Decision no. 01−377 dated 26 April 2001 of Autorité de régulation des télécommunications (ART) ordering France Telecom to fulfil its obligations under the penultimate paragraph of article D. 99−23 of the Post and Telecommunications Code, in application of article L. 36−11 of the Post and Telecommunications Code

The Telecommunications Regulatory Authority (Autorité de Régulation des Télécommunications−ART),

having regard to:

Regulation (EC) no. 2887/2000 of the European Parliament and Council dated 18 December 2000 regarding the unbundling of access to the local loop;

The Post and Telecommunications Code, and in particular articles L. 36−11 and D. 99−23 thereof;

Article 2 of decree no. 2000−881 dated 12 September 2000 modifying the Post and Telecommunications Code regarding access to the local loop;

The internal procedure rules of Autorité de régulation des télécommunications, approved by decision no. 99−528 of ART dated 18 June 1999 and in particular article 19 thereof,

The letters sent by Association française des operators privés en télécommunications (AFOPT) and Association des operators de services de télécommunications (AOST), received on 2 February 2001, requesting that sanctions be applied against France Telecom under article L. 36−11 of the Post and Telecommunications Code, given France Telecom's failure to process requests for co−location under objective, transparent and non−discriminatory conditions, as per the penultimate paragraph of article D.99−23 of the Post and Telecommunications Code;

The letter from the head of ART's legal department to Mr. Marc Fossier, director of external relations at France Telecom, dated 12 February 2001 informing him of the initiation of a sanctions procedure and inviting him to present his observations,

The letter of the reporter to Mr. Marc Fossier, director of external relations at France Telecom, dated 14 February 2001, requesting information and inviting France Telecom to present its observations,

The observations from France Telecom received on 23 February 2001,

The minutes of the hearings of France Telecom dated 27 February 2001 and 29 March 2001,

The letters from France Telecom to the reporters dated 23 March 2001 and 6 April 2001,

The reports of the visits of the Philippe−Auguste, Brune, Bassano and Invalides sites dated 4 and 5 April 2001;

The letters from two operators, members of AFOPT received on 6 April 2001,

The reporter, Mr. Olivier Mirwasser, having been heard,
And after having deliberated outside the presence of the reporter, the assistant reporter and other agents of ART on 26 April 2001,

1. Legal and regulatory provisions

The penultimate paragraph of article D. 99−23 of the Post and Telecommunications Code states: "[…] the operators named on the list established pursuant to paragraph 7 of Article L. 36−7 are required to respond to co−location requests according to objective, transparent and non discriminatory criteria."

The 1st paragraph of the same article stipulates that these provisions are applicable to "operators named on the list established pursuant to paragraph 7 of Article L. 36−7" of the Post and Telecommunications Code. By decisions no. 99−767 dated 15 September 1999 and no. 00−813 dated 26 July 2000 of Autorité de régulation des télécommunications, France Telecom was included in this list for the years 2000 and 2001.

Article 3.2 of the abovementioned Community regulation dated 18 December 2000 states that: "Notified operators shall from 31 December 2000 meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non−discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 4(5). Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time−scales."

2. Presentation of the facts

In a letter dated 30 January 2001, AFOPT and AOST requested that ART initiate a sanctions procedure against France Telecom under article L. 36−11 of the Post and Telecommunications Code. These associations consider that France Telecom has not respected its regulatory obligations and in particular that it has not processed the requests for co−location from operators under the conditions stipulated by article D. 99−23 of the Post and Telecommunications Code.

In this regard, they state that as of 30 January 2001, i.e. more than three months after the application of the abovementioned regulation regarding co−location, France Telecom has not sent any technical feasibility study despite requests for them having been sent on 1st October 2000.

To support their requests, AFOPT and AOST refer to correspondence between France Telecom and the companies Colt, Free, Siris, 9Télécom and Cegetel entreprises, members of these associations, which have already been sent to ART and which regard the processing of requests for co−location.

Moreover, in its letter dated 6 April 2001, the company 9 Télécom claims that France Telecom's requirement to sign a memorandum of understanding with a very restrictive scope, creates lead times which are incompatible with the effective implementation of unbundling, that the mechanisms for sharing the costs of the separate co−location rooms proposed by France Telecom create discriminatory conditions for the operators and that alternative solutions to separate co−location must be suggested if there is insufficient room to build a specific room.

In its letter dated 6 April 2001, the company Cegetel entreprises adds that the 8−week deadline is not respected when estimates for the co−location rooms are sent to the operators. Moreover, it requests that a physical co−location solution in France Telecom's existing rooms be defined if co−location in a specific room is not possible. It states that under current order circumstances, the co−location rooms could not be financed outside Paris. It requests that the financing process for the rooms be modified and that France Telecom be included in it. It contests the deadline of the memorandum of understanding proposed by France Telecom and
requests that detailed estimates be sent to the operators.

Based on these elements and those produced by France Telecom as part of the examination following publication of the decree, it appears that the following process was established between France Telecom and the operators:

- on 29 September 2000, France Telecom sends a letter to the operators to determine the operators forecasts and intended co-location orders;
- the operators reply before 31 October 2000 and France Telecom receives approximately 3,300 intended orders;
- on 7 and 17 November, France Telecom presents to the operators an initial purchase order to order co-location and the process it plans to follow. This process includes an order for a feasibility study, performance of the feasibility study within 8 weeks, order confirmation and performance of the services within 16 weeks; the initial purchase order supposes that the operator provides the address of the distribution frame;
- on 17 November 2000, France Telecom provides the initial lots of distribution frame addresses;
- on 20 November 2000, an operator sends the first orders for a feasibility study for Paris (37 orders);
- on 22 November 2000, France Telecom presents to the operators its reference offer for access to the local loop which describes the process proposed in November 2000 in greater detail;
- on 14 December 2000, ART orders France Telecom to provide the information required to implement access to the local loop;
- in late December, four operators order some 350 feasibility studies;
- on 2 February 2001, France Telecom proposes a memorandum of understanding to the operators allowing them to reserve co-location spaces before signing the access agreement;
- on 5 February 2001, France Telecom sends 18 initial estimates to the operator having placed the order in November;
- on 8 February 2001, ART requests that France Telecom modify its reference offer including certain aspects of the proposed co-location process;
- on 15 February 2001, France Telecom proposes four new purchase orders including modifications related to the provision of information;
- on 22 February 2001, France Telecom sends the rest of the feasibility studies for Parisian sites;
- on 23 February 2001, France Telecom publishes a new reference offer which takes into account some of the provisions of the ART decision dated 8 February;
- between 20 and 30 March 2001, France Telecom receives firm orders for the co-location room on the Paris sites from 4 operators;
- on 30 March 2001, France Telecom sends the feasibility studies for the city of Lyon.

Based on these elements, as of 31 March 2001, approximately 468 feasibility studies have been ordered and 78 firm orders placed by operators for 33 Paris sites.

3. France Telecom's observations

3.1 Review of France Telecom's proposed co-location process under its reference offer

The co-location service proposed by France Telecom involves providing, in a France Telecom building, a room fitted out specifically for this purpose and spaces for operators to install their equipment.

This room, called a "co-location room", is to be shared by operators for access to the local loop.

The request processing process is as follows:
The operator sends France Telecom its feasibility study orders, one for each distribution frame; it states the number of bays requested.

France Telecom performs the feasibility study and responds on the feasibility, including, where appropriate, estimates for fitting out the co–location room, within 8 weeks from the date of receipt of the order. For information, should it be impossible to meet the operator's order, France Telecom will do its utmost to inform the operator within one month.

Should France Telecom not be able to provide a co–location room, it will study the feasibility of installing a shelter within its premises. In this case, the lead times for the feasibility study and implementation are specific and may exceed standard lead times.

Following the completion of the feasibility study and estimates, the operator may place a firm order within one month of the response from France Telecom. Should it not reply by this deadline, the order for the feasibility study is cancelled. Any unconfirmed study order will be billed.

At the firm order, the operator pays France Telecom a deposit equal to 20% of the annual rental fee for the requested spaces and 20% of the service access fees (including the amount of the estimate for fitting out the room).

France Telecom will begin fitting out works only once the firm order of a first operator has been signed. The maximum deadline for completing the fitting out works for a room is four months from order signature.

France Telecom has suggested that operators reserve spaces and place firms orders via a temporary agreement before signing the local loop access agreement.

The fitting out expenses for the premises when creating a new room are divided among the operators having confirmed their firm order at the delivery date of the co–location room to the first operator. The division is determined according to the number of spaces requested in the firm orders.

3.2 Detailed observations

Principles of physical co–location

France Telecom reiterates that physical co–location can be envisaged only if a specific room is prepared for the operators and that secure access to this room can be provided.

It indicated that it could not permit the operators to install equipment in the rooms it uses for its own equipment for security reasons.

Concerning virtual co–location, France Telecom stated that this solution would force it to operate the operators' equipment and that it is not capable of doing so given the many technological innovations they may include.

On the means of financing the rooms, France Telecom reiterated that it had refused to pay part of the cost considering that it should not have to run the risk of building a room which might not be used or which might be used only partially.

Intended orders and feasibility studies

France Telecom stated that in response to the intended orders it received from the operators in October 2000, it confirmed the feasibility of implementing a co–location room.
It stated that it had received feasibility study orders from 6 operators for 4 cities and that it had overall met the 8-week response deadline to which it had committed. However, it emphasized that the period required to provide fitting-out estimates might take anywhere from seven to ten weeks.

Seeking available space and preparing room preparation estimates

The process includes three phases: identifying available space, preparing an estimate in house and consulting firms.

Identifying available space

France Telecom states that it has sought premises on 800 sites, in the 30 largest French cities.

It seeks space as follows: during an initial phase during October 2000, it drafted specifications determining the characteristics of the space to be provided; the specifications took into account the work done by the working groups and ART's recommendations. Then, since November, members of the property division have been visiting the sites with agents from the regional divisions to determine how the rooms can be prepared on the distribution frame sites; once the premises have been identified, they are validated by the property division.

In the available space identification process, France Telecom determines first and foremost whether independent access is possible or whether controlled access is possible; secure access via the main entrance to the building would be too costly to prepare in France Telecom's opinion. If solutions with this type of access are not found, France Telecom examines the possibility of setting up shelters on its land. The available space is evaluated in accordance with ART's recommendations, i.e. 2 square meters for 1,000 lines and taking into account the operators' intended orders. As a general rule, they are no smaller than 30 sq. m.

Preparing estimates in house at France Telecom

Following the identification of available space, France Telecom prepares an estimate for each site; the specifications of the works is prepared for each site and the works are estimated based on internal price lists from France Telecom, based on works done in the past.

France Telecom states that it has prepared estimates for the sites of the twenty largest French urban areas and for the Paris region, i.e. approximately 540 sites. France Telecom did not wait for feasibility study orders on these sites before drafting these estimates but began with the sites for which it had received requests. Moreover, it has also begun preparing estimates for the next 10 urban areas.

These estimates include two major works elements: fitting out works for the buildings estimated by the property division and equipment works estimated by France Telecom's Networks Branch (BRX).

Estimates have been requested of certain firms based on the specifications prepared by France Telecom should shelters be installed.

The equipment works are not done for the entire room; they include the number of bays ordered, the intended orders and a 25% margin to avoid making the first arrivals pay for the entire works.

Should external access need to be created, certain administrative authorisations will be required. The options for the provision of ~48 Volts and cooling are listed separately.

France Telecom states that as a general rule, the cost of the room does not depend significantly on its size except for very small spaces, since the equipment used is often similar and the equipment items are often the
most costly. France Telecom provides examples of specifications for the buildings and equipment items.

The estimates which have been sent to operators are the France Telecom in–house estimates.

Calls for tenders

France Telecom states that following these estimates, it adapts the specifications according to the specifics of the work to be done on each site and launches calls for tenders; it has launched calls for tenders on the sites for the 20 largest urban areas and for the Paris region, i.e. 540 sites.

As a general rule, the estimates received are slightly lower than the estimations provided. However, they are valid only for three months, a time during which France Telecom is not certain of receiving orders.

France Telecom is examining the way in which it will inform the operators of the results of the calls for tenders.

France Telecom considers that it will be able to meet the 4–month construction deadline for room fitting out works, from signature of the first firm order, as long as administrative authorisations are not required. For example, should a building permit or a prior works declaration be required, the deadline for obtaining authorisations and any appeals would have to be taken into account.

Details of fitting out works

The works include two main elements: the building fitting out works and the equipment works.

The building fitting out works include secured access work (locks, doors, etc.) and work in the rooms themselves (masonry, carpentry, plumbing, etc.).

The equipment works include energy supply and the creation of suites, flooring, setting up the bays, distribution frame heads and cable paths.

Additional services include cooling and the provision of a 48–Volt power supply.

These works are described in greater detail in two examples later in this decision.

Sites on which co–location is not possible

France Telecom has stated that 130 sites of the 482 sites in the twenty largest urban areas cannot be opened to physical co–location.

It adds that the lack of space is the main reason for which a site cannot be used for this type of co–location. This is the case for 103 sites.

It states that the number of connected lines on these sites is low, at approximately 771,000, i.e. 8.4% of all lines in the 20 largest urban areas (approximately 9 million lines).

Memorandum of understanding

France Telecom is surprised that few operators have signed the memorandum of understanding; it reiterates that the purpose of this memorandum was not to replace the access agreement to the local loop and that the operators’ equipment cannot be installed until the local agreement has been signed.
It accepts that the memorandum deadline of 30 April 2001 should be revised.

Process chosen for France Telecom's needs

France Telecom states that for its own needs, it does not, as a general rule, have to build a specific room nor are any specific works required. In most cases, it uses available space in the transmission rooms, which already house its equipment. The technical installation works for DSLAMs include installing suites, adding power, and connecting transmission. Cooling is sometimes needed.

France Telecom has submitted a status report for the sites on which it has deployed or plans to deploy DSLAMs; it shows that as of 31/12/2000, France Telecom was present on 549 sites, at 30/06/2001 it will be present on 555 additional sites and that at 31/12/2001, it will be present on 325 additional sites; thus, it will have installed its DSLAMs on 1,429 sites by the end of 2001.

The teams already maintaining classic equipment operate the DSLAMs. Specific training was required.

France Telecom cannot give any average time requirement for installing its equipment. It adds that the conditions of opening an area depend on a decision of the Conseil de la concurrence. France Telecom must inform its competitors 15 weeks before marketing is launched.

France Telecom adds that it has installed DSLAMs on […] of the 130 sites for which co–location is not possible, because of a lack of space.

4. Site visits

Four sites were visited during the examination.

4.1 Sites on which physical co–location is possible

[…](1)

4.2 Sites on which physical co–location is not possible

[…](1)

5. Observed defaults and conclusions

In order to meet requests for the co–location of operator equipment, France Telecom has chosen the physical co–location solution which requires the systematic fitting out of a specific room for the operators.

The principle of non discrimination required by the penultimate paragraph of article D. 99–23 of the Post and Telecommunications Code is also required by the abovementioned European regulation no. 2887/2000 which, in article 3, states that: "Notified operators shall provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time–scales". Thus, neither the provisions of the abovementioned European regulation nor those of the Post and Telecommunications Code modified by the decree dated 12 September 2000, stipulate that France Telecom's equipment must be systematically separate from that of third party operators. While fitting out a specific room may have certain advantages from a technical viewpoint as highlighted by the group chaired by Mr. Alain Bravo, it is not the sole solution, and its use must be appreciated with regard to the discriminatory effects it might cause. Therefore, France Telecom should first plan to deal with requests for co–location from operators in the same way as it handles its own needs, i.e. by installing their equipment in existing France Telecom rooms.
France Telecom stated that it could not provide co-location to operators under the same conditions as for its own needs, by allowing these operators to install their equipment in existing France Telecom rooms. Indeed, it considers that under such a configuration, the operators should have 24-hour access, 7 days a week to the premises housing all of the equipment of France Telecom's networks because of the frequent interventions which need to be done on short notice on the equipment deployed for access to the local loop. It considers that such a situation is not compatible with the security constraints for its own equipment.

In this regard, ART notes that the risk to the security of France Telecom's equipment appears limited, for the following reasons:

- access to France Telecom's technical rooms is systematically controlled by badged entry and only authorised persons have access to the premises;
- the operators would have their own equipment inside the rooms and would be in the same situation as France Telecom with regards to the provision of their services.

Moreover, France Telecom could find various solutions which might limit, if necessary, the risks to its own equipment such as those it uses for the services it provides for interconnection, providing first-level maintenance or offering accompanied access in specific cases.

Therefore, given the legitimate security concerns expressed by France Telecom in regard to the provisions in force, it does not seem necessary to systematically and exclusively impose physical separation of France Telecom's equipment and that of third party operators. As explained later in this decision, the choice taken by France Telecom to systematically prepare specific rooms creates co-location conditions for the operators which are not equivalent to those which France Telecom enjoys in terms of request processing lead times and in terms of pricing.

On the stages of request processing and related lead times

Based on the elements provided by the operators and by France Telecom, it appears that the initial estimates for fitting out co-location rooms were provided only in early February 2001, whereas the first intended orders were received by France Telecom in early October 2000. This four month delay is in part due to the time in which France Telecom provided the information required to implement access to the local loop (site addresses) and to France Telecom defining the administrative process (format of the various purchase orders). However, it is also a result of the negative impact of the cost of the feasibility study service that ART has, moreover, ordered that France Telecom modify. ART considers that France Telecom should provide these estimates under shorter lead times.

Moreover, file documents also show that the 8-week period for producing estimates that France Telecom mentions in its reference offer is very inconsistently respected. For example, the estimates for the feasibility study ordered by Cegétel, for Lyon on 12 December 2000, were not sent until 30 March 2001. Similarly, 9 Télécom Réseau sent its intended orders on 28 December 2000 for the Paris, Lyon, Marcheille sites and for the Hauts de Seine départements. On 30 March 2001, the estimates for Lyon, some of the Hauts de Seine sites, Paris and Marcheille except for Joliette site had been received. As of 4 April 2001, the estimates for the missing Hauts de Seine sites and for the Joliette site at Marcheille had still not been received.

Moreover, the process chosen by France Telecom to process operator requests creates lead times between the feasibility study order and installation in a specifically prepared room which cannot be less than 6 months. Given the orders placed, the operators will not be able to begin installing their equipment before August 2001 and then on just some 30 sites.

We have already mentioned that France Telecom has installed its equipment on over 500 sites to date and will have over 1,400 sites by the end of the year. This installation does not require systematically fitting out a
specific room and can be done in a short time and, in any case, in less time than is possible for the co-location of operator equipment. Therefore, France Telecom benefits from more advantageous conditions in terms of lead times than do other operators.

On the sites for which France Telecom declares that physical co-location is not possible

France Telecom has stated that, of the sites in the 20 largest French urban areas, i.e. 482 sites, 130 cannot be prepared to allow physical co-location in a specific room and they cannot be used by operators to install their equipment. For its own needs, France Telecom has deployed equipment on […] of these 130 sites installing equipment in an existing room and it is likely that for most of the other sites on which France Telecom declares that physical co-location of operator equipment is not possible because a specific room cannot be prepared, France Telecom is capable of installing equipment for its own needs since it uses available space in an already existing technical room.

Thus, France Telecom could install its equipment on the sites on which the operators could not. Therefore, it benefits from more advantageous conditions than the operators.

On the consequences in terms of prices of co-location for the operators

The fitting out of a specific room for the operators inside France Telecom's buildings supposes that various types of works (building, power, cooling, etc.) must be done. These works have been estimated by France Telecom in the various cases it has studied at costing FRF 1.2 million on average for Parisian sites, excluding cooling. In the process planned by France Telecom, the amount of these works is shared by the operators which install their equipment in the room; i.e., to date, a maximum of six operators in Paris and 3 outside Paris with regard to the already completed feasibility study orders. The installation costs for the operators could therefore be over several hundred thousand francs or even FRF 1 million.

For its own needs, France Telecom installs its equipment in already existing transmission rooms; it must connect the equipment to the distribution frames in the room and provide power to equipment, since the room already has 230 V and −48 V power supply. In most cases, no prior work is required. Moreover, the co-location offer in France Telecom's interconnection catalogue, which allows operators to install their equipment in the France Telecom's transmission rooms already estimates the cost of the occupation services for the room at FRF 1,288 per sq. metre per year in the Paris region and FRF 7,284/KW for power; there is no initial fixed part related to the provision of the premises.

Therefore, France Telecom benefits from more advantageous conditions than the operators by installing its equipment in rooms that are already in use.

Conclusion

Thus, with regard to the elements presented above, the requests for co-location from operators are not handled by France Telecom under non-discriminatory conditions, in disregard of the provisions of the penultimate paragraph of article D. 99–23 of the Post and Telecommunications Code; ART considers that France Telecom has not respected the provisions relative to co-location in the penultimate paragraph of article D. 99–23 of the Post and Telecommunications Code. Therefore, ART orders France Telecom to apply them.

While it is up to France Telecom to determine the means it will use to respect its regulatory obligations, ART considers it necessary to indicate the elements which would facilitate the implementation of the co-location process of operator equipment and the associated contractualisation procedures by removing the discrimination factors in processing requests for co-location, mentioned above.
Implementing and financing the co–location process

As mentioned previously, the systematic fitting out of a specific room for the operators is not required by either national or Community regulations.

France Telecom should therefore envisage, in the respect of the principle of non discrimination, to meet the requests from operators in the same way as it meets its own needs i.e. by installing equipment in existing rooms on sites and by providing access to these rooms 24 hours a day, 7 days a week. In this regard, before stating that physical co–location is not possible on a site, which, given the elements provided during the examination, is more frequent than had been expected, France Telecom should examine every solution which might meet the needs of operators in the same way as it does for its own needs.

For example, from the visits on two sites which France Telecom claims cannot receive co–location, it was noted that on these two sites:

- co–location in France Telecom's rooms seems possible, with France Telecom providing maintenance of operator equipment as it does for interconnection;
- a specific room could be prepared by giving priority to installing operator equipment on site premises.

Thus, all the potentials of the sites should be evaluated, notably by studying how little used space could be used for the physical co–location of operator equipment.

Two cases are then possible:

- the available space in the existing rooms on the site is insufficient
- there is available space in the existing rooms on the site but France Telecom considers it preferable that the operator equipment be installed in a specially prepared room

a. The available space in the existing rooms on the site is insufficient

Given the consequences for operators of such a situation, they should be allowed to verify the legitimacy of the claim.

Under these conditions, France Telecom should previously inform the operators of the sites on which physical co–location is not possible. France Telecom should thus provide operators with an up–to–date list of the sites where physical co–location cannot be provided. Moreover, under the provisions of the annex of the abovementioned European regulation, the operators have the right to visit sites, accompanied by an expert, if desired.

If operator equipment cannot be installed in the existing rooms on the site because of a lack of space, it is likely that a new room in France Telecom's buildings or nearby will be necessary for both France Telecom's needs and those of other operators. Therefore, the cost of fitting out this room should be shared by France Telecom and the third party operators based on how much each will use it.

b. There is available space in the existing rooms on the site but France Telecom considers it preferable that operator equipment be installed in a specifically prepared room

The fact that, in responding to an order, France Telecom has chosen to prepare a specific room to meet the needs of operators whereas for its own needs, it installs its equipment in existing technical rooms, should not prevent the application of the principle of non discrimination. In such a case, France Telecom might be considered as taking part in the process it proposes the third party operators and the financing of fitting out
works of the specific room should be shared.

The stages in processing requests and the contractualisation process

As regards lead times for processing feasibility study requests, the fact that France Telecom has already prepared estimates for fitting out rooms on the sites in the 20 largest urban areas and on those in the Paris region is a positive element. As a general rule, the deadline stated in France Telecom's reference offer for providing these estimates is 8 weeks following the feasibility study request. On sites for which the estimates have been done early, it is reasonable to expect that France Telecom will send them in less time in order to facilitate the process. Thus, the estimates that France Telecom has already prepared could be sent within two weeks for the sites in the 20 largest urban areas and for those in the Paris region; the estimates should include a clear description of all works and associated costs.

As regards the respect of the principle of non discrimination, the implementation of the co–location process should include modifying the contractual process between France Telecom and the operators prior to signing the agreement.

Indeed, France Telecom has proposed a temporary memorandum of understanding prior to signing the agreement, allowing an operator to reserve co–location space. This memorandum will terminate on 30 April 2001.

The date 30 April is no longer pertinent given that the advancement of the fitting out leads to the delivery of the first spaces in August 2001. It should therefore be postponed as France Telecom has agreed.

The implementation of the co–location of equipment includes two phases, one for property which involves preparing the required space and the other of a more technical nature which regards the installation of equipment and their connection to the operator's network.

The contractualisation process proposed by France Telecom also includes two phases, the first regarding the signature of the memorandum of understanding and the second marked by the signature of the access agreement. This dichotomy, which may be necessary from an operational viewpoint, should not create additional delays and hold up the installation of operator equipment once the spaces have been prepared.

Thus, it is desirable that France Telecom consider including all technical co–location operations in the memorandum of understanding.

6. Publication of the order

In accordance with the provisions of the first paragraph of article L. 36–11 and of article 19 of ART's internal procedure rules, this decision will be made public.

Decides:

Article 1: In accordance with the penultimate paragraph of article D. 99–23 of the Post and Telecommunications Code, France Telecom is ordered to deal with the requests for co–location from requesting operators under objective, transparent and non–discriminatory conditions. By 10 May 2001 at the latest, it will submit to ART the measures it plans to apply to respect these provisions.

Article 2: The head of the legal department will inform France Telecom of this decision, and will make it public.

Delivered at Paris, on 26 April 2001
The Chairman

Jean-Michel Hubert