

## THE YEAR IN REVIEW: THE TELECOMMUNICATIONS SECTOR IN FRANCE IN 2012

### ▪ 2012: A TIME FOR IDENTITY DOUBTS

#### References

In France, the year 2012 started with the spectacular and successful commercial and media launch of Free Mobile, on 14 January 2012, which signalled profound changes in the mobile telecommunications sector, prompting incumbent operators to take action.

But this warning shot across the bows is not just for mobile services; the whole sector is now undermined, severely hit notably by violent paradigm shifts, and hence business model changes.

While their place and legitimacy in the value chain had until now been preserved, it cannot but be noticed that operators are increasingly relegated to mere conduit operators and/or simple providers for infrastructure deployment and maintenance services, and are gradually losing control of contents and customers.

On the one hand, fixed services revenues are affected by the shortfall in telephone revenues — the average growth of operators has slowed down and might become negative.

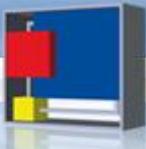
On the other hand, the dramatic rise of traffics requires maintaining a very high level of investment to be able to manage and cope with new technological constraints.

Online services — e.g., video, catch-up TV, gaming or music download — are a fantastic boost for traffic growth. However, operators are starting to feel they are losing out and believe that they should not be the only ones to dip into their pocket to handle such an explosion of traffic, notably financially, as most exemplified by the fraught relationship between operators and leading Web firms about Net neutrality.

Such tension, sometimes exacerbated by a sector-specific regulation not always in line with the current stakes, encourages the seizure of power by actors that normally could or should not have encroached on the territory of operators.

That's how Google recently came into play. Somehow considering that traditional operators could not be able to grant the investments necessary for its deployment (or would attempt to make profitable the investments already made before embarking on a new technological adventure), the Mountain View firm has just announced the deployment of an ultra high-speed network in Kansas City, Missouri. With one unique feature: it will be free for seven years in exchange for a speed of over hundreds of Gigabits per second.





What's at stake? Control. Owning the infrastructures means controlling not only contents but also subscriber network access.

The new telecoms package, whose transposition came to an end in France in 2012, does not leave out these questions but does not provide meaningful answers; it did not go to the heart of the matter and stuck to main principles, leaving it up to the actors to struggle with the details, preferring to put off the intervention of the regulator.

The smartphone craze has established a model where operators seem to have to give up any revenue expectations based on consumed applications. Amid the battle of platforms (Apple, Google, Facebook, Microsoft, Amazon, etc.) that showcases the innovation dynamic of digital services, operators no longer seem to be at the helm despite their considerable power and significant cash flows.

(1) [Accélérer l'utilisation de services de Cloud computing en Europe](#), Isabelle Pottier, 15-1-2013

Still, new general fixed and mobile access networks (NGN) will be needed to carry the various types of fast-growing data flows associated to architectures of the "Cloud" era <sup>(1)</sup>.

The launch of very high-speed fixed services and LTE services should be the occasion for a segmentation of offers and new types of "bundles" slated to raise the revenues of operators.

The difficulty for operators to exist in the face of Internet giants and terminal manufacturers, combined with high commercial costs entailed by the increased competition, may lead them to doubt about their positioning in the value chain.

- Will the activities covering the financing and deployment of infrastructures be unbundled from the activities covering the operation of the access services? If so, to which extent?
- How to monetize the increasingly high-performance access services offered to consumers, business and, to a lesser extent, actors upstream the value chain?

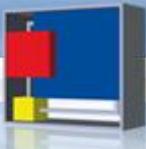
It is against this difficult background, which could mark a break in the positions established in the value chain, that most of the many regulatory decisions were adopted in 2012.

## ▪ SCARE RESOURCES

### ▪ 4<sup>th</sup> 3G license

The opening in 2012 of the services of the fourth mobile operator marked the conclusion of a process initiated by ARCEP and the government in 2009 to assign the 3G frequencies still available to a new entrant.





This choice resulted from the shared understanding that a strengthening of the competitive playing field was required for the mobile telephone market where its oligopolistic structure generated guaranteed incomes that were unfavourable to consumers.

Taking account of the specific situation of new entrants, as, among other, when they become active, they incur structurally higher costs than their competitors when terminating calls to their clients, ARCEP decided that new entrants may benefit from asymmetric voice mobile termination rates <sup>(2)</sup>.

ARCEP is also considering regulating SMS call termination tariffs of new entrants <sup>(3)</sup>.

#### ▪ 4G Licences

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

The licenses list the obligations set out in the call for applications, along with the regional development and MVNO hosting commitments made by the three applicants.

In addition, by decision dated 15 November 2012, the Conseil d’Etat dismissed the requests filed by the trade union CFE-CGC France Télécom-Orange, the Federation of the metallurgical industry CFE-CGC and the national trade union of telecommunications NT-CGC against the licenses allocated in the 800 MHz band to mobile operators Bouygues Télécom, Orange and SFR <sup>(4)</sup>.

#### ▪ Ultra-High Frequencies (UHF)

ARCEP gave its green light to the conduct of a first technical experimentation for use of white spaces in the UHF band (300-3000 MHz) in the department of Seine-Maritime <sup>(5)</sup>.

This experimentation consists in carrying out tests for coverage and connection speed of a so-called “super WIFI” technology. Frequencies used in the UHF band are located in the vacant channels between broadcasting lawyers, aka “white spaces”.

These available frequencies differ from one geographical area to another according to the frequency plan used by broadcasting services. They are in particular used by wireless microphones, which benefit from a general authorization, i.e. users of wireless microphones do not need to obtain an individual authorization as long as they comply with specific technical conditions.

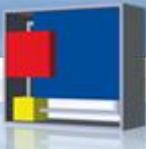
(2) [Decision 2012-0997 du 24-7-2012](#) on the determination of the relevant markets related to voice call termination Free Mobile, Lycamobile and OMEA Telecom, the designation of operators with significant influence on these markets and as such obligations for the period 2012-2013.

(3) [Public consultation from 1-8-12 to 19-9-2012](#) on the cost model calibrated SMS call termination to a mobile operator new entrant.

(4) [CE 15-11-2012 n° 357001](#).

(5) [Decision 2012-1184 of 18-9-2012](#) granting an authorization to use radio frequencies in the band 590-598 MHz to the company INFOSAT Telecom to conduct an experiment in the technical department of Seine-Maritime.





## ▪ Mobile Communication services on board Vessels (MCV)

ARCEP adopted a decision setting the terms governing radio installations' use of frequencies in the 1800 MHz band to supply Mobile Communication services on board Vessels (MCV) travelling in French territorial waters. This decision was approved by an order issued by the Minister responsible for electronic communications on 19 March 2012 <sup>(6)</sup>.

## ▪ Broadcasting

ARCEP adopted a decision confirming that wholesale terrestrial television broadcasting services (market 18) is a relevant market susceptible to ex ante regulation during the cycle that runs from 2012 to 2015, as well as operator TDF's significant power in this market <sup>(7)</sup>.

In this decision, ARCEP defined the obligations of access, transparency and non-discrimination and the pricing obligations imposed on TDF as a result.

The decision and the remedies it imposes carry forward those of the previous cycle. Some regulations have nevertheless been adjusted to ensure greater transparency and foreseeability in the marketplace.

The decision brings to a close a market analysis process that included a series of exchanges.

## ▪ Numbers

To avoid any risk of shortage of mobile numbers, ARCEP adopted a decision reorganizing the management of the blocks of numbers starting with 06 and 07 <sup>(8)</sup>.

The goal is to open up a block of numbers, starting with 0700, whose length is extended to 14 digits, dedicated to machine-to-machine (M2M) services, and then from 1 January 2016 to reserve blocks of 10-digit numbers for "traditional" mobile services (telephony, SMS/MMS, Internet access).

## ▪ HIGH AND VERY-HIGH SPEED

### ▪ Unbundling

As part of the switch from copper to fibre, ARCEP believed it necessary to take into consideration not only the increased lifespan of the civil engineering – an essential facility that can be reused for the deployment of optical fibre networks – but also the accelerated obsolescence of copper cables which are due to be replaced by optical fibre cables.

ARCEP amended its cost assessment method to be used for the copper pair, by progressively shortening the amortization period of copper cables from 25 to 13 years while at the same time progressively increasing the amortization period of civil engineering assets from 40 to 50 years between 2012 and 2021 <sup>(9)</sup>.

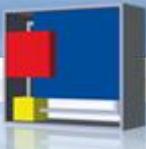
(6) [Order dated 19-3-2012](#) homologating ARCEP Decision No. 2011-1339 of 15-11-2011 setting the terms governing radio installations' use of frequencies in the 1800 MHz band to supply mobile communication services on board vessels travelling in French territorial waters.

(7) [ARCEP Decision No. 2012-1137 of 11-09-2012](#) on the definition of the relevant wholesale market for digital terrestrial television broadcasting services, the designation of an operator that enjoys significant power in this market and the obligations imposed on it as a result.

(8) [ARCEP Decision 2012-0855 of 17-7-2012](#) on the reorganization of blocks of numbers starting with 06 and 07 stated in Decision No. 05-1085 of 15-12-2005.

(9) [ARCEP Decision 2012-0007 of 17-1-2012](#) modifying the amortization periods of France Télécom's copper local loop stated in Decision 05-0834 of 15-12-2005.





This scheduled increase should result in a decrease in France Telecom's full unbundling tariffs after 2012.

- **Optical fibre**

- **FTTH**

The framework governing Fibre-To-The-Home (FTTH) rollouts in very high-density areas has been clarified after the Paris Court of Appeals upholds an ARCEP decision concerning a dispute between Bouygues Telecom and France Télécom <sup>(10)</sup>.

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 which would lessen the carrier's property rights, provided it was justified by public economics and the incumbent carrier receive fair financial compensation in exchange.

The Court confirmed that the sharing of the costs of "branching units" imposed by ARCEP (i.e. the operator providing the service is to assume 90% of the costs) adequately reconciled the interests of the different parties. The modalities of application for the regulatory framework governing co-financing offers and for deploying branching units have thus been validated.

- **Civil Engineering**

The Cour de cassation validated a decision handed down by the Court of Appeals of Paris that upheld ARCEP's decision in a dispute between France Télécom and Numéricable <sup>(11)</sup>.

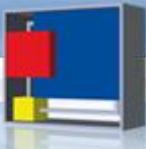
In its decision 2010-1179 dated 4-11-2010, ARCEP imposed on Numéricable, for the modernization of its network, to comply with the operational modalities fixed by France Télécom to access its civil engineering.

ARCEP's analysis to enable operators to access with higher autonomy and rapidity in a coordinate manner France Télécom's civil engineering has thus been validated.

(10) [Court of Appeals of Paris, 19-1-2012, n°2010/24694, France Télécom v. Bouygues Télécom, on ARCEP Decision 2010-1232 of 16-11-2010.](#)

(11) [Cour de cassation, commercial chamber, 25-9-2012 n°916F-D, Numéricable v. France Télécom.](#)





## ▪ REGIONAL DEVELOPMENT AND LOCAL AUTHORITIES

### ▪ Public Initiative Networks (PIN)

The Competition Authority published, at the request of the Senate, an opinion on optical fibre roll-out and reminding public authorities of the competitive framework within which they can participate in the roll-out of very high speed broadband via "integrated projects" <sup>(12)</sup> that cover both profitable and unprofitable areas.

It issued a number of recommendations to prevent the risk for public authorities of becoming victims of distorted competition within the context of their public tenders:

- when integrated operators intend to make a submission to a public tender, they should also indicate the conditions under which they would be likely to use the public network as an ISP, irrespective of the identity the operator that will ultimately be designated to build the network, such that this information may be transmitted to all other candidates;
- providing this information could constitute an acceptance condition for the candidate's tender offer.

The Competition Authority reminded that co-investment was a crucial element in new fibre-to-the-home (FTTH) network rollouts (even in the case of public-initiative networks) and that ARCEP's regulatory framework called for 90% of network expenditures to be shared outside of these very-high density areas.

### ▪ Sharing and roaming

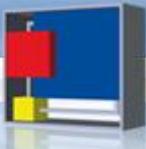
On 5 November 2012, the French Government sought the opinion of the Competition Authority regarding pooling and roaming conditions on mobile telephone networks <sup>(13)</sup>, in particular on:

- 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;
- the 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

(12) [Opinion 12-A-02 of 17 January 2011](#) regarding a request for an opinion made by the Senate Committee for the Economy, Sustainable Development and Town and Country Planning concerning the framework of public authority participation in the roll-out of very high speed broadband networks.

(13) Competition Authority, [Press release of 5-11-2012](#).





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;

- the pooling of networks between the operators in the most populated areas in France. The question is to know 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.

While it may restrict competition, the sharing of networks is not prohibited as such by competition law, particularly where it can be established that it produces positive effects on competition.

The Competition Authority will issue its opinion at the end of February 2013 following consultation with all the relevant stakeholders.

#### ▪ Network Knowledge

A decree of 12 February 2009 (known as Network Knowledge Decree) gives to the state, the local authorities and their groups, a right to have information, for free, on the infrastructures and electronic communications networks <sup>(14)</sup>.

The Conseil d'Etat had set aside on 10 November 2010 <sup>(15)</sup> two provisions of that decree for lack of legal basis: the first provision fixed the modalities for the communication to third parties of the information held by the local authorities; the second provision provided notably that from 1 July 2011 information related to host infrastructures would have to be supplied in the form of geolocated vector data.

An Act of 22 March 2011 <sup>(16)</sup> was subsequently enacted to establish the missing legal basis allowing to reinstate the provisions cancelled, thereafter incorporated into a decree of 18 April 2012 <sup>(17)</sup>.

It in particular provides that information on host infrastructures must be provided in the form of geolocated vector data from 1 January 2014. On 18 April 2012 <sup>(18)</sup>, an order related to the modalities of communication of the information provided for by decree of 12 February 2009 was also published.

With these two texts, published on 20 April 2012 in the Official Journal, the “Network Knowledge” process is finally completed. It will become fully operational from 1 January 2014.

(14) [Decree 2009-167 of 12-2-2009](#) on the communication of information to the state and the local authorities relating to the infrastructures and networks established on their territory.

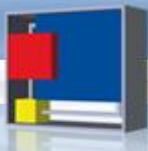
(15) [Conseil d'Etat, 10-11-2010, n°327062](#) and 330408, Sipperec.

(16) [Law 2011-302 of 22-3-2011](#) containing various provisions to bring legislation in line with European Union law in the field of health, work and electronic communications.

(17) [Decree 2012-513 of 18-4-2012](#) on the communication of information to the state and the local authorities relating to the infrastructures and networks established on their territory.

(18) [Order of 18-4-2012](#) for application of Article D 98-6-3 of the French Postal and Electronic Communications Code on the modalities for communication of information to the State and local public authorities on the infrastructures and networks established in their territory.





## ■ CONSUMERS AND UNIVERSAL SERVICE

### ■ Disabled users

In addition to an access to all necessary information on media appropriate to their disability, users with disabilities now benefit from an access to products and services equivalent to the one from which the majority of users are benefiting <sup>(19)</sup>.

(19) [French Postal and Electronic Communications Code](#), Art. R 20-30-4.

### ■ Portability

#### ■ Shorter portability process length

The number portability process is shortened to one day, provided access is available <sup>(20)</sup>.

(20) [French Postal and Electronic Communications Code](#), Art. D 406-18.

#### ■ Overseas markets

A new mobile number portability system was adopted on 12 November 2012 in the French overseas departments. This new system allows users to have their number ported to their new operator in two working days, as opposed to 10 calendar days under the previous system <sup>(21)</sup>.

The implementation of this system completes ARCEP's efforts to harmonise the mobile number portability process employed in the whole of France.

(21) [ARCEP Decision 2012-0576 of 10-5-2012](#) specifying the modalities for application of mobile number portability.

### ■ Value-Added Services (VAS)

#### ■ Self-regulation

On 3 February 2012, operators and service providers created SVA+ <sup>(22)</sup>, a self-regulation body to fight against the abusive use of special numbers (starting with 08 and known as "premium-rate" or "surcharged" numbers).

(22) [Création de l'Association SVA+](#), Actualité du 27-4-2012.

The aim of this association is to coordinate the introduction of ethical rules for VAS. Its three priority fields are:

- Youth protection by establishing common rules to restrict access of young people to sensitive services;
- Setting rules of good conduct to enhance consumer information and protection;
- Improve price information in commercial documents of VAS firms.

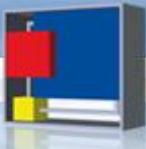
#### ■ Pricing

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;

(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.





- 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.

## ■ Universal Service (US)

### ■ Financing

ARCEP published a decision fixing operators' provisional contributions to the cost of the US for the year 2012 <sup>(24)</sup>.

### ■ Evaluation of cost

ARCEP adopted a decision on the rules used to annually assess the final net cost of US <sup>(25)</sup>.

The changes made compared to the previous year and for future financial years include the integration of an additional class.

Such class comprises very remote areas where the use of infrastructures other than the copper pair, such as satellite and mobile technologies, would be most appropriate and cost-effective than the traditional copper technology.

This is in particular the case of some remote areas in overseas departments that are not connected by wire.

In total, the evaluation of the net cost of the obligation of geographical averaging will be based on 36 zones (35 density classes and one class representing very remote areas not connected by wire).

(24) [ARCEP Decision 2011-1452 of 13-12-2011](#) fixing the provisional contributions for the operators to the cost of the US for the year 2012.

(25) [ARCEP Decision 2012-0006 of 17-1-2012](#) publishing the rules used to apply the methods mentioned in Articles R 20-33 to R 20-39 of the Postal and Electronic Communications Code to assess the final cost of universal service for the year 2010.

## ■ NETWORK SECURITY

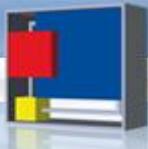
In accordance with the new European rules, a decree of 13 April 2012 set forth the rules of routing emergency calls and strengthened the obligations of electronic communications operators to preserve the security and integrity of their networks <sup>(26)</sup>.

Obligations related to caller location for emergency calls have also been strengthened: operators must now make such information available to emergency services, without charge and without delay. Operators are further required to transmit alert messages from public authorities in case of imminent threats (e.g. natural or man-made disasters). The decree states the process for transmitting these messages to the public.

The decree also introduced an obligation to notify competent public authorities of a breach of security or loss of integrity that has a significant impact on the operation of networks.

(26) [Decree 2012-488 of 13-4-2012](#) amending the obligations of electronic communications operators in accordance with the new European regulatory framework.





## ■ NET NEUTRALITY AND SERVICE QUALITY

### ■ Observatory

Following a report delivered to the Parliament <sup>(27)</sup> ARCEP decided to set up an Observatory to track the quality of Internet access services.

This observatory will present the result of the measures that will be regularly made according to a standardized methodology.

The observatory will not only serve as a tool to inform consumer and strengthen competitive emulation between operators, it will also help detect any degradation in the quality of the Internet access services that could justify an intervention from the public authorities.

(27) [Report of 20-9-12](#) to the Parliament and the government on net neutrality. ID 22885060.

### ■ Collection of information

ARCEP introduced a process of regular collection of information on the economic relationships between Internet actors on the data interconnection market <sup>(28)</sup>.

(28) [ARCEP Decision 2012-0366 of 29-3-2012](#) on the establishment of a process to collect information related to the technical and financial conditions for the interconnection and routing of data. ID 22675846.

### ■ Peering

A decision delivered by the Competition Authority, requiring France Télécom to clarify the relationships between its Internet access and Internet transit businesses <sup>(29)</sup> confirmed the approach consisting in improving transparency on the data interconnection market.

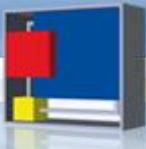
In this case, the US telecommunications operator Cogent claimed that France Télécom was compromising the peering system (enabling exchange of traffic flows between networks, free of charge) used by transit operators, by requesting payment for opening up additional technical capacity for access to Orange subscribers.

(29) [ARCEP Decision 12-D-18 of 20-9-2012](#) relating to practices concerning reciprocal interconnection services in the area of internet connectivity. ID 22886378.

Regarding this claim, it was considered that in view of the highly asymmetric nature of the traffic exchanged between France Télécom and Cogent, such a payment request did not in itself constitute an anti-competitive practice inasmuch as this type of remuneration is not uncommon in the Internet industry in cases where a significant imbalance exists between the incoming and outgoing flows exchanged between two networks, and was consistent with the overall peering policy adopted by France Télécom, with which Cogent is familiar.

However, it was noted that there was a certain lack of transparency in the relationship between the domestic network of France Télécom (Orange) and its transit operator business (Open Transit), creating a potential for margin squeezes. France Télécom agreed to make commitments to prevent such situations and enable appropriate monitoring.





## ▪ Degradation of service

Following up on information sent by the consumer association UFC-Que Choisir ?, ARCEP opened an administrative investigation on the technical and financial conditions of traffic routing between YouTube and Free.

The aim of this decision 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.

On the basis of this analysis, ARCEP will where applicable be in a position to appreciate the content, scope and possible justifications for the practices that may be established”<sup>(30)</sup>.

ARCEP will decide, early 2013, what action to take.

(30) [ARCEP Decision 2012-1545](#) of 22-11-2012 opening, in application of Article L32-4 of the Postal and Electronic Communications Code, an administrative investigation concerning diverse companies in relation to the technical and financial conditions of traffic routing.

## ▪ MARKETS AND PROCEDURES

### ▪ Market analysis

#### ▪ Obligation of cost-oriented tariffs

On 30 November 2012, ARCEP launched a public consultation on three draft decisions concerning the statutory rates of return on capital for fixed, mobile and broadcasting activities<sup>(31)</sup>. The consultation ended on 2 January 2013.

(31) [Public consultation, 30-11-2012 to 2-1-2013](#).

#### ▪ Market 5

By decision of 4 June 2012, the Conseil d'Etat rejected the claim from British Telecom France against ARCEP's market analysis of 14 June 2011 concerning wholesale broadband and ultra-fast, or bitstream, access (“market 5”)<sup>(32)</sup>.

(32) [Conseil d'Etat, 4-6-2012, n°351976](#), BT France.

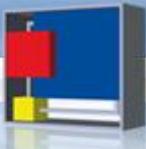
The Conseil d'Etat first confirmed the regularity of the consultations with the Competition Authority and the European Commission. It then ruled that maintaining the obligation of non-predatory pricing imposed on France Télécom on that market was compliant with national and Community law.

(33) [ARCEP Decision 2012-1502 of 27-11-2012](#) on the regulatory framework governing mobile (voice) call termination rates for operators in the French overseas markets, which will apply from 1 January to 31 December 2013.

#### ▪ Market 16

Following its analysis of market 16, ARCEP set, on 27 November 2012, a mobile call termination rate for operators in France's overseas markets of 1 eurocent per minute as of 1 January 2013<sup>(33)</sup>.





This decrease in call termination rates virtually eradicates the gap between mobile call termination rates in the overseas markets and Metropolitan France (which now stands at only 0.2 eurocents a minute).

Bo so doing, ARCEP completes the process of equalizing call termination rates in the 5 overseas departments and mainland France, for both voice calls and SMS.

(34) [Public consultation on the revision of the Recommendation on relevant markets](#), 2012-10-16.

#### ▪ Recommendation

On 16 October 2012, the European Commission launched a public consultation on the revision of the Recommendation on relevant markets <sup>(34)</sup>.

Although not legally binding, the text is a key element of the EU regulatory framework in electronic communications.

It defines and lists seven markets where competition is potentially not yet effective and that the Commission invites National Regulatory Authorities to systematically analyse.

#### ▪ Sanctions

##### ▪ Competition Authority

Following a complaint filed by Bouygues Télécom, the Competition Authority issued on 13 December 2012 a decision, by which it fined France Télécom, Orange France and SFR a total of €183.1 million.

Orange and SFR marketed, between 2005 and 2008, unlimited “on net” offerings, that is, by giving their subscribers unlimited calls to interlocutors that were subscribers of the same network.

According to the Competition Authority, “these packages, which represented the core of the post paid offering proposed to household customers, gave way to an abusive rate differentiation between ‘on net’ calls (within their respective networks) and ‘off net’ calls (to rival networks) and put a break on competition in two different ways :

-they contributed, on the one hand, to freezing the market by drawing consumers to the two biggest networks and keeping them ‘locked in’ once their choice was made ;

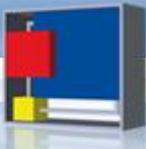
-they were also liable, on the other hand, to weaken the third operator – Bouygues Télécom –, which had to strike back by launching offerings that significantly increased its costs ” <sup>(35)</sup>.

(35) [ARCEP Decision 12-D-24 of 13-12-2012](#) on practices implemented in the mobile telephony sector for residential customers in Metropolitan France. ID 23033916.

(36) [Conseil d'Etat, 4-7-2012, n°334062](#) and 347163, Aforst. ID 23033918.

##### ▪ ARCEP

The Conseil d'Etat approved ARCEP's tariff control and penalties policy <sup>(36)</sup>.



It ruled that the regulator accurately applied the national and European legal framework governing its power to impose penalties. In accordance with this legal framework, where ARCEP finds that an undertaking does not comply with its regulatory obligations, it must first issue a notice to comply with regulation, and can impose a penalty only if that operator has failed to comply with this notice.

## ▪ Co-regulation

### ▪ ARCEP

As part of the investigation launched by the Prime Minister, ARCEP finalized early October 2012 its position on the future regulation of television and electronic communications in the Internet era and its consequences <sup>(37)</sup>.

(37) [Investigation](#) into the future of television and electronic communications regulation in the Internet era and its consequences, 12-10-2012.

Three most conceivable directions are:

-either to maintain strict regulation over television content, in keeping with the concept of cultural exception but built on new foundations that take into account the upheavals brought by the internet. In such case, the responsibilities and tasks assigned to the broadcasting and electronic communications regulatory authorities would continue to be very different, and there would be no real justification for the two to merge. It may nevertheless be wise for the Law to create a body that is common to the two regulators (ARCEP and CSA) whose purpose would be to address issues that are common to both regulators;

-or to promote updated regulation of television content while strengthening its economic dimension. In such case, one solution could be to narrow the two regulatory authorities' area of specialization;

-or to adopt primarily economic regulation of television industry players. In such case, the responsibilities and tasks assigned to the broadcasting and electronic communications regulatory authorities would become relatively similar, and it would make sense for them to merge.

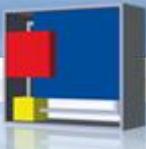
### ▪ CSA

After ARCEP, it was CSA's turn to publish its contribution to the reflection on the evolution of the regulation of television and electronic communications <sup>(38)</sup>.

(38) [Contribution to the reflection](#) on the evolution of the regulation of television and electronic communications.

CSA proposed the creation of an authority composed of two distinct executive boards, to separate the regulation of ethical and cultural issues from the regulation of technical and economic issues.





Lastly, at a Senate hearing, Minister Fleur Pellerin in charge of Digital Economy would have expressed her support for closer links between CSA and ARCEP, but not a merger <sup>(39)</sup>.

(39) « CSA/Arcep : vers un rapprochement, pas une fusion selon Fleur Pellerin », Delphine Cuny, La Tribune.fr du 11-12-2012.

## ■ EUROPEAN AND INTERNATIONAL AFFAIRS

### ■ State Aids

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>(40)</sup>.

The revision, required following the expiry of the original Guidelines published 2009, falls within the scope of the Commission's digital agenda and State aid modernisation 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 present guarantees on the opening of access.

(40) [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).

### ■ Transposition

The first legislative part of the transposition of the 2009 Community directives that constitute the third "Telecoms Package" was transposed in France through ordinance of 24 August 2011.

A Conseil d'Etat decree (electronic communications, obligations imposed on operators, protection of personal data, security of interception devices) was published in the Official Journal on 31 March 2012 <sup>(41)</sup> for its enforcement.

(41) [Decree 2012-436 of 30-3-2012](#) transposing the new European regulatory framework on electronic communications.

After the ordinance of 24 August 2011 and this decree of 30 March 2012, the decree of 13 April 2012 amending the obligations of electronic communications operators <sup>(42)</sup> and another decree of 15 November 2012 on network security <sup>(43)</sup> complete transposition of the 2009 Community directives (3rd "Telecoms Package").

(42) [Decree 2012-488 of 13-4-2012](#) amending the obligations of electronic communications operators in accordance with the new European regulatory framework.

The conclusion of this process should make it possible to benefit fully from the progress of the new European regulatory framework that reinforces ARCEP's independence and adjust its missions to both better respond to current challenges (new generation access networks rollout and protection of consumers' freedom of choice) and include new issues such as net neutrality.

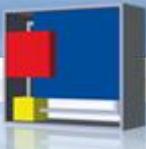
(43) [Decree 2012-1266 of 15-11-2012](#) related to the control of security and integrity of installations, networks and services of electronic communications operators.

### ■ Roaming

A new EU regulation on international roaming was adopted <sup>(44)</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.

(44) [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).





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.

#### ▪ ITU

The World Telecommunication Standardization Assembly (WTSA-12) of the International Telecommunication Union (ITU) took place from 20 to 29 November 2012, in Dubai, United Arab Emirates <sup>(45)</sup>. The WTSA-12 is in charge of setting the ITU strategy for the standardization sector for the next four years.

[\(45\) WTSA-12 of the ITU, 29-11-2012.](#)

Immediately following the WTSA -12, a World Conference on International Telecommunications (WCIT-12) was held in Dubai from 3 to 14 December 2012 <sup>(46)</sup> with more than 1,800 participants from 151 Member States to update the International Telecommunication Regulations (ITRs), an international treaty that had not been reviewed since its adoption in 1988.

[\(46\) WCIT-12, 14-12-2012.](#)

There were heated debates, including many sensitive issues, such as the Internet, security, spam, IP interconnection, international roaming, etc. During the debates, proposals have been made to mention human rights and access to telecoms services.

As most of the countries at the conference voted in favour of these additions, the text was considered as adopted. However, only 89 countries out of the 151 present signed the text (mostly emerging or developing countries) and 55 countries refrain from signing, including the United States and the European Union, coordinated by the European Commission.

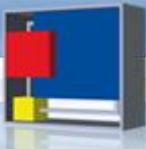
#### ▪ Africa

##### ▪ Broadband

The ACE (African Coast to Europe) submarine communications cable is a cable system along the west coast of Africa managed by a consortium of 16 operators and administrations headed by France Télécom. The consortium agreement was signed on June 5, 2010. The cable was manufactured by Alcatel Submarine Networks (ASN) and was laid by ships from ASN and France Telecom Marine.

The first phase of the 17,000 km-long optical fibre cable was put in service on 15 December 2012, with an official inauguration ceremony held on 19 December 2012, in Banjul, The Gambia.





To finance the connection to submarine cables, it will be required to involve public financial incentives, which are even more efficient in the context of partnerships with the private sector via Public-Private Partnerships (PPP) (as demonstrated by projects led by the World Bank) <sup>(47)</sup>.

Combined with the Open Access principle, these partnerships are the best means to ensure that the interests of states, private actors and consumers will all be guaranteed.

Lastly, for such partnerships to succeed, it will be important to provide a legal assistance in the elaboration of the related contracts and licenses.

## ▪ America

### ▪ Brazil

Brazil is the largest country in Latin America, both by geographical area and by population — with more than 190 million people. It is also the world's eighth largest economy. The strategic regulatory guidelines of this country are therefore major international events.

It is also an interesting example of an emerging country where regulation changes in parallel to the European regulatory framework (2002 Directives).

In this regard, on 12 November 2012, the Brazilian telecommunications regulator (Anatel) approved the General Plan of Competition Goals, "Plano Geral de Metas de Competição" or "PGMC", setting forth rules with immediate application imposing obligations on operators designated as having Significant Market Power (SMP) geographically at the municipal level <sup>(48)</sup>.

Operators may challenge the decision designating them as having SMP within 180 days from the notification of said decision. Operators with SMP are required to separate from the rest of their activity unbundled local loop (ULL) and bitstream, for which their reference offers should be approved by Anatel on or before 12 May 2013.

(47) The World Bank actively supports African connectivity policies via recent regional projects such as the Central African Backbone (CAB) (launched in 2009, ongoing operations in Chad, Central African Republic, São Tomé and Príncipe, Congo and Gabon), the Regional Communications Infrastructure Program (RCIP) in Eastern and Southern Africa (launched in 2007, ongoing operations in Kenya, Madagascar, Burundi, Rwanda, Malawi, Mozambique and Tanzania; preparatory work underway in Uganda and Comoros), and the West Africa Regional Communications Infrastructure Program (launched in 2010, ongoing operations in Sierra Leone, Liberia, Gambia, Guinea, Burkina; preparatory work underway in Mauritania, Mali and Togo). See [Scorecards by region and country](#).

(48) [PGMC of 12-11-2012](#).

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