

## FRANCE

### INTRODUCTION

There was steady growth in broadband penetration in France in 2009, against the background of further consolidation in the market. The mobile market was marked by the long awaited tender for entry of a new mobile operator, which is expected to make the mobile market more dynamic. Operators continued to compete with innovative bundled offers and attractive prices. However, the incumbent has kept its overall strong position on the French market. It remains to be seen how the lower-priced services of alternative operators are taken up by the clients.

The regulatory framework for the deployment of fibre inspired to a large extent the discussions on the rollout of next generation networks in France in 2009. More detailed conditions of deployment and sharing of fibre within buildings were set out in the secondary legislation and implementation measures taken by the regulator. There was intense legislative activity expected to impact the electronic communications sector. It concerned a new tax on the electronic communications sector and the fight against online piracy. Additionally, a law combating the digital divide was approved by the Parliament.

### REGULATORY ENVIRONMENT

#### Main regulatory developments

The French legislator has been quite active in the field of electronic communications in 2009. The Law reforming the public television system (*Loi n°2009-258 du 5 mars 2009*) adopted by the French Parliament in March 2009 introduced a new charge of 0.9% of the electronic communications operators turnover, expected to compensate for the suppression of advertising on public television.

The Law on the diffusion and protection of creation on the Internet (*Loi n° 2009-669 du 12 juin 2009 favorisant la diffusion et la protection de la création sur internet*, also referred to as "*Loi Hadopi*", being an acronym of the newly created supervisory authority) provides for a "graduated response" to alleged copyright infringements on the Internet.

The Law on the reduction of the digital divide (*Loi relative à la lutte contre la fracture numérique*, referred to as "*Loi Pintat*") was adopted in December 2009. The law provides for support to needy citizens, as well as for the development of Next Generation Access (NGA) networks in less populated rural zones. The *Caisse des dépôts et consignations* will manage (in cooperation with a committee composed of State, operators and local public authorities representatives) a public fund to co-finance very high speed broadband infrastructure in areas where such projects would not be economically viable, even if carried out jointly by several operators. At the end of 2009, the question of financing of this fund was not yet definitely decided, although €2 billion of the prepared national loan plan, referred to as the "*grand emprunt*", is to be dedicated to the deployment of NGA networks.

#### Organisation of the NRA

The Chairman of ARCEP (the French regulatory authority, *Autorité de Régulation des Communications Électroniques et des Postes*) who was appointed by the President of the

French Republic in December 2008, resigned from his office in April 2009 due to personal reasons and a new Chairman was appointed in May 2009 for a term of six years. According to the law, the regulator's Board has seven members nominated for six years. Their mandates are irrevocable and non-renewable, in order to guarantee their independence.

The cooperation of ARCEP with the National Competition Authority (NCA, *Autorité de la concurrence*) is viewed positively by the market players. ARCEP also cooperates with the National Frequency Agency (ANFR, *Agence nationale des fréquences*) in spectrum matters. Both the size of ARCEP's staff and its skills are also considered as satisfactory, enabling ARCEP to work proactively.

### **Decision-making**

In 2009 ARCEP finalised the second round of market analyses of all the markets listed in the Commission's Recommendation on relevant markets, with the exception of the market for wholesale terminating segments of leased lines, for which it completed the public consultations in the autumn of 2009. ARCEP continued in its active approach and notified three regulatory measures to the Commission. These concerned the market for wholesale broadcasting transmission services of programmes in a digital terrestrial mode; the market for wholesale voice call termination on individual mobile networks in the French overseas territories; and symmetric regulation of in-building fibre optic wiring.

ARCEP took one decision in the framework of dispute resolution in 2009. Four disputes were submitted to ARCEP in 2007 and six in 2008. Regarding sanction decisions, ARCEP issued nine decisions of notice, seven of them in relation to fixed numbers portability and two in relation to 3G mobile network coverage obligations.

### **MARKET AND REGULATORY DEVELOPMENTS**

The total electronic communications revenues in France increased notably (by 2.9% compared to the previous year) to around €49.11 billion at the end of 2008 from around €47.73 billion at the end of 2007, following the same trend as the previous year in terms of balance between revenues from the fixed and mobile sectors. At the same time, the total value of tangible investments into electronic communications networks in France has increased considerably (by 6.3% in 2008), to €6.529 billion by the end of 2008 from €6.14 billion by the end of 2007. The total investment still exceeds 10% of the revenues, which is more than in most of other sectors of the economy.

Competition intensified in 2009 regarding bundled offers combining television, broadband and fixed telephony and increasingly also mobile. As of July 2009, 22.4% of the population used bundled offers. The French Supreme Court (*Cour de cassation*) held in November 2009, with respect to the bundled offer of the biggest alternative broadband operator, that it had an obligation in the case at hand to deliver audiovisual services to its client despite the persisting technical problems with the network. This appears to put more pressure on the operators in the future, since the capacity of current networks in certain areas is challenged by the large amounts of data being transmitted.

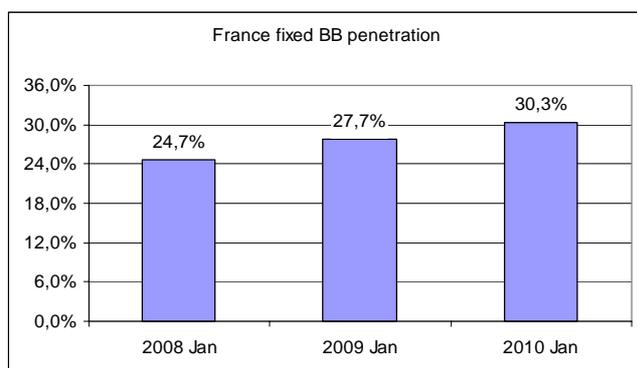
ARCEP's fibre regulation focusing primarily on the most densely populated areas is expected to unlock further deployment of NGA by operators. According to ARCEP's data, their penetration remained moderate in the second quarter of 2009 with 225 000 subscriptions to very high speed Internet, of which 175 000 with a Fibre To The Last Amplifier (FTTLA) and

50 000 with a fibre to the home (FTTH). At the same time, 4.5 million households were located in the proximity of a fibre network, while 650 000 households were located in buildings equipped with FTTH.

The Digital Plan 2012 (*“France numérique 2012”*, launched by the Government in October 2008) included the objective of broadband access for 100% of the population by 2012, and announced the creation of a certificate to be used by those providers, which would ensure service (a minimum of 512 kbit/s) at an affordable price (less than €35/month) over the whole territory. The call for tenders was launched at the end of 2009 and three satellite-based products were assigned the certificates in the beginning of 2010.

## Broadband

### *Market situation*



The broadband penetration rate in France, at 30.3% in January 2010 compared to 27.7% in January 2009, is still ahead of the EU-27 average (24.8% in January 2010), thereby placing it in the sixth position in the EU. The increase in the penetration rate of approximately 2.6 percentage point was slightly above the EU average growth of 2 percentage points. France increased the total number of broadband lines to 19.5 million in

January 2010, compared to 17.69 million in January 2009 (10.2% growth), which shows a slowing pace of the process, given the 12.7% growth over the year 2008.

The DSL market share decreased slightly between January 2009 and January 2010, from 95.3% to 94.9%. As of January 2010, 7.72 million lines in France were unbundled, the bulk of which were fully unbundled (6.41 million lines, compared to 5.61 million as of January 2009). LLU is now progressing more slowly, since it is concerning less populated areas with smaller switchboards.

As of January 2010, the incumbent had a 45.5% market share in broadband lines, in comparison with 54.5% for alternative operators. The consolidation of the market continued in 2009. Following the completion of the acquisition by the biggest alternative operator of one of the smaller competitors, the three main operators controlled approximately 95% of the market in 2009.

### *Regulatory issues*

Although alternative operators request regulated access to fibre loop and bitstream access to fibre, ARCEP does not envisage any change before the deployment of fibre networks in the most densely populated areas. The incumbent proposes a commercial offer on fibre.

Furthermore, ARCEP was managing a new round of research and experiments that should help formulate precise conditions for the deployment of fibre in smaller buildings in the very densely populated areas, and in all buildings in areas other than those defined as very densely

populated. Operators indicated that they would delay their investment plans before clear rules are in place.

The consolidated French cable operator cooperated with other operators on the deployment of fibre and, thanks to its relatively robust coverage by FTTLA, was offering its network capacity to other operators. This cable operator agreed with one local authority ("*département*") on the public funding of an open passive fibre network throughout the *département*, in which several networks have already been developed by private initiatives. This public intervention was subject to proceedings relating to its conformity with the Community rules on State aid. The Commission concluded in October 2009 that the public funding does not constitute State aid, since it will be used for coverage of areas of the department where the deployment would otherwise not be economically viable, in order to offset the costs of provision of a service of general economic interest.

The law on the modernisation of the economy (*Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie*, LME) established that local authorities can impose a new obligation on the cable operator to give access to its network in a transparent, objective and non-discriminatory manner. This option did not seem to be used much in 2009, since operators considered access to ducts of the incumbent to be sufficient at the moment.

ARCEP launched public consultation on the ways to increase the capacity of the existing copper network.

## **Mobile**

### *Market situation*

The French mobile market continued to be characterised by its limited dynamism. The penetration rate, standing at 90.2% as of October 2009, is still well behind the EU-27 average of 121.9%, but went up from 86.4% since October 2008. This significant gap might partly be attributed to a relatively small share of pre-paid users in the mobile market in France (35.9% of SIM cards). 2009 was marked by a sharp increase in data traffic, partly attributed by operators to use of specific types of smartphones, now being sold by all three operators. Also use of mobile Internet via dedicated data cards increases, although the penetration of mobile broadband via these tools was 3.3% as of the last quarter of 2009, which is rather low in comparison with the EU average of 5.2%. Volume of SMS sent monthly from one SIM card has increased by 80.4% in September 2009 compared to September 2008 thanks to unlimited offers by all three operators. On the other hand, revenues from voice decreased by almost 2% over the same period.<sup>137</sup> The mobile market overall grew by 3% in terms of revenues over the year 2008.

The main mobile network operator's market share further decreased by more than two points, from 43.6% to 41% (in terms of subscribers), while the second operator's share remained stable at 33.4% between October 2008 and October 2009. According to ARCEP, MVNOs had a 5.9% market share as of December 2009, compared to 5% one year earlier.

Despite their number, it appears that MVNOs have not had a significant impact on competition. MVNOs claim unfavourable wholesale data tariffs. They also regret that they

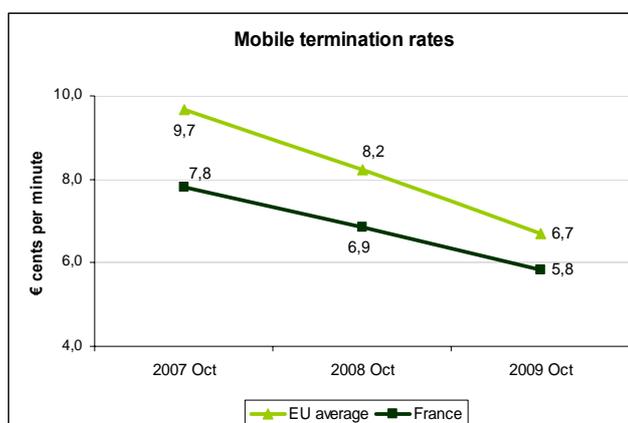
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<sup>137</sup> According to data published by ARCEP and by the Association française des opérateurs mobiles (AFOM).

cannot manage their own home location register, which would allow for easier roaming between the networks of mobile operators.

### *Regulatory issues*

While no regulatory action was taken, following the opinion of the National Competition Authority (NCA) of July 2008, analysing inter alia the terms and conditions imposed by network operators on MVNOs, some MVNOs reported improvements in 2009. MVNOs believe that they will have the possibility to become full MVNOs thanks to the licensing conditions of the fourth mobile operator, as well as the conditions of the envisaged licences for the 2.1 GHz



frequency band, as announced in 2008 in the Digital Plan 2012. The fourth mobile operator indeed committed itself to host up to four full MVNOs on its network and to grant cost oriented prices to other mobile services providers.

Long awaited conditions for the allocation of a fourth mobile licence (2x5MHz in the 2.1 GHz frequency band, later also 2x5MHz freed in the 900 MHz frequency band) were set in July 2009 by a Government decree, upon the proposal of ARCEP. The procedure had been slowed down by the re-valorisation of the price of the licence. In December 2009, ARCEP chose the application of the only candidate for the licence, a subsidiary of an alternative operator, which is active notably on the DSL broadband market. The licence itself was granted in January 2010. At least two of the three existing French mobile operators contested the conditions of the licence before the European Commission from the standpoint of State aid rules, and two of them also before the French Conseil d'Etat, in particular concerning the price of the licence. These proceedings do not, however, have any derogatory effect. The successful candidate has inter alia committed to launch its services within two years, and to cover at least 90% of the population with its 3G network within eight years. At the same time, it will benefit from the mandatory cooperation of the existing mobile operators, regarding notably national roaming and facility sharing. The fourth mobile licence having been attributed, ARCEP is expected to publish in the first half of 2010 the conditions for two licences within the 2.1 GHz frequency band, open also to existing mobile operators.

ARCEP's decision of December 2008 on mobile termination rates (MTRs) for the period between mid-2009 and end of 2010, was contested by the incumbent and the second biggest mobile operator before the Conseil d'Etat, the French Supreme Administrative Court. The plaintiffs challenged the use of the long run incremental costs (LRIC) of a generic efficient operator (estimated at between 1 €-cent and 2 €-cents per minute in 2008) and the level of the price caps to which it led. The Conseil d'Etat confirmed in July 2009 the reference to LRIC of a generic efficient operator for MTR price control. The plaintiffs also challenged both the need for the price cap asymmetry in favour of the third mobile operator, and its level. The Court considered that the asymmetry was justified in principle, but that its level in favour of the third mobile operator for the second half of 2010 was excessive. ARCEP declared that it will set a new cap applicable to the third mobile operator for that period. Regarding the fourth mobile operator, once it becomes operational, MTR should be almost symmetric and oriented towards costs.

ARCEP issued a decision in July 2009 on the market for wholesale voice call termination on individual mobile networks in the French overseas territories for the year 2010. The Commission commented the notification with respect to the asymmetry of the voice call termination of the overseas territories operators, and to the necessity of a coherent European approach in the regulation of wholesale mobile voice call termination rates.

ARCEP issued a notice in December 2009 to the incumbent and the second largest mobile operator due to delays in their 3G coverage of the territory, fixing binding schedules to meet their respective coverage commitments. On a related note, French mobile operators have been expressing concerns regarding the opinion shift of the public, which has become wary of exposition to radio waves, and often opposes installation of new equipment, or demands substantial reduction of the power of transmitters. A working group composed of operators and experts was created in 2009, in order to research the effects of mobile networks' electromagnetic waves on human health.

### *Roaming Regulation*

No particular problems were reported in 2009 concerning the implementation of the revised Roaming Regulation, save for the persisting issue of bill shocks that was generally related to data traffic. In most cases the retail prices were set at or very close to the maximum level indicated by the Regulation. Operators claim that the period for the technical implementation of further measures stipulated by the Regulation for 2010 is too short. According to the operators, roaming traffic decreased, which they explain by a decrease in business travels due to the global economic downturn.

An amendment to the Postal and electronic communications code extended the applicability of the Roaming Regulation to communications between Metropolitan France and its Overseas Territories.

## **Fixed**

### *Market situation*

The incumbent's market share remains robust. The market share of VoIP operators on fixed calls (by volume of traffic) is still high above the EU average of 14.5%, compared to 39.7% in France as of December 2008 (and 43.7% as of July 2009). The number of active operators that are actually offering publicly available telephony services decreased in 2009 to 31 from 38 as of March 2008.

Concerning the distribution of voice traffic in terms of total call volume, fixed voice traffic continued to decrease, as it represented 54% of voice traffic, while mobile voice traffic accounted for 46% as of December 2008, compared to a ratio of 55% versus 45% the previous year.

Competition slightly increased due to continuing convergence between mobile and fixed, evidenced by the entry of one of the mobile operators with an innovative quadruple play offer on the fixed market. Flat-rate offers (excluding fixed-to-mobile calls) became a standard retail product in 2009.

## *Regulatory issues*

The association of alternative operators requested ARCEP to open sanction proceedings against the incumbent, based on the presentation of the incumbent's cost-accounting and accounting separation for the year 2006. It claimed that the incumbent overcharged the alternative operators on the market for fixed access and interconnection, as evidenced by surplus funds of around €390 million on the incumbent's published accounts relating to such markets for the year 2006. In June 2009 ARCEP decided not to pursue the proceedings. It invoked the fact that in the course of the investigations the incumbent reduced its rates, taking effect retroactively as of 1 January 2009. Furthermore, the alleged overpayment may have resulted from the fact that the incumbent is not allowed to offer bitstream access at a price that is too low, which would discourage alternative operators from investing into unbundling in less densely populated areas. ARCEP concluded that it had no power to decide retroactively on sanctions for rates that it itself approved for 2006 and 2007. Alternative operators envisage seeking compensation for the overpayments in civil Court proceedings.

## **Broadcasting**

### *Market situation*

The broadcasting market shows platform competition and different technical options, between terrestrial television (analogue and digital), cable, satellite and IPTV. According to the competent authority, digital terrestrial TV reinforced its position as the main platform with 42.6% of households, whereas exclusive analogue terrestrial TV has decreased to 27% of households as of July 2009 (in comparison to the ratio of 31.7% versus 29.1% as of July 2008). Cable represents about 12% of households, and the satellite figure is about 25.2%, whereas IPTV is used by about 26.7% of households (compared to 22% of households that were subscribed to a bundled offer that included IPTV as of July 2008).

Almost 44% of ADSL subscribers (i.e. 7.7 million as of June 2009) have the possibility to access TV via ADSL, which is 2.5 million more than one year before. Alternative operators offer IPTV in the unbundled zones. Outside these zones, they use the incumbent's bitstream offer, which does not enable IPTV.

Digital terrestrial TV (DTTV) continued to be deployed, and according to the National Broadcasting Regulator, (*CSA - Conseil supérieur de l'audiovisuel*) it covered 89% of the population of Metropolitan France in December 2009. According to the relevant law, national free-to-air broadcasters will have to cover 95% of the population by November 2011. Furthermore, for those *départements* where the coverage will tend to be lower than 91% of the population, CSA requested that the broadcasters ensure operation of all the sites that cover at least 500 inhabitants. Analogue terrestrial TV is planned to be switched off as of 30 November 2011. In 2009, a number of pilot switch-offs were carried out in several French towns. In July 2009, high definition DTTV covered more than 60% of the population of Metropolitan France, broadcasting five channels.

Mobile broadcasting (*télévision mobile personnelle*) has suffered from delays in 2009. In May 2008, 13 private channels were granted a licence for mobile television, together with three pre-selected public services channels. During 2009, the operators did not conclude an agreement with the content providers on how to finance the deployment of a new network. The Government and CSA continued working on solutions to boost the development of mobile television. In October 2009 TDF (*Télédiffusion de France*) proposed to finance the

deployment of the network up to coverage of 17% of population, via an ad hoc company of TDF. The other option would be the deployment of the network by a new multiplexer operator financed by the mobile operators. The final decision of relevant actors is expected in early 2010.

### *Regulatory issues*

The Law on the Reduction of the digital divide amended the Audiovisual Law (*n° 86-2067 du 30 septembre 1986*) and established a special fund to support low-income households during the switch-over process. The conditions of this aid are specified in a decree adopted in December 2009. It should ensure a continued free reception of TV signal by households that receive only analogue terrestrial signal and are exempted from the payment of the audiovisual fee. Some on-site assistance is also envisaged for elderly and disabled citizens. Finally, inhabitants of zones where no DTTV coverage will be available will be provided with an aid in order to obtain other forms of TV reception.

In June 2009, ARCEP adopted a decision on the market for wholesale broadcasting transmission services of programmes in a digital terrestrial mode. ARCEP continues to regulate the non-replicable sites in this market.

The incumbent's fixed and mobile divisions have launched TV services, some of which being provided to their mobile and DSL subscribers on an exclusive basis. The Minister of Economy requested an opinion to be delivered by the NCA. The NCA issued in July 2009 its opinion concerning the possibility of Internet service providers to distribute TV content (such as French premier league football) exclusively. The authority stated that exclusive access must remain an exception, strictly limited in duration (one or two years) and scope, and that self-distribution (i.e. consumer access to content without a need to subscribe to Internet access from the operator) seems to balance the needs of end-users and parts of the value chain. The NCA further suggested that the regulator should set out clear rules for the exclusive distribution of TV content.

## **Horizontal regulation**

### *Spectrum management*

In 2009, the amendment to the GSM Directive allowed the use of the 900MHz frequency band also for systems other than GSM. In anticipation of this amendment, ARCEP had already decided in 2008 that the main mobile operators may use the 900 and 1800 MHz bands also for 3G services. In 2009, it was only the incumbent who took advantage of this possibility and deployed 3G services in the 900 MHz band in rural zones. Refarming of the 1800 MHz band has not yet started in France.

The deployment of WiMAX networks has been significantly delayed. Some WiMAX licences have changed holders through the secondary market. Public actors seem to be deploying more actively than private operators. This appears to be due to limited interest and absence of suitable equipment.

Discussions continued in 2009 on the method of attributing of the sub-band 790-862MHz in order to deploy very high speed broadband and mobile broadband on the whole territory. ARCEP launched a public consultation in March 2009. ARCEP will have to find a solution on how to divide the sub-band among a limited number of players, while avoiding creation of a

monopoly or duopoly. ARCEP plans to launch the tender procedure for the 790-862MHz sub-band jointly with the 2.6 GHz sub-band in mid-2010, following public consultation, and to grant licences by the end of 2010.

#### *Implementation of spectrum decisions*

France has generally implemented all spectrum decisions, or received respective derogations from the Commission. In October 2009, such a derogation concerned Decision 2009/381/EC on harmonisation of the radio spectrum for use by short-range devices, modifying Decision 2006/771/EC, with respect to the harmonisation of the 2400–2483.5 MHz frequency band. The derogation concerns the 2454–2483.5 MHz frequency band, on the grounds that there is a risk of interference with current military use. Consequently, France is authorised until 30 June 2012 to limit the power of data transmission systems and radio determination applications where the devices in question are used outside buildings.

A derogation has also been granted in relation to Decision 2008/477/EC on the harmonisation of the 2500-2690 MHz frequency band for terrestrial systems capable of providing electronic communications services, on the grounds of its current use for security purposes. France is to free the most densely populated areas already by the end of 2011, in order to limit the potential impact of the derogation on broadband coverage, and to cover at least half of the French population. The frequency band should be freed in all other areas by 31 December 2013, with the exception of Corsica, where it shall be made available by 31 May 2014.

The Commission services requested from the French authorities further information on the implementation of Decision 2008/411/EC on the harmonisation of the 3400 - 3800 MHz frequency band for terrestrial systems capable of providing electronic communications services and the abovementioned Decision 2008/477/EC.

#### *Rights of way and facility sharing*

The law on the modernisation of the economy (LME), which aimed inter alia at regulating the in-building sharing of the terminating segments of fibre networks, was implemented by several decrees in January and February 2009. Decree n° 2009-53 on the “right to fibre” specifies the right of any tenant and bona fide occupant to obtain access to a fibre network. The remaining four decrees stipulate the conditions for mandatory deployment of fibre wiring in new buildings built under building permits issued from 2010 on; outline the terms of the agreement between an operator and a building owner; impose the obligation on such an operator to inform other operators about this agreement; and impose on the operators the obligation to inform the State and decentralised public authorities ("*collectivités territoriales*"), upon request, about their infrastructures and their passive equipments. The operators consider the obligation to provide information to hundreds of decentralised authorities (and potentially up to 36 000 French municipalities) rather onerous and are also concerned by aspects such as the conservation and security of such collected information. It remains to be seen how these rules will be put into practice on a larger scale in the following years.

The provisions of the LME regarding the “right to fibre” and deployment and sharing ("*mutualisation*") of fibre in-building wiring, granted the power to ARCEP to set rules and conditions for access to in-house fibre optic lines. In December 2009, ARCEP adopted the relevant decision, together with a non-binding Recommendation on the practical implementation of the conditions of access to the very high broadband fibre network, which

aims at providing some practical and technical guidelines for the access to the in-building fibre network. The regulation is imposed symmetrically on all operators rolling out fibre lines into the homes of end-users, regardless of whether these in-building operators have significant market power (SMP). ARCEP's decision obliges them to provide access to their in-building fibre network to alternative operators. For the very densely populated areas (defined by ARCEP as being those areas where it is economically most profitable for operators to roll-out their own fibre networks into the homes), ARCEP also obliges any in-building operator to meet reasonable requests from other operators to roll-out extra, dedicated fibre lines on condition that the requesting operator is willing to co-invest. Additionally, in very densely populated areas, the in-building fibre connection point may be located within the private property limits. The decision also regulates tariff conditions and transparency of the access offers. The Commission invited ARCEP to carefully monitor the development of fibre network roll-out in France, impose other remedies on the SMP operator if the proposed symmetric regulation is not sufficient to ensure both competition and the interest of end-users, and to specify further the access pricing terms and conditions.

### *Administrative charges*

A unanimous reaction against the new charge of 0.9% of the electronic communications operators' turnover came from the telecoms sector, claiming inter alia a risk of reduction of investment in the climate of the economic downturn and risk of passing on the cost to consumers. The French Constitutional Court decided in March 2009 that the new tax was not in breach of the French Constitution concerning the principle of equality of all tax subjects before the law. However, the tax is imposed only on authorised electronic communications operators in that capacity. In August 2009, the Commission opened a formal investigation on State aid aspects, in order to examine whether the funding mechanism for the French national broadcaster as from 2010 complies with the State aid rules. In addition, the market players question the compatibility of the tax with Article 12 the Authorisation Directive, which provides that administrative charges should only cover the administrative costs for management, control and enforcement of the authorisations. Certain French operators decided to contest the tax in national administrative proceedings. The Commission services opened an infringement case on this matter in January 2010.

## **THE CONSUMER INTEREST**

### **Tariff transparency and quality of service**

In June 2009 the Ministry of Economy, Industry and Employment issued a decree on pricing information for calls to value added services. The customers have to be informed when the price of the call exceeds the price of a regular communication. This tariff information has to be provided through a free message lasting at least 10 seconds in the beginning of the call, and the increased tariff can apply only once the message is over. The decree entered into force on 1 January 2010 for the calls for which the price per minute from a fixed line exceeds €0.15, and will enter into force on 1 January 2011 for all other calls to the designated numbers. Furthermore, mobile operators agreed that calls to 0800 and 0810 numbers should be included in the mobile subscriptions from January 2010.

An association of French consumers envisages taking measures against the short validity period of pre-paid mobile cards in France, and the early expiry of the recharge period. This association also criticised the practice of certain operators which sell 3G data products to offer a speed that is in reality much lower than declared. The operators allegedly often fail to

inform their clients that the promised speed cannot be delivered due to technical constraints of the network.

Regarding tariff transparency of mobile services, the French National Consumer Council, in cooperation with the operators, prepared informative sheets that should facilitate the comparison of various offers of different operators. However, according to some mobile users, these sheets are difficult to find on the websites of particular operators.

ARCEP started reflections on the neutrality of the Internet, based on the principle of non-discrimination against different content providers and transparency in relation to consumers, taking into account technical and economical aspects. ARCEP intends to initiate public debate in the spring of 2010, while it expects to issue the first guidelines in mid-2010.

### **Universal service**

Following the judgment of the European Court of Justice on the French universal service designation mechanism in June 2008, and the respective amendment of French legislation, the participation in the designation mechanism is now open also to operators that are not able to cover the whole of the national territory. Following the calls for tenders for designating universal service providers, the Ministry of Economy, Industry and Employment adopted three decrees in November 2009, whereby it designated for the period of two years the incumbent as the provider of public pay phones and another company as the provider of directory enquiry services and of directories.

The designation of the incumbent as the provider of fixed access at a fixed location expired in March 2009, but the incumbent continued the provision of universal service at the request of the Ministry of Economy, Industry and Employment. Following the calls for tenders, in December 2009 the Ministry designated the incumbent as the provider for a period of three years. There have been discussions notably with the mobile operators regarding social tariffs for people with low income, to be offered on a voluntary basis. Alternative operators advocated an idea to include bundled offers in the universal service. Relevant public authorities are examining this issue.

An association of French operators launched a pilot center for the relay of calls for deaf persons. Client services of operators will in the future be in charge of this additional service, which should be co-financed by the public sector.

### **Users' access to the Internet and network management**

The long discussed provisions of Law on the diffusion and protection of creation on the Internet (the Hadopi Law) entered into force in November 2009. Under the original draft law, following two successive warnings to Internet users in cases of copyright infringement, Hadopi was intended to have the power to order Internet providers to temporarily suspend the Internet access of subscribers who illegally downloaded copyright protected content, subject to certain conditions. The French Constitutional Court concluded in June 2009 that the sanction powers conferred on the new administrative authority could lead to a restriction on a person's freedom of expression. Since such ultimate sanction powers should only reside with a judge, the provisions concerning the suspension of Internet access were annulled, while the law as such entered into force in June 2009. A new law, adopted in September 2009 by the Parliament (*Loi n° 2009-1311 du 28 octobre 2009 relative à la protection pénale de la propriété littéraire et artistique sur internet*, or "*Loi Hadopi 2*"), subsequently introduced a

suspension of the connection as a sanction for offences related to certain intellectual property infringements, to be judged by a single judge, potentially in simplified proceedings. The Constitutional Court ruled on Hadopi 2 on 22 October 2009, finding the law now to be in line with the Constitution, with the exception of one provision concerning the possibility to seek civil law damages by the same penal decision of the Court.

### **Number portability**

The average time for porting a fixed number was four days, and seven days for mobile numbers, as of October 2009, which is below the EU-27 average for fixed porting and above the EU-27 average for mobile porting. Porting is free for residential consumers; corporate clients usually pay, given the costs induced by a quantity of numbers that they port at once. Wholesale price of porting is €7.53 for fixed numbers, whereas porting of mobile numbers is free.

The total accumulated volume of ported mobile numbers, 4 410 500 in Metropolitan France (overseas excluded) as of October 2009, represented 7.6% of the mobile numbers. Mobile number portability seems to work quite well, following the launch of the one-stop-shop system in 2007. There were 1 663 600 movements during twelve months before October 2009, in comparison to 1 256 300 movements during the previous twelve months.

The volume of ported fixed numbers decreased and reached 2 571 600 during twelve months before October 2009, compared to 4 373 000 during the previous twelve months. The manual system has worked well so far only in the direction from the incumbent to an alternative operator, and ARCEP addressed a formal notice to all fixed operators in April 2009 demanding them to improve the system. An association of operators developed a new database for a direct exchange of information between the operators, based on ARCEP's decision of July 2009, which was approved by the Ministry of Economy, Industry and Employment in October 2009. The operation of the database of ported numbers was expected to be launched in the beginning of 2010 and will be financed by the participating operators. Interruption of service for the consumer shall be as short as possible, limited to the maximum of six hours from 2011 and to four hours from 2012.

On a related issue, the Law on the Reduction of the digital divide adopted in December 2009 introduced a tool that aims to facilitate the migration between Internet providers. The providers will have to offer their customers who decide to change provider the possibility to continue using their former e-mail address during six months following the termination of their contract.

### **Consumer complaints**

The number of consumer complaints tended to decline in 2009. This may be thanks to 2008 legislation ("*loi Chatel*"), with specific provisions on issues that are the object of frequent complaints by users. The operators have in general abided by the new law, although due to the activity of a consumer association one operator was fined and another one was brought before the Court for the non-respect of the consumer protection rules in 2009. Furthermore, voluntary undertakings were adopted in 2009 by one association of operators, in order to improve transparency and consumer protection, notably regarding the procedure for fixed number porting or for dealing with users suffering an unsolicited change of operator. A consumer association continues to point to undesirable practices of certain operators, such as

continuing billing after the termination of contract or the persistent low flexibility of contracts.

The sector of electronic communications has traditionally been subject to a large number of complaints from users regarding quality of service and contractual relations. The relevant Directorate of the Ministry of Economy, Industry and Employment received 35 000 complaints in 2007, but declared that in 2008 this figure decreased by 26%, probably due to entry into force of the law on consumer protection. The relevant unit of ARCEP received 8 000 complaints in 2008, which was less than in 2007 (10 000). The role of the Mediator of electronic communications is perceived as positive. He dealt with 13 052 submissions as at 30 September 2009 in comparison to 20 000 submissions for 2008, with an average response time of two months. Mobile operators also introduced a telephone number for reporting SMS spam, which received 36 600 notifications as of 30 September 2009. It appears that this number would attract more messages if the notification SMS was free of charge.

### **European emergency number 112**

While a major part of emergency calls appears to be still made to the traditional numbers 15, 17 and 18, some shortcomings have been reported in 2009 regarding the operation of 112. There seem to be issues with the location of the caller in a manual push mode, the precision of the location for mobile calls and the call handling by the Public Safety Answering Points. According to the French authorities, VoIP operators providing Publicly Available Telephone Services (PATS) meet the requirement to ensure that their users can access 112 as well, but there is a question of location of callers from portable computers using a mobile data connection. An association of operators is examining the possibility of an overall improvement of the situation. The Commission is closely following the issue.

Furthermore, only 27% of French respondents knew that that they can reach emergency services from anywhere in the EU by calling 112, and a relatively high percentage (15%) answered a wrong number.<sup>138</sup>

### **Harmonised numbers for harmonised services of social value (116)**

Regarding numbers based on 116, the number 116000 has been assigned in France to the service for missing children and is now operational. The assignment of the number 116111 to a helpline for children to call for assistance was subject to examination in 2009.

### **Must-carry**

The French legislation in force imposes on operators of electronic communications a must-carry obligation in relation to local public channels which provide information on local life, and which submit a request to be carried. This obligation must be fulfilled for free, and is supposed to cover also DSL and cable distribution, but not satellites. The cable operators consider this situation as discriminatory and also criticise the obligation imposed in 2009 to bear the costs of transmission of signal between the place of edition of the channel and their network.

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<sup>138</sup> Eurobarometer Flash survey on the European emergency number 112 (February 2010).

## **ePrivacy**

The Law on the diffusion and protection of creation on the Internet empowered agents of the newly created supervisory authority to obtain from electronic communications operators information relating to the traffic on their networks, in particular personal data such as IP addresses of the clients whose Internet connection was used for unauthorised diffusion of copyright protected content. This raised concerns among Internet users but was declared constitutional by the Constitutional Court. The impact of the new law may become visible in 2010 when the new anti-piracy authority Hadopi becomes operational.