



## THE YEAR IN REVIEW: THE TELECOMMUNICATIONS SECTOR IN FRANCE IN 2013

### ▪ 2013: NEW DRIVERS OF GROWTH

#### References

In France, the year 2013 was marked in the telecommunications sector with many announcements from operators and public authorities. Put into perspective, they draw major thrusts.

First observation: the mobile market is adjusting to changing competition conditions and challenges that the deployment of 4G networks entails. This is why Bouygues Telecom and SFR took the approach to share their networks. It is also with that in mind that the French State, in anticipation of the spectrum needs for the entire sector — required to meet growing demand and continue increasing the quality of service — initiated work on the 700 MHz band.

Second observation: the fixed market players, whose regulatory and financing conditions for the transition to THD are now established, should make the best use of advances in technology (VDSL, FttDP, new generation satellites). From this point of view, the innovations brought by OEMs are certainly an opportunity.

Third observation: the relationships between electronic communications operators and Internet content and applications providers remain the subject of many questions, gradually encompassing a variety of traditional sectors, ranging from the trade in goods and services (Machine to Machine communication known as “M2M”, etc.), to broadcasting and public services. The electronic communications sector must now be seen in its environment, the digital ecosystem (operators, equipment manufacturers upstream and online service providers downstream).

This retrospective provides us with the opportunity to assess the development of regulation in 2013, in particular regarding:

- Scarc resources;
- Broadband and Ultra-fast broadband;
- Regional development and local authorities;
- Consumers, Universal Service and Tax;
- Network security;
- Net Neutrality and Service Quality;
- Markets and procedures;
- European and International Affairs.





## ▪ SCARE RESOURCES

### ▪ MVNO

On 21 January 2013 at the request of Alternative Mobile, an association representing virtual operators, the French Competition Authority gave its opinion<sup>1</sup> on the state of competition in wholesale and retail mobile telephony markets in France, in particular by examining wholesale prices in relation to the retail prices that network operators charge, and by providing market players with recommendations on measures that could be taken to allow MVNOs to improve competition in the mobile telephony retail market.

The main recommendations made by the Competition Authority are based on the commitments made by operators, either as part of the award of the 4<sup>th</sup> 3G licence, of remaining 3G frequencies or of 4G frequencies.

The French telecommunications regulator, ARCEP, published the opinion transmitted to the Competition authority on 20 November 2011<sup>2</sup>. ARCEP reminded stakeholders that it would work to ensure that these commitments are met, and stressed that it would be paying particularly close attention to the Competition authority's conclusions. This could result in penalties being imposed for failures to comply, or in having to rule on a conflict between an MVNO and its host operator.

*(1) Opinion 13-A-02 of 21-1-2013 on the position of mobile virtual operators (MVNO) in the French mobile telephony market in France. ID 23740802.*

*(2) Opinion 2012-1455 of 13-11-2012 on the position of mobile virtual operators (MVNO) in the French mobile telephony market in France. ID 23740803.*

### ▪ 4<sup>th</sup> 3G Licence

#### ▪ Coverage

By decision No. 359789 of 8 April 2013, France's highest administrative court, the *Conseil d'Etat* dismissed the appeal lodged by the trade union CFE-CGC France Télécom-Orange against ARCEP's refusal to open, at the trade union's request, a procedure against Free Mobile for breach of its territory coverage obligations stated in its 3G licence.

#### ▪ Roaming

In November 2012, SFR filed a complaint with the European Commission regarding the roaming agreement between Orange and Free, which allows the latter to use the network of the incumbent operator for six years.

According to SFR, this agreement was akin to "a takeover of France Telecom by Mobile Free." The Commission did not follow this argument. On 12 April 2013<sup>3</sup>, it closed without further action the SFR complaint concluding that "the roaming contract could not be considered a takeover as defined in takeover law."

*(3) <http://ec.europa.eu/digital-agenda/en/roaming>*

In 2012 the French government had already seized the French Competition Authority about this roaming agreement. In its opinion<sup>4</sup> dated 11 March 2013 the Competition Authority found that "the roaming enjoyed by Free has helped to encourage competition since its entry into the market. It must, however, be limited in time" "and must not be extended beyond a reasonable deadline, which could be in six years, which is the date of expiry of the right to 2G roaming enjoyed by Free.

*(4) Opinion 13-A-08 of 11-3-2013 on conditions for sharing and roaming on mobile networks. ID 24089926*





- **4G Licences**

- **Refarming 1800 MHz**

On 17 January 2012, ARCEP issued Bouygues Telecom, Orange France and SFR a license to use the spectrum in the 800 MHz band (digital dividend spectrum known as “4G”).

In a letter dated 19 July 2012, Bouygues Telecom sought ARCEP’s permission to operate a fourth-generation (4G) ultra high-speed mobile network based on LTE (Long Term Evolution) technology, using its spectrum in the 1800 MHz band - on which only GSM (2G) systems are permitted today.

On 14 March 2013, ARCEP<sup>5</sup> authorized Bouygues Telecom to use the 1800 MHz starting on 1 October 2013, provided it relinquish some of its spectrum. The licensing fees attached to this ability to use these frequencies are stipulated in a Decree<sup>6</sup> establishing the amount of the fees due by mobile operators for using the 1800 MHz band.

Having confirmed on 2 April 2013 its request and accepted the conditions set by ARCEP, Bouygues Telecom (like any other operator who will use the 1800 MHz frequency band for technologies other than 2G) must pay the French state a fee consisting of (i) a variable part equal to 1% of the revenues from the technology for which frequencies are used, and (ii) a fixed amount of €3,231 per kHz allocated prorated to the population in the areas for which it has been authorized. These changes do not apply to operators that operate a second-generation network on these 1800 MHz frequencies. The fixed portion of their fee remains set at €571 per kHz allocated.

Operators SFR and Orange may also, at any time, request that their 1800 MHz band licences be extended to include 4G. Operator Free Mobile, which does not have any 1800 MHz band spectrum may, upon request, be allocated available frequencies in this band, as part of the process to allow more balanced access to the spectrum.

Moreover, in an order dated 11 July 2013, the President of France’s highest administrative court, the *Conseil d’Etat*, acting in a summary procedure, rejected on the ground of lack of emergency a request from Free Mobile to suspend the ARCEP decision authorising Bouygues Telecom to refarm the 1800 MHz band to technologies other than GSM, starting on 1 October 2013.

*(5) Decision. 2013-0363 of 14-3-2013 on Bouygues Telecom’s to review the technological restrictions of its license to use frequencies in the 1800 MHz band under Article 59, Title I.I of Ordinance 2011-1012 dated 24-8-2011. ID 23740166.*

*(6) Decree 2013-238 of 22-3-2013 amending Decree 2007-1532 of 24-10-2007 on fees to use radio frequency licenses due by holders of licences issued by ARCEP. ID 23741315.*





### ▪ 700 MHz Band

On 5 February 2013, ARCEP gave its opinion <sup>7</sup> to French Prime Minister on a draft amendment to the national radio frequency allocation table (TNRBF) to bring it in line with the decisions of the last World Radiocommunication Conference 2012 (WRC-2012).

*(7) Opinion 2013-0175 of 5-2-2013 on the draft order modifying the national radio frequency allocation table. ID 23741165.*

In its opinion, ARCEP draws the attention of the Prime Minister on the importance of the use, nationally and internationally, of the 700 MHz band (694-790 MHz) in terms of public policy, as access to the spectrum represent a major challenge to satisfy future demand for superfast mobile services.

At the international level, WRC-2012 has already decided to allocate these frequencies to mobile service in Europe (in Region 1 as defined by ITU) on a “co-primary” basis with the broadcasting service.

At European level, the European Parliament and the Council adopted on 14 March 2012 the multiannual Radio Spectrum Policy Program (RSPP), whose objectives are primarily the identification of at least 1200 MHz by 2015 to support the development of superfast mobile services, both in terms of capacity and coverage. Efforts initiated in this program have already identified the 700 MHz band as the most suitable candidate to meet these objectives, because its physical properties deliver superior propagation qualities.

The allocation of the 700 MHz band therefore has major implications for the regulation of mobile broadband market (4G LTE), comparable to those of the first digital dividend in terms of regional development, mobile market competition and monetization of the public asset that is radio spectrum.

This range of frequencies is currently occupied by digital terrestrial television (DTT) services.





### ▪ Amateur Radio Services

ARCEP decided <sup>8</sup> to update the terms governing the use of frequencies by amateur radio service stations.

Entered into force on 7 March 2013, after publication in the French Official Journal, the decision allows amateur radio services to:

- use the entire 50-52 band MHz band in Region 1 (Europe, Africa, Middle East and part of Russia) on a secondary basis. Stations of a secondary service shall not cause harmful interference to stations of a primary service, nor claim protection against any interference of these stations;
- employ digital communications systems (until then, the radio signal transmission was made either analogically or digitally, but was in any way limited).

This change in the French regulatory framework tends towards a standardization with the European and international frameworks.

### ▪ Secondary trading of radio spectrum

The secondary trading of radio spectrum has been extended to mobile bands to 900 MHz, 1800 MHz and 2.1 GHz in French departments and communities overseas, by order of 7 August 2013 <sup>9</sup>. Overseas operators are now allowed to sell all or a portion of their resources in mobile frequencies.

The possibility of assigning frequencies is permitted since 2011 on mobile bands for the French metropolitan territory.

### ▪ Digital terrestrial television (DTT)

On 22 October 2013 ARCEP authorized two new technical experiments in the “white spaces” of frequencies used for broadcasting of digital terrestrial television (DTT), which follow the other trials of this type already approved since 2012.

The first authorization <sup>10</sup>, issued to Infosat, aims to extend an experiment already underway for the so-called “super Wi-Fi” technology in DTT white spaces in the Seine-Maritime region.

The second experiment <sup>11</sup>, conducted by Hub One around Roissy airport, is designed to test professional use of the LTE mobile technology. It focuses on 700 MHz frequencies, currently used by the DTT, but intended to be used by mobile networks in the coming years, as well as on 400 MHz frequencies already allocated to professional networks.

Both experiments were approved by ARCEP in agreement with CSA, the French broadcasting authority, which is in charge of DTT frequencies.

*(8) Decision 2012-1241 of 2-10-2012 fixing the terms governing the use of frequencies by amateur radio service stations or amateur satellite service. ID 23741139.*

*(9) Order of 7-8-2013 modifying order of 11-8-2006 applying Art. L 42-3 of the CPCE on frequencies or frequency bands whose licenses may be assigned. ID 23822313.*

*(10) Decision 2013-1266 of 22-10-2013 allocating an authorization to use radio frequencies in the 590-598 MHz band to Infosat Télécom to conduct a technical experimentation in the department of Seine-Maritime. ID 24028844.*

*(11) Decision 2013-1265 du 22-10-2013 allocating an authorization to use radio frequencies to Hub One to conduct a technical on an independent radio network located in Roissy Charles de Gaulle (95). ID 24028847.*





## ■ BROADBAND AND ULTRA-FAST BROADBAND

### ■ Unbundling

#### ■ Tariffs

The rates for services provided by alternative operators on the wholesale market, which should be cost-oriented, take into account the increase in the rate of return on capital fixed by an ARCEP decision of 29 January 2013<sup>12</sup>. The rate now stands at 9.5% per year, against 8.9% in 2012.

On 30 January 2013, France Telecom thus changed in its reference offers fixing the rates of the services provided by alternative operators on the wholesale market. The unbundling tariffs increased by 10 cents to 8.90 euros per line.

#### ■ VDSL2

On 26 April 2013, the Expert Committee on Copper Systems - an independent committee whose members include France Telecom, network operators and equipment suppliers - voiced its approval<sup>13</sup> for the introduction of VDSL2 into the France Telecom copper local loop.

This opinion from the Committee marks the conclusion of a thorough investigative procedure that began in 2011. Its goal was to enable the use of VDSL2 in France, home to a singular DSL access environment in Europe, namely unbundling, and this without disrupting existing DSL technologies.

The number of residential and office buildings that could benefit from a faster internet service thanks to VDSL2 represent around 16% of all lines in France, and most are located in areas where FttH will not be rolled out in the near future.

### ■ Optical fibre

#### ■ Very high-density areas: network sharing

On 15 November 2013<sup>14</sup> ARCEP submitted a draft recommendation on the modalities for accessing fibre to the home (FTTH) lines for small buildings of fewer than 12 residential (or business premises) in high density areas, and located outside the low-density pockets defined in the ARCEP recommendation of 14 June 2011.

For these buildings, the concentration point must be located outside the private property. Very few such rollouts have been performed to date, due to a lack of standardised solutions.

In this recommendation, ARCEP specified its technical choices by proposing a recommendation to install concentration points of 100 single-fibre lines for the relevant buildings. In addition, to optimise deployments, ARCEP recommends introducing a system of prior consultation between stakeholders (including the interested local authorities). Among other things, this should make it possible to avoid unnecessary duplication of street cabinets and

*(12) Decision 2013-0001 of 29-1-2013 fixing the rate of return on capital used for the calculation of costs and tariff control of the regulated fixed activities of France Télécom for 2013 to 2015. ID 23740816.*

*(13) Opinion of the Expert Committee on Copper Systems of 26-4-2013 concerning the authorization of the VDSL2 technique from NRA (subscriber connection point) into the France Télécom the local loop:  
<http://www.arcep.fr/fileadmin/rprise/dossiers/degrou/avis-DEX130426-VDSL2.pdf>*

*(14) Draft recommendation of 15-11-2013 on the terms to access superfast optical fibre lines for buildings with fewer than 12 units or office buildings in very high density areas.*





increase resource pooling for rollout schemes.

#### ▪ **Branching units**

Through a ruling <sup>15</sup> dated 16 April 2013, the Cour de cassation definitely validated the decision issued by ARCEP on 16 November 2010 concerning a dispute between Bouygues Telecom and France Télécom. This ruling dismissed the appeal lodged by France Télécom against a judgment handed down on 19 January 2012 by the Court of appeals of Paris, which had already upheld in full the ARCEP decision settling the dispute.

*(15) Cour de cassation, commercial chamber, 16-4-2013 n 12-14.445. ID 23741346.*

The dispute was over the France Telecom offer for accessing the last metres of optical fibre lines (i.e. installed indoors) and purchased by Bouygues Telecom in very high-density areas in France.

The Court maintained that ARCEP could require France Télécom to agree to a posteriori co-financing of its network, provided it was justified by public economics and the incumbent carrier receive fair financial compensation in exchange.

On the matter of sharing the cost of “branching units”, the Cour confirmed both the judgement of the court of appeals and the decision of ARCEP, which considered the cost-sharing scheme under which the operator providing the service is to assume 90% of the costs was fair. The Cour de cassation ruled that with by imposing such scheme, ACEP exceeded neither its power nor the limits of the dispute referred to it.

This ruling thus strengthens the regulatory framework regarding the deployment of networks of optical fiber to the home (FTTH) in very high-density areas.

#### ▪ **Identifier**

A number of building operators are working across the country to deploy their fibre-to-the-home (FTTH) networks, which has included the launch of a series of public-initiative networks.

For FTTH network rollouts to become increasingly industrialised, ARCEP has published a recommendation <sup>16</sup> for introducing a unique identifier with a standardised 10-character format to be assigned to each line. This identifier will be the same nationwide and remain consistent over time. It will be assigned by a line ID administrator (which in most cases will be the building operator that installed the network) and can be used whenever work is performed on the line to facilitate communications between consumers and their service provider, but also between service providers and building operators. The identifier will be displayed on the optical network unit, which will make it easy for the customer, and technicians when necessary, to locate.

*(16) Recommendation of 25-4-2013 on the standardised line identification solution for FTTH networks:  
[http://www.arcep.fr/uploads/tx\\_gspublication/recommand-identification-lignes-FttH-avril2013.pdf](http://www.arcep.fr/uploads/tx_gspublication/recommand-identification-lignes-FttH-avril2013.pdf)*





## ■ REGIONAL DEVELOPMENT AND LOCAL AUTHORITIES

### ■ Public Initiative Networks (PIN)

#### ■ Freedom of enterprise

On 28 May 2013 ARCEP adopted a decision <sup>17</sup> on a request to settle a dispute pitting Quentiop, an FTTH service operator for the city of Saint-Quentin-en-Yvelines, against France Telecom, the incumbent operator.

Quentiop requested in particular the withdrawal of the prior consultation initiated by France Telecom on the city of Elancourt (division of the territory in concentration points' service areas) and the modification by France Telecom of the cofinancing arrangements of its offer applicable to low-density pockets of very high-density areas.

ARCEP rejected Quentiop's requests, after pointing out that any operator deploying a Public Initiative Network (PIN) is free to establish and operate a network open to the public on all parts of the territory, subject to compliance with the provisions of Article L 1425-1 of the French General Code of Local and Regional Government Authorities and of the European framework for state aids.

*(17) Decision 2013-0720 of 28-5-2013 answering a request to settle a dispute the body operating the optical fibre of Saint-Quentin-en-Yvelines and France Télécom. ID 23821920.*

#### ■ Investments

The tender specifications of the call for projects "France's Superfast Broadband Plan - Public Initiative Networks" were approved by Order on 29 April 2013 <sup>18</sup>.

It describes the main measures of the government strategy for superfast broadband, to be coordinated by a new public institution, which will eventually replace the "superfast broadband task force."

The specifications document clarify the new provisions concerning the financing of projects: eligibility, financial support from the State, minimum contributions of local authorities, premiums for projects of a supra-departmental size, etc. Finally, it reminds the modalities for the filing and reviewing of applications for funding.

*(18) Order of 29-4-2013 approving the specifications for the "France's Superfast Broadband Plan - Public Initiative Networks" call for projects. ID 23821924.*





### ▪ Pooling and Roaming

On 5 November 2012, the French government sought the opinion of the Competition Authority regarding pooling and roaming conditions on mobile telephone networks and in particular:

- the continuation of the roaming agreement between Free and Orange. Should the agreement be maintained or made more permanent, the Government is wondering to what extent Free would then enjoy a rollout model that is lastingly more advantageous than the rollout models of its competitors.
- pooling or use of roaming in the 800 MHz band for the least populated areas in France. Certain operators wish, as of now, to pool their networks in order to accelerate rollouts in the 800 MHz band in the least populated areas in France, especially in village centres that are part of the “blind spot coverage” programme. In view of the difficulties they are encountering, they want clearer information about the various available options that are in compliance with competition rules.
- pooling of networks between the operators in the most populated areas in France. The question is whether, outside of these priority rollout areas, it would be possible to consider pooling for the most populated areas in France, without adversely affecting competition, employment, and investment.

In response to the government request, the French Competition Authority made public on 11 March 2013 its decision <sup>19</sup> on the terms governing mobile network sharing and roaming. Having been invited to share its observations, ARCEP adopted an opinion on the matter, which it sent to the Competition Authority at the time and made public on 11 March 2013.

*(19) Opinion 13-A-08 of 11-3-2013 on the terms governing mobile network sharing and roaming. ID 23088757.*

These recommendations published by the Competition Authority match ARCEP’s position. Both authorities believe that roaming and network sharing are not incompatible with a goal of a competitive marketplace: they can even help stimulate competition and satisfy other regulatory objectives such as balanced regional development.

Concerning network sharing, the Competition Authority echoed the case-by-case approach recommended by ARCEP. It is therefore up to the Competition Authority or the magistrate to assess whether a sharing agreement is likely to be detrimental to competition.

On the matter of roaming, and specifically the roaming privileges accorded to Free Mobile, the Competition Authority recommends that national 3G roaming be switched off in 2016 or 2018.





## ■ CONSUMERS, UNIVERSAL SERVICE AND TAX

### ■ Prior information of consumers

An order<sup>20</sup> aiming to provide a framework for the prior information to be provided to consumers regarding the technical characteristics of fixed Internet access offers was published in the Official Journal on 13 December 2013.

This text specifies the information to be given to a consumer purchasing a fixed Internet access service. It includes the provision by operators of educational information about the technical operation of these services and regulates the advertising of commercial offers from ISPs. The order requires operators to provide certain information online starting 1 July 2014, in a dedicated and easily accessible area. This information includes, but is not limited to

- general educational information, such as the existence of tools allowing a consumer to measure the speed of their line;
- customized information, made available before the purchase, regarding for example the categories of services subject to eligibility, the estimated upstream and downstream throughput of the line (if speed varies according to the physical properties of the access, the estimate should be a range calculated from the weakening and the ADSL or VDSL technology).

This order also regulates commercial communications from operators for advertising messages or commercial documents referring directly or indirectly to the connection speed of an xDSL offer.

*(20) Order of 3-12-2013 on the prior information of consumers regarding the technical characteristics of fixed Internet access offers. ID 24029300.*

### ■ Terminals

#### ■ Subsidisation

By judgment of 15 January 2013, the Commercial Court of Paris rejected Free Mobile's claims to (i) consider some telephone subscriptions offered by SFR (including the subsidising of the terminal) as consumer credit contracts and (ii) find against SFR for unfair and deceptive practices.

The risk for SFR to see its contracts considered as consumer credit contracts is however not totally excluded, as Free Mobile has decided to appeal this decision.

#### ■ Locking

On 12 February 2013, the members of the French Telecoms Federation (FFT) decided to adopt a single phrase, common to all members, to inform consumers of the existence of the locking mechanism of a mobile terminal on the network seller operator. Such phrase is the following: *"this phone can only be used with a SIM card from [operator name]. Visit xxxx to find how to use it with the SIM card from another operator."*

This information has been given since May 2013 both on the boxes of handsets sold and in client areas on the operators' websites.

The clarity of the offers to purchase mobile terminals related to telephone subscriptions is a requirement resulting from the general rules of law and the specific provisions laid down in ARCEP decision No. 2005-1083 of 8 December 2005. The locking of a mobile terminal must be clearly distinguished from the





blocking procedure, which is implemented on all mobile networks in case of theft.

#### ▪ Portability of fixed numbers

By decree issued on 1 November 2013 <sup>21</sup> in the French Official Journal, the Minister working with the Minister of Productive Recovery, responsible for SMEs, Innovation and the Digital Economy approved the ARCEP decision dated 25 June 2013, specifying the procedures for the portability of landlines number <sup>22</sup>.

The ARCEP decision establishes the following requirements for operators on the consumers market:

- portability process length is shortened to 3 working days, provided access is available;
- clarification of the rules for compensation in case of delay or mishandling of a number portability request;
- harmonized information to subscribers throughout the number portability process;
- from October 2014: introduction of a quarantine period, which enables a number to be ported up to 40 days after the account is cancelled;
- October 1, 2015: creation of a of operator identity statement or “RIO” (for *relevé d’identité opérateur*) for fixed operators, like the RIO that already exists for mobile number portability, and implementation of a dedicated tool make it easier for operators to identify the subscriber and facilitate the process to switch of operators with number portability.

*(21) Order of 23-10-2013. ID 23967818.*

*(22) Decision 2013-0830 of 25-6-2013 specifying the modalities for application of fixed number portability. ID 23967816.*

The process is also changing for the business market:

- the portability process is shortened to 7 working days, provided access is available;
- for better information of business customers, fixed operators must make available all the (technical and contractual) information necessary to switch operators with a retention of the fixed number;
- service is maintained until the actual portability: if the contract expires before portability occurred, the former operator should extend the provision of service on the fixed number until its actual portability;
- from October 2014: implementation of the quarantine period;
- starting 1 October 2015: operators can jointly elect to extend the RIO-based control imposed on the consumer market to all or part of the business market.





- **Value-Added Services (VAS)**

- **Tariffs**

In 2012, ARCEP adopted a decision reorganizing and simplifying the pricing of numbers starting with 08 and short numbers<sup>23</sup>.

The main directions concern:

- the taking into account of the convergence in uses from a fixed or mobile terminal by standardising the VAS pricing methods used and by developing freephone numbers for users calling from a fixed or a mobile line;
- a better price transparency by the dissociation of the price of the service delivered and the price of the call which is aligned with the price of calls to fixed lines;
- simplifying the range of time-based rates and creating a range of call-based rates for service providers;
- the fight against fraud and abusive practices (such as ping calls) or practices from some Internet directories allocating surcharged/premium-rate numbers to individuals or companies without their knowledge.

The provisions contained in this ARCEP decision are to be introduced gradually by 1 January 2015. But several stakeholders of the VAS market (especially call origination operators and call recipient operators) have difficulties to negotiate their interconnection contracts, and contract negotiations between call recipient operators and service providers hinge on these agreements. These difficulties prevent call recipient operators from entering safely into business negotiations with their counterparties, i.e. service providers, even though their agreements must be signed before 1 January 2015, to ensure a smooth introduction for VAS retail market reforms.

As a result, ARCEP decided in 2013 to draft for 2014 a recommendation<sup>24</sup>, which is not prescriptive in any way, but whose purpose is rather to remind stakeholders of their legal and regulatory obligations, and the terms of application of the existing symmetrical regulatory framework governing the VAS interconnection market - notably Decision No. 2007-0213 of 16 April 2007 and Article L. 34-8-2 of the French Postal and Electronic Communications Code.

*(23) ARCEP Decision 2012-0856 of 17-7-2012 modifying the organization of blocks of numbers starting with 08 and short numbers provided for by ARCEP Decision 05-1085 of 15-12-2005. This decision will come into force on 1 January 2015. ID 23033702.*

*(24) Draft recommendation of 29-11-2013 on the wholesale VAS interconnection market. ID 24029671.*





- **Universal Service (US)**

- **Evaluation of cost**

To facilitate the reporting by service operators and providers of the relevant turnover for ARCEP to calculate their contribution to Universal Service fund, ARCEP establishes every year a reporting statement.

For 2012, the statement<sup>25</sup> mirrors the statement of 2011, with a clearer formal presentation:

- the relevant turnover to be reported is the electronic communications turnover made with the final consumer;
- the interconnection and access services are therefore to be deducted from the base.

- **“Connections” and “telephone service”**

By order of 31 October 2013<sup>26</sup>, the minister in charge of electronic communications appointed Orange as a provider of the Universal Service component laid down in Article L 35-1 1 of the French Postal and Electronic Communications Code, regarding “connection” and “telephone service.”

The service provider specifications appended to this order clarify in particular the content of services, the rates, the quality of the service and relationships with users, as well as the main principles of the universal service, namely price cap (affordability), the equalization of connection tariffs (take account of exceptional difficulties in construction, but apply uniform prices throughout the territory), Internet access and technological neutrality.

In addition to a reminder of the minimum obligations to be met by the service provider, the specifications further:

- specify the scope of the connection, which includes the physical connection (limited to the needs of an individual), its maintenance and its operation;
- recalls the commitments made in terms of quality of service by the service provider.

- **Taxation of the digital economy**

On 10 September 2013, the French Digital Council (CNN) presented its opinion<sup>27</sup> on the taxation of the digital economy to Fleur Pellerin, the Minister for the Digital Economy, and Bernard Cazeneuve, the Minister for the Budget.

The CNN found that the various taxes proposed in the recent years “do not fulfil the objective of fiscal rebalancing between stakeholders, can be circumvented, and may hamper the competitiveness of domestic digital stakeholders.” The opinion advises the government against establishing a national sector-specific tax, which could “penalize the French ecosystem and overburden the position of France in international negotiations.”

Instead, the CNN recommends multiplying tax audits in companies, strengthening cooperation between tax administrations, and using competition law and consumer law. It also advocates a concerted European action.

*(25) Decision 2013-0827 du 16-7-2013 adopting the statement for declaration of the relevant turnover to calculate the final contribution to the universal service fund for the year 2012. ID 23822231.*

*(26) Order of 31-10-2013 designating the operator in charge of supplying the “connections” and “telephone service” services of the universal service component laid down in Art. L 35-1(1) of CPCE. ID 24028955.*

*(27) CNN Opinion 2013-3 of 1-9-2013 on taxation of the digital economy. ID 23781729.*





## ■ NETWORK SECURITY

### ■ Interceptions for security purposes

The government has updated the amounts reimbursed by the French State where it orders (fixed and mobile) telephone operators and Internet Service Providers (ISP) to provide certain services. In other words, it is the compensation which may be claimed by these technical intermediaries when public authorities require their cooperation.

Three orders (dated 21 and 23 August and 24 September 2013) fixing the rates applicable to services requested from operators regarding requests for interception of communications<sup>28</sup> were published on 10 October 2013 in the French Official Journal.

For mobile lines, it now costs 3.06 euros to the French State for identifying a mobile subscriber from his/her call number, the technical characteristics of his/her line or the number of his/her SIM card. The same price applies to obtain a history of the assignment of a call number. For 4.08 euros, the State can also know the selling point at which a customer bought his/her telephone plan, subject to providing a phone number, SIM card number, subscriber identifier (IMSI) or phone identifier (IMEI).

For the real-time location of a mobile device, i.e. track a device, the authorities have to pay 20 euros to trigger the monitoring, plus 8 euros per tracking day.

For fixed lines, the rate for identification of a subscriber can range from 53 cents — if there are more than 20 numbers to be searched, and if the search request is sent electronically — to 4.08 euros if there is only one number to identify. To obtain the date, time and duration of each incoming and outgoing call made from a line, the State needs to pay out 10.20 euros for those details related over an indivisible period of 31 days, and then 1 euro per additional month.

While rates introduced by those new orders did not change significantly compared to the previous order of 26 March 2012, the new orders also officially fix the amount of the refunds for the services provided by ISPs. Indeed, although Articles L 34-1-1 and R 10-13 of the French Postal and Electronic Communications Code require operators to retain data related to the use of Internet, the tariffs for those services had never been set. Until now, ISPs thus each applied their own rate and the corresponding charges for the State were therefore significantly high over the last years.

Now, the State allocates 18 euro cents (excluding taxes) per IP to ISPs when they identify more than 20 subscribers “from a compliant dematerialized application related to timestamped IP addresses”, and provided that the ISP only has to carry out a brief search in its information system. On the other hand, if a deeper search is required (e.g. if the only information given is a mere timestamped IP address and “additional information”), the French Treasury will have to pay 18 euros to get information on the identity of an individual (and on his/her installation equipment, connection, contract, etc.) from an ISP. Lastly, to intercept the DATA/IP traffic sent and received by an Internet access, the State will be required to pay 24 euros.

*(28) Order of 21-8-2013 taken in application of Art. R 213-1 et R 213-2 of the Code of Criminal Procedure fixing the rates applicable for orders to electronic communications operators. ID 24028650; Order of 23-8-2013 amending order of 26-3-2012 taken in application of Art. D 98-7 of CPCE fixing the rates applicable to requests to perform interceptions for security purposes. ID 24028668; Order of 24-9-2013 amending order of 26-3-2012 taken in application of Art. R 10-21 of CPCE fixing the rates applicable in electronic communications matters for the supply of the data stated in Art. L 34-1-1 of the same Code. ID 24028675.*





## ▪ NET NEUTRALITY AND SERVICE QUALITY

### ▪ Quality of fixed Internet access services

By decision of 29 January 2013<sup>29</sup>, ARCEP introduced a system for measuring and tracking the quality of fixed Internet access services.

On 20 March 2013, the Minister responsible for electronic communications approved the ARCEP decision on the implementation of a device for measuring and monitoring the quality of services for fixed Internet access. This aim is to improve the information available to internet users, and to provide ARCEP with the means to fulfil its duty to supervise the overall quality of fixed calling and internet access services.

The main measurements are to be performed by operators of more than 100,000 subscribers. The metrics obtained in this fashion concern seven performance indicators: upward and downward throughput, Web browsing (average time to load pages), streaming video (viewing quality), peer-to-peer file sharing, latency time and packet loss that significantly decreases performance.

Supplementary measurements, for which ARCEP will be responsible, will consist of tests that volunteer users will perform using their own equipment. Thanks to a web-based interface, these users will be able to measure their line's performance, and transmit the results to ARCEP.

### ▪ Degradation of service

In response to a request received in September 2012 from the president of consumer protection association *UFC-Que Choisir* about the deterioration of the conditions in which users of ISP Free could access the YouTube website (Google group) ARCEP launched an administrative inquiry to clarify the technical and financial terms governing IP traffic routing between the Free and Google.

The aim of this investigation<sup>30</sup> is to clarify the causes of the deterioration of the quality of service noticed by many subscribers of the ISP Free when watching videos on the YouTube online platform.

ARCEP requested the Iliad and Google groups, as well as three transit operators, to answer a questionnaire and give technical and financial explanations before end December 2012, to “check the existence and extent of the malfunctions and slowing of traffic reported and determine exactly its causes.

ARCEP's enquiry<sup>31</sup> made it possible to ascertain that Free's interconnection capacities are congested during peak hours, as use of the most bandwidth-hungry applications continues to rise. This is an issue that all ISPs are having to contend with. However, the inquiry did not reveal any discriminatory practices in the terms governing interconnection and IP traffic routing between the two companies. To it, no practices contrary to principles of net neutrality were observed.

*(29) Decision 2013-0004 of 29-1-2013 on the measurement and publication of indicators on the quality of fixed Internet access and calling services. ID 23741230*

*(30) Decision 2012-1545 of 22-11-2012 opening, in application of Article L32-4 of the CPCE, an administrative investigation concerning diverse companies in relation to the technical and financial conditions of traffic routing. ID 23033890.*

*(31) Decision 2013-0987 of 16-7-2013 closing the administrative investigation opened in application of Article L32-4 of the CPCE, concerning diverse companies in relation to the technical and financial conditions of traffic routing. ID 23821931.*





### ▪ Collection of data

A decision issued in 2012 decision gave ARCEP the ability to regularly (twice-yearly) gather information on economic relationships between the different players of the data interconnection market<sup>32</sup>. The ARCEP decision had been disputed by American carriers AT&T and Verizon.

Through a decision dated 10 July 2013<sup>33</sup>, the *Conseil d'Etat* (France's highest administrative court) backed up ARCEP and confirmed it had the right to regularly gather information from electronic communications operators and providers of public online communication services (known as "FSCPL") regarding the technical and pricing conditions governing interconnection and data routing, as ARCEP's information gathering campaign was proportionate to the regulator's ability to meet the responsibilities assigned to it by law.

On 12 December 2013, however, ARCEP issued a draft decision<sup>34</sup> to amend its 2012 decision. The proposed adjustments draw conclusions from an 18-month assessment of system established by the 2012 decision and the administrative investigation conducted by ARCEP in 2012 concerning IP traffic routing between ISP Free and Google.

The proposed amendments are intended to reduce the burden on FSCPL by cutting red tape. Taking into account the reservations expressed by FSCPL, ARCEP now proposes to exempt them from responding periodically to the questionnaire, unlike electronic communications operators notified under Article L 33-1 of the French Postal and Electronic Communications Code, who remain bound by this obligation. ARCEP nonetheless still considers it necessary to punctually interrogate FSCPL, based on the responses obtained from electronic communications operators, in order to verify and supplement such responses.

(32) *Decision 2012-0366 of 29-3-2012 on the introduction of an information gathering system regarding the technical and pricing conditions governing interconnection and data routing. ID 22675846.*

(33) *CE 10-7-2013 n° 360397 and 360398, AT&T et Verizon. ID 24029833.*

(34) *Draft decision to amend decision 2012-0366 on the introduction of an information gathering system regarding the technical and pricing conditions governing interconnection and data routing. ID 24089937*

## ▪ MARKETS AND PROCEDURES

### ▪ Market Analysis

#### ▪ Market 6

On 21 May 2013 ARCEP decided<sup>35</sup> to extend its Decision 2010-0402 on the analysis of wholesale capacity services market up to 1 July 2014.

ARCEP will thus be able to achieve by mid-2014 a comprehensive analysis of all wholesale markets that make it possible for alternative operators to create fixed access offers, which are currently the subject of three separate market analyses (markets 4, 5 and 6). In synchronizing such analyses ARCEP can determine the obligations imposed on SMP operators in these markets in a coherent manner.

To this end, on 27 November 2013, ARCEP presented its draft decisions analysing the broadband and superfast broadband markets (markets 4, 5, 6 and - LLU, bitstream, leased lines and undersea cables), which will apply by mid-2014 and for 3 years (2014-2017)<sup>36</sup>. Several measures concern in particular the business market. ARCEP's propositions include:

- monitor and accompany the development in the competitive situation on the dedicated optical fibre local loops ("BL0D") by identifying a "zone of effective competition through infrastructures" (ZCEI) on which Orange's regulated tariffs carry can be lifted, and a "zone of insufficient competition through infrastructures" (ZCII);
- offer a service quality for wholesale offers, including passive, to fully meet

(35) *Decision 2013-0653 of 21-5-2013 extending decision 2010-0402 of 8-4-2010 on the definition of relevant capacity services markets, the designation of operators that enjoy significant power in this market and the obligations imposed on them as a result. ID 23822257.*

(36) *Draft decision on the definition of relevant market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location, the designation of the operator that enjoys significant power in this market and the obligations imposed on it as a result. ID 24029466; Draft decision on the definition of relevant market for non-*





the requirements of the retail market;

- clarify the engineering rules and secure the related services (hosting, optical fibre link rental solution [LFO], etc.) in order to support the deployment of new access networks (particularly BLOD);
- accompany the technological transition to the Ethernet.

#### ▪ **Mobile call termination**

Following the public consultation it conducted from 1 February to 1 March 2013, and after notifying its draft decision to the European Commission in April 2013, ARCEP adopted on 16 May 2013 a decision<sup>37</sup> specifying the cost accounting and redistribution obligations imposed on mobile operators.

This decision cancels and supersedes ARCEP's Decision 2010-0200 of 11 February 2010. It takes into account the evolving regulations on mobile voice call termination and the changing technological landscape (increasing of data traffic and development of 4G). It changes the accounting specifications to simplify them while ensuring the relevance and reliability of the data returned for a proper understanding of mobile operator costs.

#### ▪ **Sanction**

##### ▪ **ARCEP**

On 29 April 2013 the Constitutional Council received from France's highest administrative court, the *Conseil d'Etat*, a priority question on constitutionality raised by the Numéricable SAS and Numéricable NC companies. This question concerned the compliance of Article L. 36-11 of the French Postal and Electronic Communications Code (CPCE) regarding the power of ARCEP to impose penalties with the rights and freedoms guaranteed by the French Constitution.

The applicants alleged that these provisions did not guarantee the separation between ARCEP's (i) prosecution and investigation powers and (ii) sanctioning powers.

The Constitutional Council upheld the complaint of Numéricable companies and ruled unconstitutional, and hence repealed, the first twelve paragraphs of Article L. 36-11 of the CPCE<sup>38</sup>.

However, the legislature has planned to restore ARCEP's sanctioning power in 2014. Indeed, Article 1 of a law empowering the executive power to take orders on various measures to simplify and secure business life<sup>39</sup> authorizes the Government to secure, by regulation, the sanctioning power of ARCEP operators against electronic or postal communications operators. Upon promulgation of the Act on 2 January 2014, the draft ordinance on the new procedure for sanction by ARCEP was sent to the *Conseil d'Etat* for review before publication.

*physical or virtual network access including 'bitstream' access at a fixed location, the designation of the operator that enjoys significant power in this market and the obligations imposed on it as a result. ID 24029474; Draft decision on the definition of relevant capacity services market (market 6), the designation of the operators that enjoy significant power in this market and the obligations imposed on them as a result. ID 24029478.*

*(37) Decision 2013-0520 of 16-5-2013 specifying the cost accounting and redistribution obligations imposed on mobile operators. ID 23741422.*

*(38) Decision 2013-331 QPC of 5-7-2013. ID 23822284.*

*(39) Act 2014-1 of 2-1-2014 empowering the Government to simplify and secure business life. ID 24029120.*





## ▪ EUROPEAN AND INTERNATIONAL AFFAIRS

### ▪ Single Market

On 11 September 2013, the European Commission published a proposal for a regulation to deepen the Single Market for electronic communications<sup>40</sup>.

This proposal plans to introduce comprehensive measures to amend some of the bases of the current regulatory framework, including how operators declare themselves in the European Union (“European passport” principle), frequencies, net neutrality, international roaming, wholesale markets for bitstream access, harmonization at the European Union level of consumer law applied to this sector, as well as the respective roles and interaction between the Commission, BEREC and national regulators.

The proposed regulation was discussed by the Council and the European Parliament and should be adopted in spring 2014. The plenary vote of the European Parliament’s position is currently scheduled for its plenary session of 2 April 2014, shortly before the end of its term (European elections will take place from 22 to 25 May 2014).

*(40) Proposal for a Regulation of 11-09-2013 laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012. ID 24084804*

### ▪ Antitrust in Portugal

On 23 January 2013, the European Commission fined<sup>41</sup> Telefónica and Portugal Telecom for agreeing not to compete with each other on the Iberian telecommunications markets.

Mid-2010 the two operators inserted a clause in their contract indicating they would not compete with each other and stay out of each other’s home market, Spain and Portugal. They terminated the non-compete agreement in February 2011, after the Commission opened antitrust proceedings, which led to fines.

The European Commission has imposed fines of €66,894,000 on Telefónica and of €12,290,000 on Portugal Telecom.

*(41) Press release IP/13/39 of 23-1-2013.*

### ▪ Abuse of dominant position

By judgment dated 16 October 2013<sup>42</sup>, the General Court of the European Union (EGC) rejected a complaint from Vivendi. On 7 July 2010 the European Commission had rejected a complaint lodged by Vivendi and Iliad against the incumbent French telecommunications operator, France Télécom (which later became Orange), relating to an alleged abuse of a dominant position, based on its pricing practices since 2006. Vivendi decided to bring an action for the annulment of the Commission’s decision.

*(42) EGC 16-10-2013, Case T-432/10, Vivendi v. European Commission. ID 24028822.*

The EGC concluded that the possibility of establishing proof of any infringement on the part of France Télécom was very limited. Such a finding was “*sufficient in itself to conclude that the EU has no interest in pursuing the investigation, and it justifies the rejection of the complaint*”. Accordingly, the Court dismissed the action brought by Vivendi.





- **State Aids**

- **Guidelines**

After two public consultations in 2011 and 2012, the European Commission adopted on 19 December 2012 revised Guidelines for the application of State aid rules in the electronic communications sector.

The new guidelines were published in the OJEU on 26 January 2013<sup>43</sup>.

The revision, required following the expiry of the original Guidelines published 2009, falls within the scope of the Commission's Digital Agenda for Europe (DAE) and State Aid Modernisation (SAM) policy.

The Commission stated that, to be authorized, subsidies should be able to ensure a “step change” in terms of connection speed and service range and that the subsidised network should provide guarantees on access.

- **Cable networks and ducts**

On 17 July 2013, the European Commission opened an in-depth investigation to verify whether the transfer, for free, of public cable infrastructure (cable networks and ducts) between 2003 and 2006 by 33 French municipalities to the French Telecom operator Numéricable, involved state aid in the meaning of the EU rules<sup>44</sup>.

- **Public financing**

By judgment dated 16 September 2013 concerning the compatibility of the French Hauts-de-Seine department's project for deployment of a very high speed (fibre-optic) broadband electronic communications network (known as “THD 92 project”) with the State aid rules, the General Court of the European Union rejected the action brought by Iliad, Free, Free Infrastructure, Colt Télécommunications France and Orange for the annulment of the decision of the European Commission dated 30 September 2009 that approved the THD 92 project. The Court ruled that the criteria to escape classification as State aid, as laid down in the *Altmark* case law, were met and thus confirmed the Commission's decision.

- **Non-discrimination and costing methodologies**

On 11 September 2013, the European Commission adopted a recommendation<sup>45</sup> on consistent non-discrimination obligations and costing methodologies, concurrently with the publication of the proposal for a regulation on the single market for electronic communications.

The recommendation specifies the practical arrangements for applying the non-discrimination and cost orientation obligations that an independent national regulation authority (NRA) may impose on operators following analyses of market for wholesale network infrastructure access and wholesale broadband access market. The recommendations of the European Commission include the equivalence of input, the definition of a costing methodology and the non-imposition of regulated wholesale access prices on NGA networks, where certain conditions of non-discrimination and competition are met.

*(43) Communication from the Commission, EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, 2013/C 25/01 of 26-1-2013. ID 23059837*

*(44) Press release IP/13/707 of 17/07/2013.*

*(45) Commission Recommendation C(2013) 5761 of 11-9-2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment. ID 23822344.*





### ▪ Roaming

A new EU regulation on international roaming was adopted<sup>46</sup>. The amendments will directly benefit consumers. Retail price caps for roaming calls made or sent and for roaming SMS will continue to decrease until 2014.

The regulation introduces for data roaming a retail (and no longer only wholesale) price cap, which should follow a downward trend until 2014. It will make it possible to put an end to unreasonably high bills for consumers using roaming data.

Moreover, the regulation further provides that, from 1 July 2014, consumers could now choose a different operator for the provision of roaming services (“decoupling”).

It also reinforces the obligations to provide information to consumers. Lastly, the obligation to meet reasonable requests for wholesale roaming access will enable operators, in particular MVNOs, to build more interesting retail roaming charges.

The EU regulation on international roaming, which came into effect on 1 July 2012, introduced the obligation for mobile operators to allow their customers to separately purchase retail roaming services from a third-party supplier. Consequently, from 1 July 2014, all operators shall enable their customers, without changing their terminal or number, to access:

- roaming services provided as a bundle (voice, SMS, data) by any alternative roaming provider;
- data roaming services provided directly by an operator in the visited country.

To ensure the effective and consistent implementation of that decoupling requirement throughout the European Union, BEREC published guidelines on Friday 5 July 2013 to clarify certain technical and regularly aspects<sup>47</sup>.

### ▪ Digital dividend

On 23 July 2013, the European Commission announced<sup>48</sup> to have accepted to grant exceptional and temporary derogations for 9 Member States (Spain, Cyprus, Lithuania, Hungary, Malta, Austria, Poland, Romania and Finland) that requested to postpone the use of the 800 MHz band for wireless broadband. Resulting from the digital dividend, this band was harmonized in the European Union by a 2010 decision of the Commission allowing its making available as of 1 January 2013. A system of temporary derogations was provided by the same decision.

So far, 11 Member States have announced that they have effectively allowed the use of the band for providing electronic communications services. This includes France, where the 800 MHz band has been assigned on an exclusive basis to ARCEP since 1<sup>er</sup> December 2011. On 17 January 2012, ARCEP allocated authorizations in this band to Bouygues Telecom, Orange and SFR (Free enjoys roaming rights from SFR), each being awarded 10 MHz duplex.

### ▪ Spain

In June 2013 the Spanish Parliament adopted a law creating a new authority in charge of both competition and regulatory matters. After a transition period of four months, it became effective on 7 October 2013. The new authority merges the current competition authority with several sectoral regulators responsible for Telecom, Energy, Railway, Postal, Audiovisual and Airports.

The new “super-regulator”, called National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia or “CNMC”)<sup>49</sup> consists of 10 members, appointed by the government for six years. Decisions will be made in two separate chambers: the Competition Chamber devoted solely to competition enforcement, and the Regulatory Chamber devoted to regulatory files.

*(46). Regulation (EU) No. 531/2012 of the European Parliament and of the Council of 13-6-2012 on roaming on public mobile communications networks within the Union (recast). ID 23059853*

*(47) Berec Guidelines on Roaming Regulation (EC) No. 531/2012 of 5-7-2013. ID 23821871.*

*(48) Press release P/13/726 of 23-7-2013.*

*(49) <http://www.cnmc.es/>*





- **Africa**

- **World Bank**

On 30 May 2013<sup>50</sup> the World Bank approved US\$30 million each to support the Government of Mauritania and Government of Togo's efforts to strengthen telecommunications connectivity through expansion of fiber-optic broadband networks and introduction of legal and regulatory reforms to promote robust private sector competition.

(50)

<http://www.worldbank.org/>

The investments are expected to expand access, improve quality and reliability of voice and Internet communications, serve as the backbone for greater private sector investment in ICT services and dramatically drive down costs, as has been the experience in other African countries

The project is part of the second phase of a US\$300 million West Africa Regional Communications Infrastructure Program (WARCIP) that seeks to bridge connectivity gaps between 16 West African countries and with the rest of the world. WARCIP harnesses the resources and dynamism of the private sector through innovative public-private partnerships to enable rapid roll out of infrastructure and expansion of telecoms services.

- **Americas**

- **Brazil: Internet governance**

The Brazilian government said<sup>51</sup> it would host in April 2014 an international summit of governments, industry, civil society and academia to discuss of Internet governance.

(51) <http://www.eubrasil.eu/>

This summit follows up the Montevideo Statement made by leaders who met in Uruguay to first call for the emancipation of ICANN (Internet Corporation for Assigned Names and Numbers) and its component IANA (Internet Assigned Numbers Authority), which are international technical bodies in charge of determining standards and managing network resources at a global level. The objective is to create an environment in which all stakeholders, including all governments, participate on an equal footing, and no longer under the control of the U.S. Department of Commerce.

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