SLA on fault clearance time
The SLA on fault clearance time for wholesale products must be consistent with the commitments of the incumbent for its retail products.
In respect to the proposal, a deeper segmentation in expectations could be used for fault clearance time. Several maintenance levels could be defined, for example:
T0 + 2 days (for residential and enterprises),
10 working hours, for enterprises access,
4 working hours, for enterprises access,
7/7 - 24/24, for enterprises access.

The segmentation giving rise to different levels of fees and being possibly suitable to different kinds of problems to solve.

Best Practice 3a: Compensation rules
3a does not go without 3b. For an efficient mechanism, the client must have certain obligations in order to make the provider's action feasible, efficient and rapid.
Bad information, bad operational environment, no willingness to ease the intervention are detrimental to the expected results and no compensation could be asked under such circumstances.
An example related to production-delivery time has already been mentioned. Another one is the level of signalisation that is transmitted to the regulated operator: the level of possible error in this signalisation level must be below a certain level to be defined, otherwise the operation will be compromised and it should not be attributed to the supplier.

Best Practice 3b: Forecast
The forecast is needed by the supplier to adapt the necessary resources to handle the task.
The proposal could be more stringent:
    geographic granularity: Main Distribution Frame level,
    time granularity: month,
    acceptable Tolerance 30%,
    to be provided every month on a sliding trimester base.

Best Practice 4a: KPIs the minimal set to be implemented
To be in line with the KPIs and publishing the results is beneficial for the provider. In this way, it demonstrates its ability to be transparent and non discriminatory
There is a large range of possible KPIs. In France, every month, France Telecom provides 119 indicators on its public website.

Best Practice 4b: KPI Periodicity, Comparison criteria, Publication
The virtue for the supplier is to demonstrate that it does not implement discriminatory offers and that it is able to fulfil its obligations, notably in terms of delay. See 4a answer.

Best Practice 5: Bulk migration process conditions
Bulk migration process is mainly relevant when the demand is high, but tailored offers are more efficient for the provider as well as for the customer. In any case the bulk migration process and conditions must be part of the Reference Offer.

Best Practice 6: Ground Number Portability Synchronisation
We must keep in mind that the most important indicator is the perceived time by the final user regarding the number porting. It should be a few hours maximum.
Besides the requirement related to the unique command and the limited cut off period, a level of obligation for concomitant delivery could be the following: in 80% of the daily cases, the synchronisation of the LLU and GNP delivery must be ensured within one day.

Best Practice 7: Passive connectivity solutions
The real impact of this practice is the increase of the operator's commercial zones and consequently the number of unbundled lines.

Best Practice 8: Collocation of equipments
The list of equipments to be authorized in this context must be clear and available to the customers. For security and commercial reasons, collocation of equipment must be handled with care, avoiding the incumbent provider to lose control of its resources. For instance, collocation must be managed carefully in order to avoid contracts rerouting toward wholesale activities (i.e. POPs within Local exchanges).

Best Practice 9: Stand alone bitstream access (St-WBA)
The comments are the same as for WBA.

Best Practice 10: WLA&WBA Price consistency
First, there is a general comment concerning the entire chapter about a point to be clarified: the text gives the impression that wholesale and retail markets are both regulated. If this understanding is true; there is a risk of bias in the definition of these best practices.
About ARN's models for price consistency, it should be reminded that they are often different from the models used by the Competition Authorities. If a Competition Authority had to hear a case, such potential divergence would reduce the expected visibility given to the new operators (new entrants and incumbents).

Best Practice 11: WLA-WBA Economic space
This practice seems to be redundant with the previous one?
Price consistency and related economic space must also be defined in order not to jeopardize the national averaging of wholesale prices.

A national circumstance to be taken into account in the economic space calls for explanation. That is the existence of alternative infrastructure. We don't see the reason to include this parameter. The alternative infrastructures do not always belong to the same market, depending on the definition given by the NRAs.

Also, in the rationale, we do not understand the added value of mentioning the differences of economy of scale between WLA and WBA.

Best Practice 12: Practical Scheme for WLA WBA economic space monitoring
It is relevant to differentiate the access and the conveyance because the technologies for conveyance are diverse and the associated costs as well (IP, ATM, GEthernet).

In respect to time priority given to all these best practices, one meeting per year to monitor the economic space is sufficient.

Annexe:
A minimal set of timers for SLA: the French example

INDICATEURS DE QUALITE DE SERVICE POUR LE DEGROUPAGE ET LES MARCHES AVAL

Résultats du mois de novembre 2007

Offres résidentielles, service téléphonique commuté		A	B
		Revente de l'abonnement	Abonnement FT
Délai pertinent de livraison		*8 jours calendaires, ou RV client*	
Délai pertinent de relève des dérangements		*48h jours ouvrables*	
Ligne existante			
1	Délais moyen de livraison	jours	1,2	5,0
2	Taux de respect du délai de 8 jours calendaires	%	95,9%	88,5%
3	Nombre de commandes livrées en plus de 30 jours calendaires	nb	107	3 164
Ligne avec construction			
5	Délais moyen de livraison	jours	19,5	15,5
6	Taux de respect du délai de 8 jours calendaires	%	0,0%	55,1%
7	Nombre de commandes livrées en plus de 30 jours calendaires	nb	0	12 175
8				
Ligne existante ou avec construction			
9	Taux de signalisations sur les parcs livrés depuis moins d'un mois - cause FT	%	0,5%	2,8%
10	Taux de respect des délais contractuels de relève	%	46,3%	55,4%
11	Taux de signalisations sur le parc par ligne et par an cause France Télécom	%	5,0%	8,0%
12	Taux de signalisations sur le parc par ligne et par an autres causes	%	2,9%	2,7%
13	Nombre de dérangements de resp FT non relevés en moins de 3 jours ouvrables	nb	980	59 106

Offre résidentielle, accès DSL pour ligne avec RTC		A	B	C
		Dégroupage partiel	Offre régionale résidentielle DSL access	Détail DSL résidentiel Orange
Délai pertinent de livraison		*7 jours ouvrés*		*8 jours calendaires*
Délai pertinent de relève des dérangements		*J+1 (jours ouvrables)*		
14	Délais moyen de livraison	jours	3,1	4,6	2,7
15	Taux de respect du délai de 7 j ouvré ou 8 j calendaires	%	95,5%	88,8%	94,7%
16	Nombre de commandes livrées en plus de 30 jours calendaires	nb	184	815	39
18	Taux de signalisations sur les parcs livrés depuis moins d'un mois - cause FT	%	2,2%	2,2%	ND
19	Taux de respect des délais contractuels de relève	%	45,3%	26,8%	31,1%
20	Taux de signalisations sur le parc par ligne et par an cause France Télécom	%	2,7%	2,8%	7,0%
21	Taux de signalisations sur le parc par ligne et par an autres causes	%	5,1%	7,2%	5,8%
22	Nombre de dérangements de resp FT non relevés en moins de 3 jours ouvrables	nb	587	847	14 136

Offres résidentielles, accès DSL pour ligne sans RTC sans GTR 4h		A	B	C
		Dégroupage total	Offre régionale résidentielle DSL access Only	Détail Orange DSL nu
Délai pertinent de livraison		*7, 8 jours ouvrés (ou RV client en construction)*		*8 jours calendaires*
Délai pertinent de relève des dérangements		*J+2 (j ouvrables)*	*J+1 (jours ouvrables)*	
Ligne existante				
23	Délais moyen de livraison	jours	3,3	4,2	4,3
24	Taux de respect du délai de 7 jours ouvrés, ou 8 j calendaires	%	95,9%	90,7%	88,3%
25	Nombre de commandes livrées en plus de 30 jours calendaires	nb	1 018	1 448	39
Ligne avec construction				
27	Délais moyen de livraison	jours	14,5	16,2	nd
28	Taux de respect du délai de 8 jours ouvrés ou 8 j calendaires	%	24,1%	17,2%	nd
29	Nombre de commandes livrées en plus de 30 jours calendaires	nb	1 148	27	nd
Ligne existante ou avec construction				
31	% de respect de réalisation de livraison avec portabilité dans la même journée	%	60,2%	nd	
32	Taux de signalisations sur les parcs livrés depuis moins d'un mois - cause FT	%	3,2%	3,6%	ND
33	Taux de respect des délais contractuels de relève	%	65,8%	26,8%	33,1%
34	Taux de signalisations sur le parc par ligne et par an cause France Télécom	%	6,7%	10,7%	23,1%
35	Taux de signalisations sur le parc par ligne et par an autres causes	%	10,6%	16,0%	12,9%
36	Nombre de dérangements de resp FT non relevés en moins de 3 jours ouvrables	nb	4 659	2 389	7 537

Offres professionnelles, accès à toute la paire de cuivre avec GTR 4h		A	B	C	D	E
		Revente de l'abonnement - marché PRO avec GTR 4h	Dégroupage Total avec GTR 4H	Offre Numéris avec GTR 4H	Offre régionaleDSL pro avec GTR 4H	Détail DSL pro avec GTR 4H
Délai pertinent de livraison		*8 j calend ou RV client*	*7, 8 j ouvrés ou RV client*	*8 j calend ou RV client*	*14 jours calendaires ou RV client*	
Délai pertinent de relève des dérangements				*4 heures*		
37	Délais moyen de livraison	jours	21,1	13,2	22,6	22,2	25,3
38	Tx de respect du délai de 7, 8 j ouvrés, 8 j calend (col A,B,C), ou RdV client (col D,E)	%	15,9%	43,6%	28,3%	91,1%	92,7%
39	Nombre de commandes livrées en plus de 30 jours calendaires	nb	16	261	2 429		
40							
41	Taux de signalisations sur production de moins de 30 jours pour cause FT	%	0,8%	2,6%	ND	3,9%	1,2%
42	Taux de respect des délais contractuels de relève	%	66,7%	69,3%	22,5%	90,0%	81,1%
43	Taux de signalisations sur le parc par ligne et par an cause France Télécom	%	2,6%	6,7%	ND	23,9%	13,5%
44	Taux de signalisations sur le parc par ligne et par an autres causes	%	4,2%	7,8%	ND	20,1%	5,9%
45	Nombre de dérangements de la responsabilité FT non relevés en 4 heures	Nb	1	105	1 989	122	284