

CHAPTER 5

Consumers

A. Taking consumer interests into account

The Authority has no direct power to address the issues encountered by users of telecommunications services in the areas of consumer rights or contracts. It is essentially through the development of competition that the regulatory framework aims to increase consumer satisfaction levels.

ARCEP is responsible, by law, for ensuring “*effective and loyal competition which is beneficial to consumers*”¹. To this end, ARCEP continues to implement asymmetrical regulation, in other words regulation that imposes obligations only on SMP operators in a bid to scale back dominant positions in telecommunications markets, and in particular, that of the incumbent carrier.

Cf. CPCE Article L.32-1.

The benefits created by the regulator’s efforts to open telecommunications markets up to competition have been considerable. Estimates indicate that between 1998 and 2005, consumer prices have decreased, on average, by just over 30% while consumption levels have risen by close to 2.5 times, which translates into consumer gains of more than €10 billion during that period².

² - Cf. ARCEP 2006 annual report, pp. 449-453.

The remarkable broadband penetration rate is a perfect illustration of the positive effect that new entrants’ contribution to market competition has on innovation and prices. Unbundling made great strides between 2000 and 2007, and helped spur the Internet’s growing ubiquity. Subscriptions are currently priced at around 30 euros a month, on average, for ever-higher connection speeds (now up to 25 Mbps), and the array of available services has been expanding steadily – with subscriptions now including Internet access, calling and television services. The market took another step forward in 2007 thanks to full unbundling (3.8 million lines at the end of the year).

At the same time, the French regulatory framework was careful to ensure that all consumers might benefit from the dividends of competition, with the implementation of universal service. This mechanism guarantees access to the fixed telephone service at a price that is not affected by the user’s geographical location, and provides for reduced subscription prices for categories of consumers that meet certain socio-economic criteria (referred to as social tariffs). Universal service

represents a cost of around €30 million for its provider, namely France Telecom, and is financed by a contribution of roughly 1 % of the sector's turnover.

The regulatory framework ensures greater protection for consumers via specific measures, which include:

- 3 - See below, C. ◆ a ceiling tariff for international roaming calls³ ;
- 4 - See below, B. ◆ provisions for monitoring the quality of the service provided by operators and telecommunications service providers⁴ ;
- 5 - See below, E. ◆ number portability to make it easier for consumers to switch operators⁵;
- 6 - See below, F. ◆ a universal directory⁶.

These various measures require the implementation of actions that fall within the regulator's purview, juxtaposed with more specific and more direct involvement from ARCEP on issues that concern consumers.

1. ARCEP actions

1.1 Better informing consumers

Disputes involving consumers and the telecommunications sector are monitored by the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*) or the electronic communications mediator, before being ruled on by courts of First Instance (Court of First Instance and Commercial Court).

Although the Authority has no specific power to manage disputes that involve consumers, it does hold talks on a regular basis with consumer protection associations, and contributes to informing users of telecommunications and postal sector issues.

Since its inception, the Authority has, however, provided consumers with indirect support through its Consumer Division. The goal has been to provide a direct response when consumers request clarification on offers resulting from regulatory decisions, and to back a consumer's request for dispute settlement with their operator – in which case the Authority forwards the file to the operator.

ARCEP strengthened its consumer-related actions considerably in 2007 by:

- ◆ setting up a consumer committee;
- ◆ and creating a dedicated website for consumers: telecom-info.fr.

The Authority also undertook an internal reorganisation to make its consumer-oriented initiatives more effective. As a result, it created a Consumer Relations Department in 2007. Part of the General Directorate, it takes over the responsibilities of the Authority's former Consumer Division. ARCEP also formed a consumer committee and launched a dedicated website for consumers:

7 - See below. telecom-info.fr⁷.

1.1.1 Assisting consumers on a daily basis

In 2007, ARCEP received 10,000 queries from consumers by post, e-mail and phone: 3,500 by post, 6,000 by phone and 1,000 by e-mail.

Analysing queries also helps the Authority to formulate precise responses which can be included in the FAQ, along with specific explanations.

In most cases, the queries concern consumer rights and contractual issues. As ARCEP's role is confined to that of "mediator", it may inform operators of recurring problems that have come to its attention. The Authority may, for instance, detect problems that have arisen in the implementation of new offers that operators are launching in the marketplace.

The indirect actions taken by ARCEP can thus act as incentives: by alerting operators of problems that have been brought to its attention, it will encourage them to find solutions.

1.1.2 Consumer committee

Since its inception, the Authority has held meetings with consumer associations on specific topics, generally concerning a particular current issue. These dedicated meetings have revealed the participants' mutual interest in discussing subjects pertaining to regulation.

To develop and formalise these meetings, the Authority proposed the creation of a working structure devoted to discussing consumer-related issues that fall under the purview of ARCEP's responsibilities: the Consumer committee.

In addition to consumer associations and ARCEP, the committee brings together the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*), the Ministry of Industry, that National Consumer Institute (l'Institut national de la consommation) and the electronic communications mediator. Operators may also be invited to attend if the topic being discussed concerns them.

The goal of the Consumer committee is to enable the flow of information between the participants within a permanent structure, in order to identify problems and facilitate resolution through discussion. It also enables associations to address the Authority to obtain details on its decisions or the manner in which markets operate.

The Consumer committee is not meant to replace other entities (the national consumer agency, CNC (*Conseil national de la consommation*), the committee devoted to abusive contractual clauses or the courts, or to resolve disputes. It also operates separately from the dedicated roundtables organised by the Secretary of State for consumer affairs (*secrétariat d'Etat à la Consommation*) and does not take part in preparing draft legislation or regulation.

The first meeting of the Consumer committee was held on 17 December 2007, and was followed by three more technical meetings in the first half of 2008 :

- ◆ in February 2008, on the topic of ultra-fast broadband (optical fibre sharing, future legislation);

- ◆ in March 2008, on postal sector issues (quality of service, access to letter boxes in buildings equipped with a Vigik system, sending small items at the letter tariff);
- ◆ in May 2008, on telecommunications issues such as the quality of access services and fixed and mobile call termination

1.1.3 Dedicated website for consumers

ARCEP has created a website dedicated specifically to telecommunications service users: Telecom-info.fr

8 - Cf. www.arcep.fr.

The site is separate from the official ARCEP site⁸ which is targeted more to sector players than to the general public. Although the ARCEP site does have a section devoted to consumers, it seemed appropriate to create a distinct and clearly identified platform to provide consumers with a more accessible set of information.

Informative, practical and educational, Telecom-info.fr should allow consumers to access all of the information they require to better understand how the sector works and what is involved in its regulation. Updated and expanded on a regular basis, its content and format will evolve according to users' needs and suggestions.

1.2 The Authority's contribution to strengthening consumers' rights

9 - ARCEP Opinion No. 07-0857 of 22 October 2007.

In 2007, ARCEP issued an opinion⁹ on draft legislation on developing competition for the benefit of consumers – referred to as the “Chatel” Act (loi “*Chatel*”)¹⁰.

10 - Law No. 2008-3 of 3 January 2008 on the development of competition for the consumer's benefit, JO of 4 January 2008.

Adopted on 3 January 2008, the “Chatel” Act reinforces the consumer protection code to provide, among other things, a clearer framework for contractual relations between electronic communications service providers¹¹ and their customers. Its provisions came into force on 1 June 2008.

1.2.1 ARCEP opinion on the “Chatel” Act draft legislation

11 - NB: the provisions contained in the “Chatel” Act are aimed at all providers of fixed, mobile and Internet services, and applies to consumers and not business customers.

In accordance with the regulatory framework¹², the Minister of the Economy, Finance and Industry called on the Authority to issue an opinion on the articles in the draft legislation that pertained to the electronic communications sector.

In particular, these articles concerned:

- ◆ controlling the cancellation periods for electronic communications service contracts and setting time limits for refunding prepaid calling minutes and the deposits consumers paid when subscribing to these contracts;
- ◆ not charging consumers for the waiting time on technical support, after-sales and customer support calls to their electronic communications service providers made via the service in question, and the ability to reach these services by calling a non-surcharged number using any other network.

In its opinion on this draft legislation, the Authority issued a favourable opinion on the proposed provisions.

Among other things, it underscored the fact that imposing time limits on deposit refunds and controlling the contract cancellation notice process will help lift impediments when changing operators. In its opinion on the earlier pro-consumer draft legislation¹³ in 2006, the Authority already expressed the view that contract cancellation mechanisms and, more generally, “exit costs” had a considerable impact on the competition momentum in communication services

13 - ARCEP Opinion No. 06-0847 of 7 September 2006.

markets. As underscored by the Nasse¹⁴ report: ‘by making it more expensive to “exit”, they force customer loyalty by preventing competition between vendors’.

In its work devoted to improving the terms governing number portability, ARCEP had denounced the exit costs created by the need to give notice of cancellation several months in advance as being purely artificial and particularly prejudicial to consumers. In its opinion it also specified that the second point of dissatisfaction that emerged from the complaints gathered by the consumer affairs directorate, DGCCRF, concerned the cancellation of electronic communications service contracts, particularly mobile telephony ones.

The Authority also supported the proposal to make technical support call waiting times free of charge for customers calling on the telecom network in question, and to provide non-surcharged access to these services for calls made from any other network. It was the Authority’s view that the proposed measure was a balanced one, in terms of consumer interests and the technical restrictions currently imposed on French operators. The measure would thus put an end to the use of surcharged numbers by telecommunications service providers which bill technical support services indirectly, despite having direct and more transparent billing modes in place for their customers (flat rate, per-call or per-minute billing for processing the request, for instance, in cases where the customer is to be billed for the service provided).

Here, in its opinion ARCEP recalled that the development of the telecommunications sector must not occur at the expense of the quality of the service delivered to consumers, despite which consumers apparently continue to come up against a range of technical, contractual and financial difficulties, and are rather dissatisfied by the way quality of service issues are handled by their providers’ technical support departments.

Also worth noting is that the law mandates the Authority to identify surcharged numbers in the national numbering plan, as part of its assignment process.

1.2.2 Proposed amendments resulting from the ARCEP opinion

As a consequence of this opinion, parliamentary amendments brought new provisions concerning telecommunications to the draft legislation.

Of particular note, supported by the government, Parliament limited contractual lifespans to 24 months and added that, when a contract contains a commitment clause of more than 12 months, the operator must also offer the option of the same service with a 12-month commitment, at an attractive (non-disqualifying) price. Moreover, customers must have the option of cancelling their contract at the end of the 12-month period (13th month), in exchange for a set sum equal to a maximum of one quarter of the outstanding balance due on the contract.

ARCEP is very pleased with the introduction of these provisions. As it had indicated previously, in the opinion adopted in September 2006¹⁵, it is in favour of a limit on contract commitment/renewal periods, as much for the flexibility that it provides for end users as for the likely increase in retail market fluidity that it would create, resulting in a greater degree of competitiveness that would be beneficial to consumers.

The Law also stipulates that, in two years’ time, ARCEP must draft an

14 - Report on “exit costs”, assigned to Philippe Nasse by the Minister of Industry, 24 May 2005. Available (in French) on the Ministry website: www.industrie.gouv.fr.

15 - ARCEP Opinion No. 06-0847 of 7 September 2006.

assessment of the impact of these provisions on contract commitment periods and cancellation terms.

Lastly, mobile operators must bill customers for calls to directory services at the same price as a “normal” national call (included in the flat rate), to which would be added a surcharge earned by the directory service provider. In addition, when the service provider offers the option of connecting the caller to the number they were looking for, it must inform the consumer of the cost of this service before providing it, with the user’s consent.

2. ARCEP actions undertaken as part of its regulatory mandate

In accordance with the European regulatory framework, ARCEP is devoted to enabling the development of facilities-based competition on those portions of the network where it is economically viable. By allowing alternative operators to become increasingly independent of the incumbent carrier’s services, facilities-based competition brings about lasting competition which, in time, leads to lighter regulation and possibly no regulation at all. It also enables differentiation between the operators’ services and provides an incentive to innovate which, in turn, stimulates the market in a manner that benefits consumers – as revealed by the way in which the electronic communications sector, and the broadband market in particular, has evolved over the past ten years.

To stimulate this competition, through the coordinated regulation of wholesale markets at different levels, the Authority will provide incentives for alternative carriers to invest progressively in their own networks apace with the expansion of their subscriber base. The efficiency of this “ladder of investment” model also relies on the interoperability and interconnection obligation imposed on all operators.

The dynamic implementation of this process requires France Telecom to provide suitable wholesale offerings (e.g. LLU, WLR) that enable its competitors to replicate its retail offers as they are introduced into the marketplace¹⁶.

16 - Cf. Part 4, Chapter 3, D.

But one of the Authority’s roles has a more direct impact on consumers, namely its monitoring of retail markets.

2.1 Prices

ARCEP regulates retail prices in exceptional cases only, as most of its actions concern wholesale markets. The decreases that the Authority has ordered in the tariffs that operators bill one another (wholesale tariffs) can thus be carried over directly to retail prices, e.g. the tariffs that mobile operators charge fixed operators for transmitting their calls¹⁷, or those that mobile operators charge one another for routing text messages.

17 - Cf. Part 4, Chapter 3, C, 1

In 2006, ARCEP also initiated European discussions on the excessive price of international roaming – suggesting a decrease in wholesale prices and supervision of retail tariffs. The European Commission finally adopted a regulation¹⁸ in summer 2007 that imposed a considerable decrease, at the end of the summer, in the price of mobile calls made or received by a French consumer in a roaming situation inside Europe. Application of this regulation was

18 - EC Regulation No. 717/2007 concerning roaming on public mobile telephone networks within the Community, OJEC of 29 June 2007.

extended to the specific situation of mobile roaming between Metropolitan France and the French overseas territories¹⁹.

19 - See below, C.

It has also created a framework for universal service calling prices, for two tariff baskets in 2006: one which is representative of a subscriber in Metropolitan France, the other of a subscriber in the overseas territories²⁰. As a result, a portion of the sector's productivity gains are passed on directly to these subscribers, and not only to the heaviest consumers. This framework is in effect until 2008.

20 - See below, E.

Moreover, ARCEP has given particular attention to value-added services by taking measures aimed at correcting market malfunctions of which it is aware²¹. It will continue its efforts in 2008, particularly in the area of improving consumer information with respect to pricing (the transparency and clarity of tariffs).

21 - See below, G.

2.2 Quality of service

Because monitoring only prices is not enough, ARCEP also takes an interest in the quality of the service on offer, which must not decline as competition increases but, quite the contrary, should improve²².

22 - See below, B.

Among other things, the Authority has included minimum QoS thresholds in mobile operators' licences, and has required them to publish service coverage maps, to be verified by the regulator. For several years now, ARCEP has also performed surveys on the services offered by mobile operators, whose results it publishes.

It has also been monitoring the quality of wholesale services since June 2005. Every month, France Telecom publishes parameters of the quality of the wholesale services it provides to alternative operators and to Orange, for its retail offerings. At the Authority's request, in 2007 the incumbent carrier expanded the list of parameters to be taken into account when measuring this quality of service.

ARCEP has also worked on establishing the method used for monitoring the quality of the fixed telephone service and of ISP retail offers. These new QoS parameters could be published in 2008.

The Authority will also be performing new surveys on the quality of directory services in 2008 – the last one having been in 2006 – to ensure, among other things, that universal directory lists can indeed be accessed via 118 numbers.

2.3 Number portability

Since 21 May 2007, consumers in Metropolitan France have had the option of switching mobile operators without having to change their number, within a maximum 10 days. Users now address themselves directly and solely to their new operator of choice which will process all the necessary steps on the customer's behalf (single-step process), including the *de facto* cancellation of their subscription contract with their old operator and the associated cancellation notice. This system has also been in place in the Antilles Guyana region since 1 April 2006 and in the Reunion-Mayotte region since 1 July 2007.

These legislative changes have made it possible to update the mobile number retention mechanisms such that consumers can benefit from a faster, simpler

and better quality service. By the end of Q1 2008, 2.15 million numbers have been ported since the implementation of the mobile number portability process (1 July 2003), of which half since the implementation of the one-step process.

The Authority made a substantial contribution to these changes, and supports ongoing improvements to the system that seeks to provide a framework for the relationships between operators on issues tied to the financial terms of interconnection agreements.

As concerns fixed portability, for which the one-step process and a maximum porting time of 10 days has been in effect since 2003, the work being done by ARCEP and operators is focused on optimising the porting process (automation, harmonisation, direct routing) and improving the quality of service, particularly for porting operations between France Telecom and alternative operators. In 2007, three working groups met under the guidance of ARCEP to guarantee optimal porting terms for consumers wanting to keep their fixed telephone number when they opt for an unbundled solution, for instance.

2.4 Universal service obligations

ARCEP is responsible for ensuring that France Telecom fulfil its universal service obligations, which include the provision of a quality telephone service nationwide at an affordable price²³.

23 - See below, E.

It enforces universal service tariffs either through a multi-year schedule, or by opposing their implementation through a justified decision or approving it through a favourable opinion.

The Authority also issues an opinion on the level of the social tariff, which provides a reduction in eligible customers' telephone bills. In 2008, ARCEP underscored the importance of guaranteeing that social tariffs be maintained for the consumers concerned through compensation from the universal service fund.

In 2007, France Telecom was designated by ministerial order as the provider responsible for the universal directory and universal directory services components for a duration of two years. In 2009, a call for candidates will make it possible to designate provider(s) of the universal telephone and public payphone services. With the application of the Law of 3 January 2008, the methods for designating universal service providers will be relaxed, which includes the possibility of designating several operators as the providers of the same component.

2.5 Making a quality universal directory and directory services available to the public

Since 2004, ARCEP has devoted considerable efforts, in tandem with operators and universal directory publishers, to making a high quality universal directory and directory services available to the public²⁴. The goal has been to guarantee the protection of subscribers, users and consumers' rights (including the right to be listed, free of charge, in the directories) and the privacy of their personal data, while ensuring that the directories contain relevant and consistent information, as well as an efficient and reliable system for making the lists of subscribers and users available to both operators and publishers.

24 - See below, F.

After having consulted with the different players concerned, including consumer associations, the Authority adopted a decision in November 2006²⁵, which was approved by the Minister responsible for electronic communications on 8 March 2007.

25 - ARCEP Decision
No. 06-0639
of 30 November 2006,
JO of 24 March 2007.

In early 2007, having noted that there were serious gaps in the creation of operators' universal directory lists, the Authority undertook several measures to remedy the situation, including penalty procedures and the instigation of administrative enquiries.

3. Actions in support of disabled persons

Existing regulatory provisions require the Minister responsible for electronic communications to ensure that the interests of the regions and the users, **notably disabled users**, are taken into account when providing access to services and to equipment²⁶.

26 - Cf. Article L.32-1, II,
Para. 7.

In the fixed telephony market, the law stipulates that the universal service provider must ensure that disabled persons have access to the universal service, provided that the enabling technologies are available and can be deployed at a reasonable cost.

Several commitments were made to facilitate access for disabled persons to fixed telephony services:

- ◆ access to information on pricing and contractual and billing documents that is adapted to the different types of disability (large print for the visually impaired and Braille translations for the blind);
- ◆ a service for exchanging written messages (mini-messages) over fixed phone sets for the hard of hearing and the deaf;
- ◆ free access to directory services for persons incapable of consulting the directory due to visual impairment;
- ◆ access to public payphones for persons with a physical or visual disability.

27 - Available (in French) at
www.afom.fr.

In the mobile telephony sector, it is primarily an accessibility charter²⁷ that is applied – the first of its kind and produced by the sector as a whole, under the direction of the French mobile operators association (AFOM)

On 10 May 2005, the three mobile operators in Metropolitan France (Bouygues Telecom, Orange and SFR) committed to enabling access to



mobile telephony services for disabled persons through their signature of the AFOM charter.

To this end, and in concert with users' associations, the operators made commitments pertaining to:

- ◆ mobile handsets adapted to the needs of disabled persons;
- ◆ the development of services that allow disabled persons to be more autonomous;
- ◆ informing the public of the offers tailored to the needs of disabled persons;
- ◆ keeping abreast of technological developments.

Application of the charter includes monitoring and an annual scorecard. The scorecard for 2007, which was presented at a joint press conference given by the Inter-ministerial delegation to disabled persons, DIPH (*Délégation interministérielle aux personnes handicapées*), AFOM and ARCEP on 4 December 2007, underscored the following points in particular:

- ◆ the increasing upstream involvement of handset manufacturers. Their cooperation is particularly important to developing handsets and offers that are as well adapted as possible to each disability. Their signature of the charter in 2007 is a strong sign of their commitments in this direction;
- ◆ a broader selection of adapted handsets, particularly in terms of display, streamlined features and the ability to configure the devices according to the needs of the disabled user;
- ◆ increased development of services based on speech synthesis, speech recognition and text-based communication (dedicated SMS and MMS flat rates);
- ◆ the distribution of a large number of information charts and brochures, along with ongoing awareness-raising and training campaigns aimed at vendors.

In addition to the joint commitments made as part of the AFOM charter, it should be noted that mobile operators are also acting individually, for instance by offering solutions tailored to a given type of disability, or by selecting the handsets they will sell from among those deemed the most adapted to the needs of the disabled.

ARCEP will continue to contribute to discussions on this topic in 2008, and to monitor the actions taken by the operators.

B. Monitoring quality of service

The quality of the service rendered shapes the relationship between an operator and its customers, and is one of the keys to successfully opening the market up to competition.

28 - Cf. CPCE Article L32-1, Para. 12.

In its bid to inform consumers as well as possible²⁸, ARCEP performs quality of service surveys on a regular basis.

29 - Decree No. 2005-862 of 26 July 2005, JO of 29 July 2005.

A recent decree²⁹ specified the rules concerning the conditions of permanence, quality and availability of the network and the service. Of particular note: an operator must take the necessary measures to ensure the permanent and ongoing operation of the electronic communications network

and services, along with the measures needed to remedy, as quickly as possible, the effects of network failures that cause the quality of the service to deteriorate for all or a portion of customers.

Article D.98-4 of the CPCE also specifies that all operators are obligated to report on the quality of their service, based on parameters defined by ARCEP.

1. Mobile telephony

In 2007, for the tenth year in a row ARCEP conducted a quality assessment survey on 2G and 3G mobile telephony networks in Metropolitan France, to measure how they are perceived on a daily basis by the three operators' customers. Aside from service availability, the survey also seeks to assess the level and quality of the services marketed by the operators, particularly:

- ◆ the auditory quality of telephone calls;
- ◆ the text messaging service (SMS);
- ◆ the multimedia messaging service (MMS and equivalent i-mode e-mail);
- ◆ packet-mode data transfers;
- ◆ browsing on mobile Internet sites (WAP and i-mode);
- ◆ videophony.

The 2007 survey was conducted by the firms Directique and Assystem which were responsible, respectively, for testing voice calls and data services, based on the methodology and specifications defined by a working group composed of mobile operators, and submitted for consultation to a user association.

To gain a better understanding of customers' mobile usage throughout the year, the survey was spread out over a period of three months, based on over 11,000 points of measurement on each of the operators' GSM and UMTS networks. The results of this survey, which was launched in March 2007 and conducted between April and July of that year, were published in November 2007³⁰.

30 - Available in the annexes and on the ARCEP website: www.arcep.fr.

The surveys revealed:

- ◆ the excellent quality of voice and text messaging services;
- ◆ improvements in voice parameters in cities with a population of over 400,000 residents, and on the main transportation arteries;
- ◆ satisfactory results for photo transmissions over multimedia messaging services (MMS and i-mode mail) and for videophony services.

File downloads tests made it possible to establish real performance ranges of 3G networks and its HSDPA evolutions in summer 2007, at which time commercial solutions were limited to a theoretical bitrate of 1.8 Mbps.

Conducted in cities with a population of more than 400,000, these tests revealed that:

- ◆ bitrates for downloading 5 MB files on the fastest 3G networks reached 1.4 Mbps;
- ◆ the average download rates on the networks of operators that have rolled out 3G were 887 kbps;

31 - Source: ARCEP.

◆ on the fastest networks, the upload speed for a 1 MB file reached 340 kbps.

32 - ARCEP public consultation of 19 December 2007, available in the annexes and on the ARCEP website: www.arcep.fr.

2. Fixed telephony

New telephone service offerings, particularly VoB (voice over broadband) solutions, are currently coming to compete with the “classic” telephony offers carried over the PSTN: at the end of 2007, VoB accounted for 32% of the calls made from a fixed line³¹.

To enable consumers to compare the respective quality of these different services, and to encourage operators to monitor and improve the quality of the services they deliver, it is important that ARCEP track the quality of the services being marketed by operators using a set of specified parameters.

This is why ARCEP launched a public consultation in late 2007³² to gather feedback and opinions from the players on the future system, and particularly on the QoS parameters that operators will be required to publish.

The Authority suggested that a list of quality of service parameters be established that reflect how the service operates from the customer’s viewpoint, and on the quality of operator’s support services. To do so, it relied on:

- ◆ ETSI publications³³;
- ◆ the list of quality of service parameters published in the European Universal Service Directive³⁴;
- ◆ the parameters contained in the Order of 16 March 2006³⁵.

The planned system seeks to implement the quality of service provisions contained in the European and national regulatory frameworks³⁶ which require operators to publish individual, comparable, adequate and up-to-date information on the quality of the fixed telephony service³⁷ supplied to end users. This list of parameters and the methods to be employed by the operators for measuring and publishing the results will be specified in 2008, in an ARCEP decision whose provisions will become mandatory after receiving the approval of the Minister responsible for electronic communications.

The measurement of the parameters used for this purpose is not intended to replace or limit measurements of the quality of the fixed telephony service that operators have already put into place to track the operation of their service. Its goal is to have a clear and simple means of providing consumers with information on the quality of the service that they use.

Quality of service parameters contained in the Universal Service Directive

Annex III of the European Universal Service Directive lists nine quality of service parameters:

- 1) Supply time for initial connection;
- 2) Fault rate per access line;
- 3) Fault repair time;
- 4) Unsuccessful call ratio;
- 5) Call set-up time;

33 - ETSI Guide 201 769 “Speech Processing, Transmission & Quality Aspects (STQ) - QoS parameter definitions and measurements - Parameters for voice telephony service required under the ONP Voice Telephony Directive 98/10/EC”, and ETSI Guide 202 057 “Speech Processing, Transmission and Quality Aspects (STQ) - User related QoS parameter definitions and measurements”.

34 - Cf. Annex III of Directive 2002/22/EC of the European Parliament and Council of 7 March 2002, concerning the universal service and users’ rights with respect to electronic communication networks and services (Universal Service Directive).

35 - Order of 16 March 2006 concerning electronic communication service contracts, adding voice call QoS parameters.

36 - Article 22 of Directive 2002/22/EC of the European Parliament and Council and CPCE Article D.98-4.

37 - Reminder: the telephone service delivered over mobile networks is subject to a dedicated annual survey performed by ARCEP, and thus not affected by this provision.

- 6) Response time for operator services;
- 7) Response time for directory enquiry services;
- 8) Proportion of coin and card operated public pay-telephones in working order;
- 9) Bill correctness complaints.

3. Broadband

3.1 ISP retail offers: quality of service parameters for informing consumers

Quality of service (QoS) is an increasingly significant issue for the telecommunications sector. Some Internet service providers (ISP) have decided to publish quality of service parameters for their retail offers. But because they are not measured and identified in the same way across the board, it is impossible to compare the parameters from one ISP to the next.

This is why, in autumn 2007 as part of the ISP Committee, comprised of the leading residential Internet access providers in France, and which meets on a regular basis, the Authority suggested to the ISPs that, together, they define a minimum set of common quality of service parameters for broadband retail offers.

The goal is to define parameters that are meaningful for consumers, and specific enough to ensure that all ISPs employ exactly the same methodology.

The outcome of the work led by the Authority was the establishment of three parameters: delivery time, fault repair time and customer service.

After a running-in period, these parameters could be published some time in 2008.

This process is in line with the public consultation launched by ARCEP in December 2007 on the system to be used for monitoring the quality of the residential telephone service on fixed networks.

3.2 Broadband wholesale offers

To enable the establishment of lasting competition that benefits consumers, alternative operators need to be able to offer their subscribers broadband access services with a satisfactory level of quality, in both the residential and enterprise market.

The quality of the broadband access offers that alternative operators market nevertheless depends not only on the quality of their own services but also on the quality of the wholesale, unbundling and bitstream solutions purchased from France Telecom, and on which their own access offers are based.

The Authority works to ensure that the quality of the wholesale offerings supplied by France Telecom allows alternative operators to commit to providing end users with service quality comparable to that delivered by the incumbent carrier's retail division, Orange.

At the Authority's request, every month since June 2005, France Telecom has posted a set of parameters³⁸ that measure the quality of the wholesale services it

38 - The history of QoS parameters published by France Telecom is available on the ARCEP website: www.arcep.fr.

provides to alternative operators and that of Orange retail market offerings. These parameters have made it possible to measure the evolution of the quality of service and, because they are available for public viewing, have provided France Telecom with an incentive to implement the technical and operational solutions needed to improve it, which naturally benefits consumers.

ARCEP takes a particular interest in the way that quality of service is evolving, particularly in terms of supply times for delivering access and for fault repair. The Authority also works in tandem with France Telecom and alternative operators to continue to improve the processes being used.

France Telecom currently appears to be ensuring a comparable quality of service for its retail offerings and the wholesale solutions it offers alternative operators. Average delivery times for wholesale offers also appear to be satisfactory. There is, however, still room for improvement in the area of after-sales services and in cases of “production queues” in both the enterprise and residential market.

At the Authority’s request, since October 2007 France Telecom has been updating its list of QoS parameters to take account of any major changes in the marketplace, with additions that include:

- ◆ parameters that are specific to inactive lines and those in the set-up process;
- ◆ parameters on naked ADSL wholesale and retail offers;
- ◆ production queue parameters, measured in volume.

The Residential bitstream and unbundling order process (*Processus de commande dégroupage et bitstream résidentiel*) and Enterprise DSL and capacity services (*DSL professionnel et Services de capacité*) working groups have also devoted efforts to improving the quality of DSL wholesale offers.

When a problem does occur, the alternative operator needs to pinpoint the origin of the fault and, when it deems France Telecom responsible, must submit a request for repair to the incumbent carrier in the form of a trouble ticket. Improving fault repair times for consumers whose broadband access has broken down requires better management of trouble tickets on the part of all operators, particularly for tickets that have been wrongly submitted by alternative operators.

In late 2007, France Telecom and alternative operators established a precise diagnosis of the responsibilities of each with respect to quality of service issues. Solutions were proposed as part of multilateral working groups, and applied on a trial basis in early 2008.

Reviewing after-sales service processes in the DSL broadband wholesale market includes discussions on the implementation of QoS commitments from France Telecom, along with penalties for late deliveries or repairs.

3.3 Slamming

Definition

Slamming is the term used to refer to a situation when a customer's service is "slammed" (i.e. cut off) without them having subscribed to a new subscription with another service provider.

This can occur, for instance, when a customer orders a new ADSL connection and by mistake gives their service provider a phone number which is not theirs, e.g. the number of the previous tenant who chose to retain their number when they moved.

In early 2007, the Authority had occasion to remind the industry that, when it has been established that a customer has been the victim of slamming, electronic communications providers must re-establish their services, free of charge and as quickly as possible, in accordance with their service agreements.

To better inform consumers on how to proceed when affected by slamming, ARCEP has enhanced the FAQ on its website with a rubric that details "what to do when you are a victim of slamming"³⁹.

And, finally, the Authority has engaged in discussions with alternative operators and France Telecom to define the inter-operator mechanisms that will help minimise cases of slamming. The first step is to ensure greater accuracy of the information provided. As a result, operators were able to implement a system in March 2007 that made it possible to check the information supplied by end users when placing an order.

Moreover, discussions between alternative operators and France Telecom made it possible to draft an agreement between retail operators that seeks to implement an incentive-based process for compensating instances of slamming. An *ad hoc* procedure for swifter reconnection of slammed subscribers has also been available since the middle of 2007 for slammed unbundled connections, and is due to be extended to wholesale offers in the coming months.

4. Directory assistance services (118)

ARCEP has been assessing the quality of directory assistance services (118 numbers) on a regular basis since 2005, to ensure that consumers benefit from a reliable service (service availability, accuracy of the information supplied and speed of response).

This type of assessment of service quality is a rare initiative in Europe. In most European markets, whether recently deregulated or not, quality of service is not checked. The few elements of comparison, from England and Denmark, reveal that the quality of the directory assistance services in France is comparatively high.

ARCEP did not perform a QoS survey in 2007, but it did specify new rules that apply to directory services providers. An ARCEP decision, which was approved by the Minister of Industry in March 2007⁴⁰, includes an obligation for all directory services to make the universal directory available to their customers⁴¹.

The Authority will be performing a new QoS survey in 2008 which will verify,

³⁹ - Available on the ARCEP website: www.arcep.fr.

⁴⁰ - ARCEP Decision No. 06-0639 of 30 November 2006, approved by the Ministerial Order of 9 March 2007 and published in the Journal Officiel of 24 March 2007.

⁴¹ - See below..

among other things, that universal directory listings can be accessed via all 118 numbers. The results of the survey will be published on the ARCEP website (www.arcep.fr).

5. Quality of the service provided by the universal service provider

In its capacity of universal service provider, France Telecom must comply with a minimum set of quality of service parameters and obligations.

These parameters were specified by Orders dated 3 March 2005 which designate France Telecom as the provider of each of the three universal service components (the telephone service, directories and directory assistance services and public payphones), and correspond to eight of the nine parameters listed⁴² in the European Universal Service Directive⁴³ which also determines the levels of quality to be achieved.

42 - See inset above

43 - European Parliament and Council Directive 2002/22/EC of 7 March 2002 concerning the universal service and user rights with respect to electronic communication services networks (Universal Service Directive).

Among other things, these orders stipulate that France Telecom must publish the definitions, measurement methods and their results, by “all appropriate means”. As concerns the universal directory and directory services component, the order specifies that the appropriate means is “on-screen display in the electronic directory”.

All components combined, these parameters are distinguished in particular by their measurement of:

- ◆ the intrinsic quality of the network. This corresponds to the unsuccessful call ratio (expressed as a percentage) and the call set-up time (expressed in seconds) for the “telephone service” component;
- ◆ installation and maintenance calls, which depend to a large extent on the processes in place and the number of persons assigned to the proper execution of the processes. It pertains to the supply time for initial connection (expressed in days), the fault repair time, measured by the rate of non-repair of telephone line disruptions the same day or the following working day (expressed as a percentage) for the telephone service component, and to the more than 24-hour fault rate for the “public payphone” component;
- ◆ other quality of service elements, such as invoice accuracy, which is measured by the number of billing complaints (expressed as a percentage) and the response time in under 20 seconds for the “directory assistance services” component (expressed as a percentage).

France Telecom publishes its quality of service parameters on its website⁴⁴.

France Telecom parameters in figures, for 2005 and 2006

⁴⁴ - Available (in French) at: www.francetelecom.com/fr_FR/groupe/reseau/documentation.

Parameter	Target	2005	2006
1. Supply time for initial connection	8 days	7.94 days*	8.13 days*
2. Fault rate per access line	7.50 %	7.72 %	5.85 %
3. Fault repair time measured by the rate of unresolved faults	15 %	22 %	29.7 %
4. Unsuccessful call ratio	0.70 %	0.28 %	0.27 %
5. Call set-up time	2.90 s	1.22 %	1.30 %
6. Billing complaints	0,05 %	0.05 %	0.08 %
7. Response time for directory enquiry services	75 %	88.19 %	87.07 %
8. Proportion of pay-telephones in working order	0.60 %	0.55 %	0.72 %**

* Included in France Telecom figures are the subscribers who expressed the desire to reschedule their appointments by more than 48 hours, for their own convenience.

** Parameter concerning public payphones whose share of the financed net cost has gone from 17% to 48% since 2002.

C. International roaming

1. Implementation of “Eurotariffs”: providing consumers with better information

In late June 2007, the European Union adopted a regulation⁴⁵ that imposed a considerable decrease, at the end of the summer, in the price of mobile calls made or received by a French consumer in a roaming situation inside Europe, and using a French mobile phone.

⁴⁵ - EC Regulation No. 717/2007 concerning roaming on public mobile telephone networks inside the Community, ECJ of 29 June 2007.

Pursuant to the regulation adopted by the European Union, operators are required to offer their customers a “Eurotariff” service with a ceiling of €0.24, excluding VAT (or less than €0.29 including VAT per minute) on calls received when travelling in a European Union country, and of €0.49 excluding VAT (or less than €0.59 including VAT per minute) on calls to a fixed or mobile number in the European Union. These ceilings will be lowered once again on 30 August 2008 and 2009 to €0.22 then to €0.19 excluding VAT per minute for received calls and to €0.46 then €0.43 excluding VAT per minute for outbound calls. Customers who have not previously subscribed to a specific roaming offer automatically benefit from these new tariffs; all others were initially on an opt-in basis. These decreases are made possible by similar regulation on subadjacent wholesale tariffs, billed between operators in the different EU Member States.

This new text also reinforces the obligations imposed on operators which must now inform their customers of roaming tariffs within the European Union. As a result, starting on 30 September 2007, operators are required to send customers

a text message informing them of the three main prices of roaming calls – i.e. the price of an inbound call, the price of a local call in the country where they are travelling and the price of a call to France – upon their arrival in another European Union Member State. Operators are also required, upon request by the customer and for free, to provide more detailed information on calling rates to other destinations (via mobile voice mail or text message), and on the price of SMS, MMS and mobile data services.

All of France's operators complied with the provisions of the EU regulation, in many cases switching all of their customers to these new tariffs by default a month ahead of the deadline. On its website (www.arcep.fr), ARCEP published a table listing the different services and tariffs offered by operators and MVNOs in Metropolitan France and in the overseas territories. The geographical peculiarity of France in fact required that the application of Eurotariffs be extended to mobile roaming between Metropolitan France and its overseas territories and

46 - Cf. Part 4, Chapter 7, D. *départements*⁴⁶.

2. Principle of wholesale and retail market regulation

ARCEP was designated as the regulatory authority responsible for applying regulation at the national level. As such, it participates in all of the work performed within the European Regulators Group (ERG) devoted to implementing market monitoring systems. These systems will make it possible to ensure that operators are complying with regulations, and to quantify the price decreases that have been applied in wholesale and retail international roaming markets.

Regulation of wholesale services has been in effect since 29 June 2007.

Implementing the regulation of retail services, on the other hand, is a more complex matter:

- ◆ during the initial transitional phase, customers were subject to an opt-in system for subscribing to the Eurotariff;
- ◆ then, starting on 30 September 2007, all customer bases (excluding specific offers) were switched to the Eurotariff, which becomes the default roaming offer (opt-out).

The three national mobile network operators in France, along with MVNO Coriolis for its enterprise customers, all implemented an opt-in process while moving the switchover to a default offer (opt-out) ahead to late August (Orange, SFR) or mid-September (Bouygues Telecom). MVNOs and operators in the overseas territories took a simpler approach by switching all of their customers to the default offer ahead of time, in late and even mid-August for some (Virgin Mobile), which was more beneficial to consumers.

Lastly, Community regulation is moving towards more direct regulation of retail prices for mobile telephony services, without it being entirely certain that such regulation will prove a necessary and proportionate complement to the regulation of only subjacent wholesale services. The European Commission will perform an assessment of the impact of this regulation during the first 18 months of application to determine, among other things, whether the scope of application of the regulation should be expanded to text messaging and data services, or carried over for an additional period of time.

D. Number portability

1. Legislative and regulatory changes

Number portability (or number retention) allows customers to switch fixed or mobile operators without having to change their telephone number: this provides consumers with a competitive advantage, provided the process is quick and easy and that operators do not impede its use, for instance through implicitly reinforcing customer-loyalty mechanisms.

The speed at which a customer's number portability request can be fulfilled depends on the time it takes to cancel the contract with their existing operator. As a result, on several occasions, the Authority underscored the fact that, if all operators did not decrease their cancellation notice periods, it would be impossible to reduce porting waiting periods. ARCEP thus encouraged mobile operators to reduce this notice period starting in late 2004.

In an opinion issued in March 2005⁴⁷, at the request of the Minister of Industry, ARCEP declared itself in favour of reducing the operator cancellation period to less than 10 days, and of implementing a single-step process for all (in other words, a single point of contact for consumers, in this case a customer's new operator, which will take charge of all the necessary procedures). At the time, the Authority had indicated that, given the complexity of these changes, a new specific regulatory mechanism would need to be put into place.

As a result, to introduce a more flexible and streamlined process for number portability, new provisions⁴⁸ were imposed on operators:

- ◆ the obligation to put into place a one-step process. **Subscribers only need to deal with their new operator of choice** ("recipient operator"), which takes charge of processing all of their requests: subscription to a new contract, request for number portability and notifying cancellation with their old operator;
- ◆ a period of **a maximum 10 days** for a number to be ported (unless otherwise requested by the customer);
- ◆ legal concomitance of the number's effective portage and cancellation of the old contract: **the notice is nullified when the cancellation is combined with a portability request**. If the subscriber agreement with the old operator includes a minimum contract period, the subscriber must pay the balance due up to the end of the contract's lifespan.

Changes made to the legislative framework for portability helped spur an update of the portability mechanisms, thus providing consumers with a faster, simpler and higher quality service.

47 - ART Opinion No. 05-0197 of 22 March 2005, requested from the Minister-delegate of Industry on 18 February 2005, concerning number portability.

48 - Cf. Article 59 of the Law of 2 August 2005 in favour of small and medium enterprises.

2. Mobile number portability (MNP)

2.1 In Metropolitan France

The new number portability process for Metropolitan France came into effect on 21 May 2007.

2.1.1 Impact of legislative and regulatory changes

On the methods use for applying mobile number portability in Metropolitan France

49 - See above The application of the new legislative and regulatory provisions⁴⁹ defined in 2005 required a complete overhaul of the systems and architectures that operators had put into place for the launch of mobile number portability on 30 June 2003 (MNP v1). Under the Authority's guidance, mobile operators (including MVNOs) have made considerable efforts since June 2005 to define an architecture tailored to the new number portability process for Metropolitan France (MNP v2). The mobile portability group, GPM (*Groupe Portabilité Mobile*) was responsible for the work that led to the definition of technical and operational methods for MNP v2.

Furthermore, subscribers have the legal right to keep their mobile number – a right that requires all operators to satisfy all requests for number retention. This is why, in its Decision of 30 March 2006⁵⁰, the Authority defined⁵¹ the obligations incumbent on operators in Metropolitan France. These obligations include:

50 - ARCEP Decision No. 06-0381 of 30 March 2006, specifying the methods of application for mobile number portability in Metropolitan France.

51 - In accordance with CPCE Article D.406-18 II.

- ◆ individual obligations, concerning the methods for providing subscribers with the necessary information for keeping their number when switching operators, along with information on the consequences of their portability request;
- ◆ obligations that govern the relationship between operators, which primarily define the technical procedures for managing inter-operator information streams when subscribers make a portability request.

ARCEP was careful to ensure that its decision was consistent with the work performed by the GPM working group, and that it enabled the players to undertake the necessary investments and technical upgrades to implement MNP v2 within a secure legal framework.

Concerning the accounting, recovery and price-setting methods for the costs tied to mobile number portability

The new number portability process contains a great many changes, most notably the predominant role played by the recipient operator throughout the entire process.

When the one-step process was launched it emerged that, despite the Authority's intervention, mobile operators were not always able to establish the financial terms of portability interconnection agreements. In particular, operators were unable to agree on the services to be taken into account when setting the tariff that the recipient operator must pay the donor operator under the new portability process.

The Authority thus decided that it was necessary to provide a framework for the

method used for setting collectable costs under the new portability process, by issuing a decision.

As a result, in late 2007 ARCEP submitted a draft decision⁵² to public consultation, in which it stipulates that the cost recovery, price-setting and cost accounting methods must promote economic efficiency, stimulate lasting competition, optimise the advantages for the consumer and ensure fair remuneration on the capital employed, in accordance with existing regulation⁵³.

This draft decision sets out the cost typologies for the mobile number retention functionality, and specifies that all of the resulting costs are recovered through operators' overall activity. The Authority nevertheless underscores the fact that the donor operator can re-invoice the recipient operator for the variable costs that are tied directly to an actual request to port a mobile number. They are estimated based on what it costs an efficient operator to implement the nominal process. Indeed, depending on the porting requests, non-variable costs result from operators' obligation to provide their customers with the option of retaining their telephone number.

After receiving the requested opinions of the Radiocommunications Consultative Committee, CCR, and the Consultative Committee for Electronic Communication Networks and Services, CCRSCE, the Authority will adopt a final decision which will be submitted for approval to the Minister responsible for electronic communications⁵⁴.

2.1.2 Practical considerations of the mobile number portability process

Concomitant request for a new subscription

Subscribers request portability of their number when subscribing to a service with a new operator. The new operator will inform them of the process for implementing MNP, and its consequences:

- ◆ subscribers have the right to keep their number, provided they meet the eligibility criteria; the ported number must still be active the day that it is ported;
- ◆ the request for number portability has the value of a request for cancellation of the subscriber's contract with their old operator, whose number is to be ported;
- ◆ the contract cancellation takes effect when the number has been ported, without prejudice to the provisions concerning minimum contract periods.

The new operator (recipient operator) is thus mandated by the customer to perform all of the necessary steps, namely:

- ◆ subscription to a new contract;
- ◆ portage of the affected mobile number;
- ◆ cancellation of the corresponding agreement with the old operator (donor operator).

Thanks to this mechanism, customers address themselves directly and solely to their new operator of choice, to request retention of their mobile number and cancellation of their subscription contract with their old operator.

52 - ARCEP public consultation of 6 December 2007 on the accounting, recovery and price-setting methods for the costs tied to mobile number portability, available at www.arcep.fr.

53 - Cf. CPCE Article D. 406-19 IV.

54 - Cf. CPCE Article L.36-6.

Streamlined identification process

To make an MNP request, customers need to be able to prove that they are the holder of the mobile number to be ported, and must thus supply an operator identity statement or RIO (*relevé d'identité opérateur*). The RIO is a unique identifier assigned to a line and a customer contract, which provides proper identification for portability requests.

To obtain their operator identity statement, customers make a free call from their mobile to an interactive voice server dedicated to MNP, provided by their current operator, and in response will receive a text message containing the information needed to complete their porting request and, if applicable, information about the months remaining in their contractual commitment to their existing operator⁵⁵.

55 - In cases where subscribers still have contractual commitments (i.e. minimum contract period) with the operator they want to leave, this operator can invoice them for the sums due, e.g. payment of subscription fees up to the end of their contract's lifespan.

For businesses and public entities' multi-line service contracts, operators will need to implement a system for overall management of RIO access, either:

- ◆ electronically (online customer service area, where available);
- ◆ or via the billing system employed for the particular mobile line.

Portability within a maximum 10 days

The nominal time to port is seven calendar days and may not exceed 10 days unless the customer expressly requests a later date.

However, if consumer code provisions concerning the right to retract or renounce apply (mail order, door-to-door sales), the aforementioned 10-day period does not begin until that right expires.

The day that the number is actually ported is the day that the line with the new operator is opened and the line with the old operator is shut down: after having changed SIM cards, the subscriber can place and receive calls on the new operator's network, using the same number. Service interruption for these purposes may not exceed 4 hours.

2.1.3 Operational launch of the new mobile number portability process

In September 2006, a progress report initiated by the Authority on the implementation of the new MNP mechanism for Metropolitan France revealed that, for technical reasons, neither the operators nor the economic interest group devoted to managing portability, GIE EGP (*Entité de gestion de la portabilité*) was able to meet the deadline for implementing the new mobile number portability system, which had initially been set for 1 January 2007.

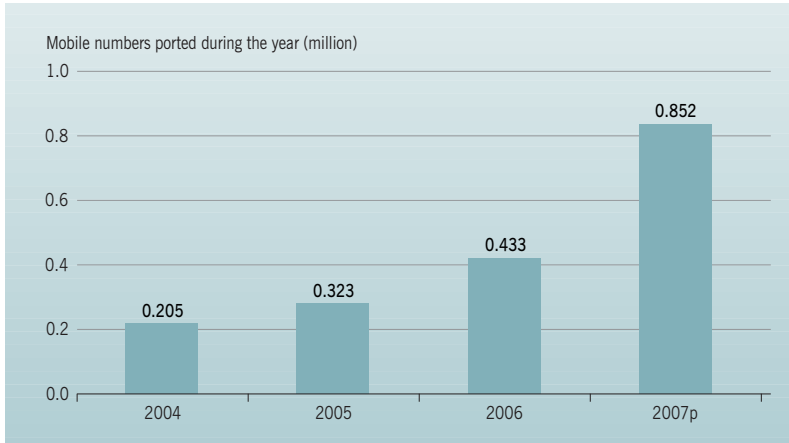
It emerged that a new deployment timetable, with launch set for 21 May 2007, was necessary to ensure the successful introduction of this new process.

2.1.4 Quantitative data for 2007

As of 31 December 2007, 1.8 million mobile numbers had been ported (or 3.5% of the total active base of mobile customers) since the implementation of the MNP process on 1 July 2003.

Implementation of the one-step process has been successful: more than 800,000 numbers were ported in 2007 alone, or almost the same quantity as were ported in 2004, 2005 and 2006 combined.

Growth of the number of mobile numbers ported in Metropolitan France since 2004



Source: ARCEP, Electronic communications Observatory (2007 figures are forecast).

2.2 Overseas

2.2.1 Antilles-Guyana region

One-step portability was introduced in the Antilles-Guyana⁵⁶ zone on 1 April 2006, in accordance with the Decree of 27 January 2006⁵⁷.

As of 31 December 2007, around 25,000 mobile numbers had been ported (or 2.3% of the customers of the operators involved) since the launch of the one-step process, and so apparently confirming the success of this fast and simple approach.

As in Metropolitan France⁵⁸, the portability process implemented in the overseas territories is characterised by the fact that customers address themselves directly and solely to their new operator of choice which, in turn, processes the new subscription, the porting request and notifies their existing operator of the cancellation of their contract – within a period that has been shortened to a maximum of 10 days.

It should nevertheless be pointed out that, unlike in Metropolitan France, operators in the Antilles-Guyana region have not yet implemented the operator identity statement (RIO), a code whose goal is to protect them against risks of error concerning the number to be ported. Implemented relatively tardily in Metropolitan France, the RIO has not been able to be incorporated in the one-stop portability process in the Antilles-Guyana region, which was implemented on 1 April 2006. Since 1 September 2007, however, customers been able to access information via an SMS server regarding the end date of their contract, if they have one and it still has time remaining.

56 - The Antilles-Guyana region includes the overseas départements of Martinique, Guadeloupe and Guyana, as well as the collectivities of Saint Martin and Saint Barthélemy.

57 - Decree No. 2006-82 of 27 January 2006 concerning number retention as provided for by CPCE Article L.44.

58 - See above.

59 - ARCEP Decision
No. 07-0193
of 5 April 2007.

Moreover, as it has already done in Metropolitan France, the Authority adopted a decision that provides a framework for the portability process in the Antilles-Guyana region⁵⁹.

The goal of this decision is to consolidate existing mobile number portability practices in these overseas *départements* by providing operators with a sound legal framework which is consistent with the work performed by the Antilles-Guyana mobile number portability group, GPMAG (*Groupe portabilité mobile Antilles-Guyana*) and the rules applied in Metropolitan France.

2.2.2 The Reunion-Mayotte region

60 - Mobile number portability had been introduced in Reunion on 31 March 2005, based on a two-step process. At the time, MNP was not an issue in Mayotte as there was only one mobile operator in the marketplace.

One-step portability was introduced in Reunion and Mayotte zone on 1 July 2007⁶⁰, with the goal of stimulating competition in a region where three players are currently operational.

The operators concerned⁶¹ have developed specifications which are similar to those adopted by operators in Metropolitan France, particularly with respect to RIO.

Around 10,000 numbers were ported⁶² between 31 March 2005 – when two-step portability was introduced in Reunion – and 31 December 2007. More than a third of these numbers (3,500) were ported in the last quarter of 2007, a good indication of the impact of the implementation of the one-step process in the region.

61 - The operators concerned by the process are Orange Réunion, Outremer Télécom and SRR.

As it has done in Metropolitan France and in the Antilles-Guyana region, the Authority will provide a framework, through a regulatory decision, for the mobile number portability process in the *département* of Reunion and the territorial collectivity of Mayotte, to provide the regions with a sound legal footing.

62 - ARCEP estimate.

3. Fixed number portability

Numbers affected by fixed portability

Fixed portability applies to:

- ◆ fixed geographic numbers (of the type OZ AB PQ MC DU, where Z is equal to 1, 2, 3, 4 or 5)
- ◆ and fixed non-geographic numbers (of the type OZ AB PQ MC DU), including the freephone value-added service numbers, shared-cost and shared-revenue numbers (where Z is 8), and person-to-person numbers (where Z is 9).

3.1 Status of fixed portability

63 - Cf. 13th European Commission report, volume 2, p. 59.

As of October 2007, 2.6 million fixed numbers had been ported in France since the launch of fixed portability in 2003⁶³.

Since its implementation, fixed portability has been a one-step process, which means that application of the new legislative provisions did not require a major overhaul of the system, but rather encouraged increased efforts to optimise the process and improve the quality of the service, to comply with the legal waiting period of 10 days.

The portability process currently employed by operators concerns chiefly operations between the incumbent carrier and alternative telcos, spurred by the substantial increase in unbundled fixed lines over the past few years.

In light of the situation where several types of fixed telephony access exist, including LLU for instance, and where the methods for implementing portability vary from one operator to the next (particularly between the enterprise and residential market), in late 2006 ARCEP invited operators to make a concerted effort to improve their portability processes – and particularly to make them more consistent – along with their methods for routing calls to ported fixed numbers.

Three working groups met under the aegis of ARCEP to address the issues of:

- ◆ improving France Telecom outbound portability in the short term, particularly for enterprise markets;
- ◆ harmonising the standard portability processes, and the implementation methods (from the customer's perspective and between the operators involved);
- ◆ call routing to ported fixed numbers, and particularly the methods for implementing direct routing.

A fixed portability committee meets on a regular basis to review the results of the work performed by these groups.

3.2 Working group devoted to porting from France Telecom to alternative carriers

In 2007, in tandem with alternative operators, the work devoted to outbound France Telecom porting made it possible to establish a roadmap for a number of changes:

- ◆ increasing the reliability of porting requests for DDI (direct dialling-in) ranges attached to an IDN (installation designation number) gateway. This would make it possible to prevent the ineligibility of certain requests in the business market, and is correlated with a firm request for portability;
- ◆ implementation of processes that enable only a portion of the client company's installation to be ported, referred to as “partial porting”;
- ◆ removal of all operator quota systems and transmission of enterprise porting mandates: the new operator (recipient operator) is responsible for the mandate received from its customer, without having to transmit it to the old operator (the donor operator which may not be the one assigned the number that is to be ported);
- ◆ implementing streamlined, automated processes for both the enterprise and residential markets;
- ◆ implementing specific porting periods over and above existing non-working hours for achieving portability, notably for an enterprise's critical sites.

In addition to testing these various functionalities, computer-based developments for automating the implementation of fixed portability between France Telecom and alternative operators were completed in late 2007. Alternative operators must continue their own in-house efforts to automate the processes in the same manner as the incumbent carrier, with most expecting to have done so by the second half of 2008.

The Authority underscored the significant efforts made by operators in 2007 which helped to improve automation of portability processes, particularly for enterprises.

3.3 Working group dedicated to the common framework for portability processes

The goal of improving France Telecom processes in the medium term was accompanied by broader efforts to harmonise the implementation of fixed portability between two operators. A working document, **drafted in 2007**, provides a reminder of the fundamental principles of fixed portability from the end user's perspective (one-stop process, ineligibility clauses, automatic cancellation of the old contract, subscriber information, etc.) but also from the perspective of the operators involved in the portability process (their obligations, central role of the recipient operator, information that must be exchanged between operators, correlation with access, etc.).

In the long run, the application of a common framework must facilitate the implementation of fixed portability operations, regardless of the operators involved and the customer's profile.

3.4 Working group dedicated to call routing to ported fixed numbers

As it stands, operators that have been assigned numbers are responsible for routing calls to ported fixed numbers: this is referred to as indirect routing. This involves certain drawbacks, such as network inefficiencies, the added cost of routing calls and the dangers of a lesser quality of service.

An alternative solution consists of implementing direct routing between the calling operator and the recipient operator of the ported number. This solution avoids having the call routed over the network of the operator that was originally assigned the number but which is no longer the customer's operator. It thus makes it possible to guarantee better control over the quality of the service and to optimise inter-operator transit costs. It nevertheless requires the calling operator to have prior knowledge of the technical information associated with the ported number, and that this information be kept up to date in its routing equipment.

In mid-2007, operators defined a joint position on the need to create a central database of ported fixed numbers, which would help facilitate the implementation of direct routing to these numbers. The creation of such a database should also make it easier for operators to comply with the obligation to make the list of their ported numbers (and associated prefixes) available.

The French association of telecommunications network operators and service providers, AFORST (*Association des opérateurs de réseaux et services de télécommunications*) was instrumental in driving these efforts which led to the production of a Statement of Requirements and a pre-project report that defined the fundamental characteristics of a database of ported numbers. These documents are the stepping off point for future discussions in workshops conducted by AFORST, and whose goal is to draft specifications to be submitted to technical service providers in 2008.

The Authority, which is in favour of direct routing of calls to ported numbers, congratulates fixed operators on their efforts and encourages them to continue the work being done at the technical, legal and financial levels.

E. Universal service

1. Universal service and the universal service operator

The work performed in 2007 was devoted to applying the regulatory framework set in 2004⁶⁴.

1.1 Universal service components

The universal telecommunications service is made up of three public telecommunications service components, which include the provision of mandatory electronic communications services and general interest missions. It is the only component to be financed by a sectoral fund.

Public electronic communications service		
Universal service	Mandatory services	General interest missions
Three components: fixed telephony service (tariff balancing and social tariffs), directories and directory assistance, public payphones	ISDN, leased lines, packet switching service, advanced call forwarding service, calling signal...	Involvement in national defence and national security Development of research and training
Designated provider: France Telecom Financed by the sectoral fund to which all operators contribute	Shouldered by the operator designated to provide the "telephone service" component	Included in operators' terms

64 - 2004 was marked by the publication in the *Journal Officiel* of 1 January 2004, of Law No. 2003-1365 of 31 December 2003 concerning public telecommunications service obligations and France Telecom, transposing the European "Universal Service" Directive of 7 March 2002. As with the telecommunications regulation law of 1996, the legislator has reaffirmed the significance it gives to the public electronic communications service defined in CPCE Article L. 35, and to the universal service in particular.

Universal service must be provided nationwide, and includes three components:

- ◆ **Telephone service**, which covers the installation and operation of a fixed connection to the public network for all persons who request it, and provision of a quality telephone service over this connection, at an affordable price. It also includes the provision of an offer of a reduced telephone bill for certain subscriber categories;
- ◆ **Universal Directory and Universal Directory Information Service** covers the provision of a directory enquiry service (118 711) and an electronic directory service at a reasonable price (www.118711.fr), and the free distribution of a printed directory to all public telephone service subscribers;
- ◆ **Public Payphone Service** covers the installation of public payphones in the public thoroughfare, and the provision of a quality and reasonably-priced telephone service over these payphones.

Each of these three components includes provisions for disabled persons, guaranteeing that their access to services is equivalent to that enjoyed by all other users, provided that the enabling technologies are available and can be deployed at a reasonable cost.

1.2 Designation of the universal service operator(s)

“Any operator that agrees to provide a component of universal service nationwide and is capable of doing so” can be designated to provide one of the universal service components⁶⁵.

65 - CPCE Article L.35-2.

66 - *Three orders de signating the universal service operator (one per component) were issued by the Minister in charge of electronic communications, dated 3 March 2005.*

67 - *Published in the Journal Officiel of 25 January 2007.*

68 - *These parameters include those contained in the European “Universal Service” Directive.*

69 - *Operators update this information on a regular basis in all of their sales outlets and points of contact with customers, and through an electronic means that can be accessed in real time at a reasonable price, and ensure disabled users access to this information in a manner adapted to their disability.*

70 - *They are bound to provide 6 months' advance notice of the conditions and periods applying to cancellations and changes, 18 months' advance notice of technical modifications requiring the replacement or significant adaptation of equipment connected to the network, and one week's advance notice both for new service offerings related to universal service and for changes (other than tariff changes) to existing service offerings.*

Designation of the operator(s) in charge of universal service is performed by the Minister responsible for electronic communications, following calls for candidates (one per component) relating to the technical and tariff conditions and, if necessary, to the net cost of providing these services.

This procedure allows for competition over each of the universal service components, and limits the cost of universal service since the net costs factored in for assessing the cost of universal service cannot exceed the commitments made in the responses to the call for candidates.

Having submitted its response to the call for candidates on 12 December 2004, France Telecom was designated⁶⁶ by the minister as the operator in charge of universal service for all three components in March 2005: until March 2009 (for four years) for the telephone and public payphone services and until March 2007 (for two years) for the third component (Universal Directory and Universal Directory Information Service).

In early 2007, after a new call for candidates⁶⁷, France Telecom was designated by ministerial order as the provider responsible for the Universal Directory and Universal Directory Information Service component on 29 March 2007, for a period of two years.

1.3 Universal service operator obligations

The operator(s) responsible for providing one or more of these components must:

- ◆ comply with quality of service obligations, and publish the value of the QoS parameters⁶⁸ set by the specifications;
- ◆ establish a tariff catalogue for the universal service and the mandatory services;
- ◆ communicate their tariffs to the ministry and to ARCEP at least eight days prior to their implementation;
- ◆ inform⁶⁹ users of their universal service offer, of the corresponding tariffs and of any future modifications, suspensions or cancellations;
- ◆ not alter the material terms of use of a universal service before having informed users⁷⁰;
- ◆ separate universal service items from other services in all material related to the service offering, on customer invoices and in the subscriber contract.

The tariffs charged for offers which fall under the heading of provision of a universal service component are set by the operator, which is required to adhere to the principles of transparency, non-discrimination and cost-oriented pricing.

They do not depend on the way that subscribers utilise the service, as long as it does not affect the conditions for providing the service. These tariffs are set in such a way as to avoid discrimination based on a user's geographical location.

ARCEP is responsible for approving universal service tariffs and any changes proposed by service providers, and setting a multi-year rate schedule⁷¹.

71 - See below.

1.4 Social tariffs and “pay or play”

The universal service is “*supplied [by its designated provider(s)] under technical and pricing conditions that take account of certain categories of persons’ specific difficulties in accessing the telephone service, due notably to their income level or their disability*”⁷².

72 - CPCE Article L.35-1.

Before 1 November of each year, a ministerial order sets the monthly sum of the social tariff reduction for the following year, after having received ARCEP’s opinion. These social tariffs must translate into a reduced phone bill for eligible customers⁷³.

73 - CPCE Article R.20-34 I.

1.4.1 Who is eligible for a tariff reduction?

An eligible customer is any person who earns the social integration minimum income, a specific solidarity allowance or the disabled adult allowance. They receive a certificate from the social organisation on which they depend (family allowances fund, *Caisse Nationale Allocations Familiales* [CNAF], the national union for employment in industry and commerce, *Union Nationale pour l’Emploi dans Industrie et le Commerce* [UNEDIC] or the agricultural social insurance mutual benefit fund, *Caisse Centrale de Mutualité Sociale Agricole* [CCMSA]) which they must fill in to obtain a social tariff reduction from certain operators. If they do not receive the certificate directly, customers must request it from their social organisation. The reduction in their phone bill is put into effect within one or two months following the return of the completed certificate.

The reduction and the associated compensation are increased by an additional €4, excl. VAT (€5 incl. VAT) a month⁷⁴ for certain eligible customers.

74 - According to the strict interpretation made by the Directorate-General for Enterprise (Direction Générale des Entreprises).

1.4.2 Who can offer social tariffs?

The universal service provider must offer a reduced tariff⁷⁵, but other operators are also able to offer their customers a social tariff reduction for their telephony access service⁷⁶. To do so, the operator must take the initiative to submit a request to the ministry⁷⁷. After having received the minister’s approval, the operator is eligible for compensation from the universal service fund for the expenses incurred by offering social tariff reductions, up to a set threshold⁷⁸.

75 - CPCE Article L.35-3.

In 2007, the Authority received no requests from any operator other than the designated provider to be able to offer a social tariff reduction mechanism.

76 - Provided that the service is similar to the one defined in the first universal service component, and so able to be qualified as a “universal service”.

Operator Erenis, which had proposed such an offer in 2006⁷⁹, made a decision in May 2007 not to implement it, following its takeover by Neuf Cegetel.

77 - CPCE Article R.20-34.

As it stands, then, France Telecom is the only carrier to offer a social tariff reduction. As the service provider designated by the ministry for the first universal service component, namely telephony, the incumbent carrier is in fact required to offer a social tariff reduction.

78 - The social tariff reduction ceiling is set annually by the minister.

79 - Ratified by the Ministerial Order of 18 October 2006.

80 - A greater reduction has been approved for this category of beneficiary.

France Telecom has thus committed to offering a set social tariff subscription of €6.49, incl. VAT, a month (compared to €16, incl. VAT, a month for a “standard” subscription, since 4 July 2007). The social tariff subscription has been reduced to as little as €1.71, incl. VAT, a month for certain disabled ex-servicemen⁸⁰.

For 2007, the reductions agreed to by France Telecom are thus compensated by the universal service fund to the amount of €5.04 including VAT a month (€9.82 including VAT a month for certain disabled ex-servicemen), with France Telecom shouldering the balance of the reduction.

The terms that currently apply to the universal service provider will expire in March 2009 and a new call for candidates will be launched to designate the new universal service provider(s) of the telephone service component for the next four years.

Change in the social tariff for a France Telecom subscription since 2000

	Up to october 14 2000	14 october 2000 to 20 july 2002	20 july 2002 to 3 march 2005	Starting on 3 march 2005	Starting on 4 july 2006	Starting on 4 july 2007
Price of the basic subscription (in euros, incl. VAT/month)	11.79	12.55	13.00	13.99	15.00	16.00
Price of the social subscription, eligible customers (in euros, incl. VAT/month)	6.76	6.76	7.00	6.49	6.49	6.49
Difference (in euros, incl. VAT/month)	5.04	5.79	6.00	7.50	8.51	9.51
Compensation paid to France Telecom by the universal service fund fund (social tariff reduction in euros, incl. VAT/month)	5.04*	5.04*	5.04*	5.04*	5.04*	5.04*
Portion of the subscription shouldered by France Telecom (in euros, incl. VAT/month)	0.00	0.75	0.97	2.46	3.74	4.47

* or €4.21 excluding VAT.

1.5 Financing the universal service

1.5.1 Universal service fund contributors

81 - CPCE Article L.35-3. By law, it is operators that finance the net cost of the universal service⁸¹. In addition to fixed and mobile operators, entities that contribute to the universal service fund are Internet access providers⁸², data transport providers⁸³, providers of directory information services⁸⁴, providers of telephone cards, MVNOs⁸⁵, VoIP service providers⁸⁶, VPN (virtual private network) access service providers, SMS aggregators and local authorities engaged in telecommunications operator activities.

82 - Orange,
Club Internet, etc.

83 - Transpac, etc.

84 - Notably “118” services.

85 - Debitel,
NRJ mobile, etc.

86 - Wengo, etc.

87 - CPCE Article L.35-3-II.

88 - CPCE
Article R.20-39 (Para. 2).

1.5.2 Contribution based on turnover

Calculation of each operator’s contribution to universal service funding is “based on a prorata share of the turnover generated by electronic communications services”, except under certain exceptions⁸⁷. Exempt from this contribution are operators whose turnover is below €5 million⁸⁸. The Caisse des dépôts et consignations (Deposit and consignment office) is responsible for the fund’s accounting and financial management.

1.5.3 The electronic communication services involved

The following table lists the services factored into the scope of relevant turnover, which is used as the basis for calculating an operator's contribution to the universal service fund.

Electronic communications services

Electronic communications services	Included in the scope
Fixed telephony services	
- Originating from a fixed line	Yes
- Originating from a public payphone	Yes
- Originating from a calling card	Yes
Mobile services	
- Terrestrial mobile telephony (access and call origination)	No
- Roaming in	Yes
- Roaming out	Yes
- Calls from mobiles	Yes
Other mobile services	
- Satellite mobile services	Yes
- Paging services	Yes
- Professional mobile networks	Yes
Internet (including wireless)	
- Narrowband	Yes
- Broadband	Yes
- Other services related to Internet access provision (advertising, e-commerce, website hosting other than for access, firewall, antivirus...)	No
Advanced services (fixed and mobile telephony)	
- Toll-free services	Yes
- Shared cost numbers	Yes
- Shared revenue numbers (regardless of the number's owner)	Yes
- Special routing services	No
Leased line and other capacity and data transport services (fixed and mobile network)	
- Analogue and digital lines, regardless of bitrate	Yes
- Other capacity services (LAN interconnection, etc.)	Yes
- Data transport	Yes
Directory services and related income (fixed and mobile telephony)	
- Telephone directory services	Yes
- Electronic directory search	Yes
Related income	
- Directory sales (print, CD-ROM, ...)	No
- Advertising: other income	No
- Sale of databases	No
Terminal sales, rental and maintenance	No
Other services related to electronic communications (computer applications and hosting services)	No
Interconnection and access for fixed and mobile telephony, including inbound international traffic	No

Breakdown of contributions by type of operator

Contributions (% of the cost of universal service)	2002 ⁸⁹	2003	2004	2005	2006
Fixed ⁹⁰	51%	48.4 %	49.3 %	45.2 %	49 %
Mobile	39%	41.8%	43.6%	47.5 %	48.8%
Internet	2 %	0.8%	1.4 %	1.5 %	1.4 %
Cable-operator	0 %	0.3 %	0.3 %	0.3 %	0.4 %
ISP ⁹¹	4 %	4.0%	1.1 %	1.0 %	0.4 %
Data transport ⁹²	4 %	4.8%	4.5%	4.5 %	–

89 - Breakdown taking account of the Law of 31 December 2003.

90 - Including Wanadoo, since its integration into France Telecom in 2004.

91 - Excluding Wanadoo, since its integration into France Telecom in 2004.

92 - Excluding Transpac, included in France Telecom fixed operations since 2006.

93 - CPCE Article L.36-7.

94 - By taking account of the regulatory provisions set by Decree No. 2004-1222 of 17 November 2004, notably for the €5 M deduction.

95 - ARCEP conducted a public consultation, from 16 March to 16 April 2007, on the draft guidelines for the statement of relevant income used for assessing contributions to the universal service fund for fiscal year 2006.

ARCEP Decision No. 07-0376 of 26 April 2007 adopted the definitive guidelines.

96 - In its Decision No. 2007-0003 of 23 January 2007, ARCEP published the certificates of conformity for the costs, by product, that France Telecom posted to its operating accounts, relating to the net cost of the universal service and the carrier's individualised accounts, established by France Telecom as part of its regulatory obligations.

2. ARCEP's role

The Authority is responsible for setting the contributions for funding universal service obligations, and for monitoring the funding mechanisms⁹³.

2.1 Determining the cost of universal service

In 2008, ARCEP performed the net cost assessment for 2006; in 2007 it performed the assessment for net costs in 2005.

The annual assessment of net cost takes into account not only the costs, but also the revenue and intangible benefits accruing to the operators that provide each of the universal service components.

For each fiscal year, the rules for calculating the final cost of universal service are adopted by ARCEP after public consultation, and are published before the assessment is made.

In 2007, the Authority adopted⁹⁴ the definitive guidelines for 2006⁹⁵ by providing specifications on bundled offers that include services to be declared and others that need not be declared, pertaining particularly to triple play bundles that include television services.

Supervised annual accounting

ARCEP requires providers of the various component services to supply the information needed to determine the cost of the component parts of universal service. The portion of the providers' accounts used to calculate the net cost of universal service obligations is audited by an independent body named by ARCEP. The audit covers the cost and income data for services used to determine the cost of universal service obligations, as well as the methods used to gather the data on network and traffic characteristics produced by the providers' information systems. This then allows the independent auditor to issue a certificate of conformity, which ARCEP publishes in the annex to its decision⁹⁶, along with the declaration of costs posted to France Telecom's individualised accounts.

2.1.1 Geographical balancing

The net cost of the geographical component is equal to the sum of the relevant net costs in unprofitable zones, which would not be served by an operator under normal market conditions⁹⁷.

97 - CPCE Article R20-33.

For 2006, ARCEP elected to segment local distribution into zones which represented France Telecom's network from an economic point of view, made up of 35 classes of local distribution zones, characterised by their geographic density.

The model reflects the behaviour of an operator which is developing a network starting with the most profitable zones, supposedly those that are the most densely populated. For each class of local zone, a net cost appears when the added cost to the operator for serving this category of local zone is higher than the direct and indirect revenues generated by providing services in this class of local zone.

In 2006, geographical balancing decreased considerably compared to 2005 due to an increase in subscriptions, combined with a reduction reported by France Telecom of the costs that fall within the scope of costs factored into the calculation of the net cost of the universal service.

2.1.2 Social tariffs⁹⁸

98 - In compliance with CPCE Article R20-34.

The social tariffs system is confined to the social tariff reduction offered on the cost of a basic telephone subscription.

The net cost of social tariffs is equal to the funded portion⁹⁹ of the reduction agreed to by the operator providing the service to disadvantaged persons (notably due to low income levels), plus the social organisation's management costs and those incurred by the companies providing the social tariff reduction.

99 - Whose ceiling is set by ministerial decree, and has remained at €4.21 a month, excl. VAT, per subscriber, since 2000.

In an opinion¹⁰⁰ issued in early 2008, ARCEP underscored the importance of guaranteeing the stability of the price of the social subscription through compensation from the universal service fund for the beneficiaries of the social tariff reduction.

100 - ARCEP opinion No. 08-0192 of 26 February 2008.

2.1.3 Directories and directory services¹⁰¹

101 - In accordance with CPCE Article R. 20-36.

The net cost to France Telecom for providing directories and directory assistance services is in a deficit situation.

The deficit in 2006 was greater than it was in 2005, due to:

- ◆ France Telecom's sale of its *Pages Jaunes* (Yellow Pages) division to a private equity firm, Kohlberg Kravis Roberts (KKR) for the sum of €3.3 billion on 24 July 2006, with a retroactive effect to 1 January 2006, which removed the profit-making subcomponent tied to print directories from the net cost;
- ◆ disappearance of the "12" directory assistance number, replaced by "118 711" and co-existing with other directory services supplied by France Telecom, including "118 712".

Given that, in its response to the call for candidates for the "directories and directory assistance services" component for the period running from 2005 to 2007, France Telecom estimated that the net annual cost of the universal directory

102 - In accordance with the commitments made in its response to the call for candidates for the selection of the provider of the corresponding universal service component.

103 - In accordance with CPCE Article R. 20-35.

104 - According to Article R20-30-3: "the operator in charge [...] of providing the [public payphone] component of the universal service [...] will make public payphones [...] available to the public in public areas. This operator will make at least one payphone available to the public in all municipalities. In municipalities where the population exceeds 1,000 inhabitants, the operator will install at least a second payphone."

105 - In accordance with CPCE Article R. 20-37-1.

106 - European Commission Communiqué of 27 November 1996.

service (profit making) and the directory assistance service (operating at a loss) offset one another, after taking account of the complementary revenue, ARCEP estimated that the net cost of the "directories and directory assistance services" component was nil¹⁰².

2.1.4 Public payphones¹⁰³

The net cost of installing public payphones corresponds to the deficit reported in the municipalities where France Telecom meets the exact number of required payphones to be installed¹⁰⁴.

The definitive net cost of this component for 2006 was slightly higher than in 2005. The drop in traffic between those two years translated into a greater number of public payphones operating at a loss.

2.1.5 Intangible benefits¹⁰⁵

To assess the intangible benefits enjoyed by universal service operators, ARCEP incorporates the advantages derived from brand image, ubiquity, lifecycle and access to data¹⁰⁶.

Brand image

An operator that provides a telephone service to all persons requesting it, even in sparsely populated zones, automatically improves its brand image with the public. Assessing this advantage is tied to the additional cost that the subscriber is willing to pay, which is evaluated through a statistical study.

To calculate the net cost of the universal service for 2006, ARCEP kept the methodology developed in 1999, which was based on a survey performed by an independent firm in late 2000 and updated in 2006. The decrease in the benefits associated with brand image between 2005 and 2006 is correlated with the decline of France Telecom's residential analogue fixed telephony revenue.

Ubiquity

Ubiquity corresponds to the technical and commercial advantage that results from having a high density network when connecting a new subscriber, compared to an operator under normal market conditions. For the universal service operator, the fact of having "universal coverage in a ubiquitous operating zone" naturally generates comparatively lower costs than those generated by the competition when extending its network to new customers.

Lifecycle

This is the advantage derived from the improvement over time of the economic status of subscribers benefiting from universal service. Some subscribers who are not profitable when they first connect to the phone service can become profitable later on (e.g. as the children in the household grow up), thereby creating new revenues for the operator

Access to telephone usage data

This is the advantage derived from the use of subscriber data to improve market knowledge. Because of the service it provides, a universal service operator has access to market data (regarding usage) which it can use for its marketing needs or to assess network upgrade requirements.

2.1.6 The notion of excessive prices

The existence of a net cost leads to the possibility of compensation only in cases where it constitutes an unfair burden on an operator¹⁰⁷.

It was the Authority's view that, in light of the definitive costs for 2006, such was the case and the implementation of a compensation mechanism was therefore justified¹⁰⁸.

2.2 Determining the net cost of providing the universal service for 2006

In 2007, the Authority submitted to public consultation draft rules for determining the cost of universal service in 2006¹⁰⁹. These new rules took into account the regulatory provisions established by decree¹¹⁰.

Following a public consultation, ARCEP set the rate to compensate for use of capital at 10%¹¹¹ for 2006. The Authority also published the rules employed for evaluating the cost of universal service¹¹², prior to its decision¹¹³ evaluating the net cost of providing universal service in 2005.

Applying this same method, after deduction of intangible benefits, ARCEP valued the net cost of universal service obligations in 2006 at 29.6 million euros. This sum constitutes an excessive cost and thus eligible for compensation.

For information, the maximum contribution for a universal service operator in 2005 was 0.09% of relevant turnover; for 2006, it totalled 0.08% of its relevant turnover.

Net cost of providing universal service, 2002 to 2008

€ ^(a) millions	2003 Final	2004 Final	2005 Final	2006 Final	2007 Estimated ^(b)	2008 Estimated ^(c)
Geographical balancing	76.885	57.465	3.225	1.368	57.465	3.225
Public payphones	23.549	18.598	13.906	14.239	18.598	13.906
Social tariffs	36.814	39.198	37.236	36.257	38.249	37.236
Directories and directory services	0.000	0.000	0.000	0.000	0.000	0.000
Intangible benefits	-84.007 ^(e)	-81.978 ^(f)	-23.457 ^(g)	-22.217 ^(h)	-81.978	-23.457
Total	53.242	33.284	30.910	29.647	32.334	30.910

(a) All figures rounded off to the closest 1,000 euros.

(b) Provisional contributions for 2006 and 2007 are based on the final net cost in 2004. The cost of covering telephone debts (0.949 M), has been deducted. Decisions concerning estimates for 2006 and 2007 are, respectively, ARCEP Decision No. 05-919 of 15 November 2005 and No. 06-1103 of 14 November 2006.

(c) Estimated contributions for 2008 are calculated based on the net final cost for 2005. The decision concerning estimates made for 2008 is ARCEP Decision No. 08-0994 of 15 November 2007.

(d) Details of intangible benefits for 2003 : 83.535 M€ for brand image, 0.123 M€ for ubiquity, 0.000 M€ for lifecycle and 0.349 M€ for access to telephone usage data.

(e) Details of intangible benefits for 2004 : 81.664 M€ for brand image, 0.112 M€ for ubiquity, 0.000 M€ for lifecycle and 0.202 M for access to telephone usage data.

(f) Details of intangible benefits for 2005 : 23.316 M€ for brand image, 0.076 M€ for ubiquity, 0.000 M€ for lifecycle and 0.065 M€ for access to telephone usage data.

(g) Details of intangible benefits for 2006 : 22.141M€ for brand image, 0.066 M€ for ubiquity, 0.000 M€ for lifecycle and 0.010M€ for access to telephone usage data.

107 - CPCE Article L.35-3 (III).

108 - In accordance with CPCE Article L.35-3 (III).

109 - Public consultation from 21 December 2007 to 1 February 2008.

110 - Decree No. 2004-1222 of 17 November 2004 amending CPCE Articles R.20-33 through R.20-39 concerning the methods for calculating the net cost corresponding to universal service obligations. Of particular note, the cost of geographical balancing was limited only to the costs incurred in unprofitable zones.

111 - ARCEP Decision No. 07-0834 of 10 October 2007.

112 - ARCEP Decision No. 08-0181 of 19 February 2008.

113 - ARCEP Decision No. 08-0335 of 1 April 2008..

As they appear in the final assessments, net costs continue to decrease, due mainly to the drop in the cost of the geographical balancing component as a result of the amortisation of the PSTN. Also worth noting is the decrease in intangible benefits since 2005, and particularly the brand image advantage. ARCEP in fact commissioned a statistical report to obtain figures on the “added price” that subscribers would be willing to pay for universal services: it appears that increasing competition in the telecommunications market has driven down this added price.

The estimated net cost for 2008 is equal to the latest reported final net cost, namely the one calculated for 2005.

Management of the universal service fund

ARCEP is responsible for the universal service fund, FSU (Fonds de Service Universel), which is managed by the Caisse des Dépôts et Consignations (Deposit and consignment office).

The universal service fund was created in 1997. It is a sectoral fund sustained by electronic communications operators. In concert with the Caisse des Dépôts et Consignations, the Authority defined the technical system for managing the fund, and an agreement was signed between ARCEP and the Caisse des Dépôts et Consignations. It was approved by the minister on 19 December 1997, and is renewed by tacit agreement, unless notice to terminate is given within six months.

Payment of operators' estimated contributions to the universal service fund are made during the year in question, in two instalments – on 15 January and 15 September of each year – whose amount is equal to half of the estimated balance. Once the final cost has been assessed, contributions are adjusted, at the latest, on 20 September of the second year following the year in question.

As with the contributions to the universal service fund, the fees for its management are shared between the operators.

114 - ARCEP Opinion
No. 06-1135
of 21 November 2006.

115 - Decree No. 2007-563
of 16 April 2007 concerning
the methods for assessing,
contributing to and sharing
the final costs of the un-
iversal service for the years
1997, 1998 and 1999 and
2000, JO of 18 April 2007.

116 - Order of 2 August
2002 setting the rates
mentioned in CPCE Article
R.20-37 for the final
assessment of costs
corresponding to universal
service obligations for
the year 2000,
JO of 20 October 2002.

117 - Order of 11 July 2002
indicating the final figures for
the net cost of the universal
service and the final balance
of operators' contributions
for the years 1997,
1998 and 1999,
JO of 18 October 2002.

3. Regulatory changes in 2007 and 2008

3.1 Reassessment of contributions to the universal service fund for 1998, 1999 and 2000

Following receipt of the ARCEP opinion¹¹⁴, the minister adopted a retroactive decree¹¹⁵ whose aim was to fill the legal void created by the cancellations announced by the *Conseil d'Etat* on 11 April 2005 and 12 December 2005 of the Orders dated 2 August 2002¹¹⁶ and 11 July 2002¹¹⁷. This allowed ARCEP to reassess the final contributions due from operators for the years 1998, 1999 and 2000.

Based on rules in effect up to 2004 concerning the methods for assessing, contributing to and sharing the final costs of the universal service for the years 1998 and 1999, this decree enabled the Authority to adopt:

- ◆ a decision¹¹⁸ specifying the rules to be employed for applying the methods indicated in the Decree of 16 April 2007, for the final assessment of the cost of the universal service for 1998 to 2000;

- ◆ decisions stipulating the final cost of the universal service and operators' contributions for the years 1998 and 1999¹¹⁹;
- ◆ a decision that stipulates the final assessment of the final cost of the universal service and operators' contributions for the year 2000¹²⁰.

As the calculation methods are identical to those employed in the different temporary measures, the figures for operators' final net contributions to the universal service fund for the years 1998, 1999 and 2000 remained the same as those set by previous decisions¹²¹.

3.2 The law introduces greater flexibility in the designation of the universal service provider

The Law of 3 January 2008 on developing competition for the consumer's benefit¹²² introduced greater flexibility in the method used for designating universal service providers¹²³.

It makes it possible to designate several operators as the providers of a given component, at the outcome of the calls for candidates, and so opening the provision of the universal service to entities that operate on a regional scale, i.e. not necessarily on the national scale. From a concrete standpoint, the application of these provisions creates the possibility of designating two distinct operators for the provision of the directories component, on the one hand, and for provision of the directory assistance services component on the other. Moreover, the ministry can elect not to designate an operator as the universal service provider should it conclude that the state of the market is capable of meeting consumer needs.

This law echoes the views of the Commission which, in a reasoned Opinion issued on 10 April 2006, reproached French authorities for the method used to designate the enterprise responsible for fulfilling universal service obligations. It was the Commission's view that requiring that the enterprise provide the service nationwide made the incumbent carrier the only eligible candidate in France.

4. Pending disputes

In 2007, no operators filed appeals with the *Conseil d'État* on ARCEP decisions concerning the estimated assessments of operators' contributions to the cost of universal service for 2007 or the final assessment for 2005.

However, operators Bouygues Telecom and Tél  2 did file appeals with the *Conseil d'  tat* concerning Decree No. 2007-563 of 16 April 2007 concerning the methods used for assessing, contributing to and sharing the final costs of the universal service for the years 1997, 1998 and 1999 and 2000.

The *Conseil d'  tat* rejected operators' requests concerning:

- ◆ provisional assessments of the cost of universal service and operators' contributions for 2005¹²⁴ filed by Bouygues Telecom and AFORST;
- ◆ provisional assessments of the cost of universal service and operators' contributions for 2006¹²⁵ filed by AFORST;
- ◆ final assessments of the cost of universal service and operators' contributions for 2002¹²⁶ filed by Bouygues Telecom and AFORST;

118 - Decision
No. 07-0747
of 20 September 2007.

119 - ARCEP Decision
No. 07-0871
of 23 October 2007.

120 - ARCEP Decision
No. 07-0872
of 23 October 2007..

121 - ART Decision
No. 02-329 of 23 April
2003 for the years 1998
and 1999 and
No. 2002-417 of 11 June
2002 the year 2000.

122 - Act No. 2008-3
of 3 January 2008 on the
development of
competition for the benefit
of consumers,
JO of 4 January 2008.

123 - Cf. Article 15 of Act
No. 2008-3 of 3 January
2008 amending CPCE
Articles L.35-2 and L. 35-3
concerning the universal
service.

124 - ART Decision
No. 05-0028
of 17 March 2005.

125 - ARCEP Decision
No. 05-0019
of 15 November 2005.

126 - ART Decision
No. 04-1068
of 21 December 2004.

127 - ARCEP Decision
No. 05-0472
of 21 June 2005.

- ◆ final assessments of the cost of universal service and operators' contributions for 2003¹²⁷ filed by Bouygues Telecom and AFORST;
- ◆ final assessments of the cost of universal service and operators' contributions for 2004¹²⁸ filed by Bouygues Telecom and AFORST.

128 - ARCEP Decision
No. 05-0917
of 27 October 2005.

In addition, seven cases brought before the Commercial Court of Paris¹²⁹ were appealed by the ministry to the Paris Court of Appeal, which requested input from the Authority on the matters.

129 - Actions brought by
Cegetel, Dauphin, SFR,
SRR, Tele2, Viatel
Opérations and Viatel
concerning requests made
to the minister for
restitution of a portion of
the sums paid to the
universal service fund for
the years 1998 to 2000.

5. Control of universal service tariffs in 2007

5.1 Introduction of a multi-year control mechanism

The Authority has formalised the commitments made by France Telecom when applying to be designated as the universal service operator¹³⁰. France Telecom had proposed offering universal service customers with a regular decrease in calling tariffs.

130 - ARCEP Decision
No. 06-0725
of 25 July 2006.

ARCEP took this opportunity to replace the procedure of individual prior determination of universal tariffs with a control measure providing for a multi-year price cap on calling tariff baskets. This new system, provided for by legislative and regulatory texts, is in accordance with France Telecom's proposals and the recommendations expressed by the Authority in its opinion in early 2005.

131 - In March 2005,
France Telecom was
designated as the universal
service operator for the
telephone service
component for a period of
four years. The universal
service designation
will thus be renewed
in early 2009.

This form of tariff control will apply up to 2008¹³¹ to calls made by two representative subscribers, one located in Metropolitan France, the other overseas, who have chosen France Telecom's universal service offer and who constitute two distinct tariff baskets: one for Metropolitan France (which includes calls originating in Metropolitan France to fixed and mobile numbers in Metropolitan France and in the overseas territories and *départements*) and one for the overseas territories and departments (which includes calls originating in the overseas territories and departments to fixed and mobile numbers in the overseas territories and departments and in Metropolitan France).

132 - These 3% represent
the portion of savings
generated by the operator
in charge of providing
universal service passed on
to universal service
subscribers.

The average annual price of each tariff basket will evolve every year at most at the rate of the consumer price index, minus 3%¹³² and minus the decrease in external interconnection and access costs (notably mobile voice call termination).

5.2 The purpose of multi-year tariff controls

A multi-year system of controls guarantees that the end users of the universal service – in this case the service offered by France Telecom – will benefit from a regular decrease in their calling tariffs, and notably that decreases in mobile call termination tariffs (fixed to mobile calls) ordered by the Authority will be passed onto them. This will also allow them to benefit from a share of the incumbent carrier's productivity gains which are not reserved only for heavy users.

For France Telecom, a multi-year system based on defining objectives for the tariff basket provides the operator with a certain room to manoeuvre, within which it can exercise its pricing choices.

5.3 A priori control over universal service provision

ARCEP has maintained the procedure of *a priori* control over all universal services which are not subject to tariff control. As a result, the price of calls to fixed non-geographic numbers (087B and 09AB) is still controlled individually by the Authority, prior to their implementation. The market for calls to these numbers is not terribly competitive, and consumers' calling patterns with respect to these numbers are evolving constantly. In the same vein, calls to special service numbers (08AB, 3BPQ and 118XY) are not part of the multi-year price control mechanism (and so continue to be controlled individually), nor are international calls.

F. Universal directory

1. Background

1.1 Legislative and regulatory framework

The principles of implementing universal directory services (printed directories, online directories, directory assistance services...) are defined by law¹³³: all subscribers have the right to be included, free of charge, in the lists compiled by the operators and destined to be published in the directories or which can be looked up through a directory service.

The mechanism for their implementation was specified by a decree¹³⁴, on which the Authority issued a favourable opinion¹³⁵.

The task of creating a universal directory is a complex one, however, and involves a number of challenges:

- ◆ the multiplicity of operators that assign numbers – the universal directory being a compilation of all operators' subscriber lists – as well as the multiplicity of players wanting to or having to supply a universal directory;
- ◆ the juxtaposition of two listing registration systems, depending on whether the subscription is with a fixed or a mobile operator.

As a result, it became necessary to provide clarification and more precise information to make it easier to supply the public with a good quality public universal directory and universal directory assistance services. This is why, in 2006, following work performed with the various players involved, the Authority published a decision¹³⁶ that reiterated the importance of:

- ◆ the protection of consumers' rights and the privacy of their personal information;
- ◆ consistent and relevant content in the directories;
- ◆ an efficient and reliable operational process for sharing subscriber and user lists between operators and publishers.

133 - Cf. CPCE
Article L.34.

134 - Decree
No. 2005-606
of 27 May 2005
concerning directories and
directory services.

135 - ART Opinion
No. 04-1039
of 7 December 2004..

136 - ARCEP Decision
No. 06-0639
of 30 November 2006,
approved by Ministerial
Order of 9 March 2007
and published in the
JO of 24 March 2007.

137 - In particular, these rights extend to numbers associated with prepaid cards or assigned temporarily, as well as to IP or Internet telephony services

138 - Cf. CPCE Article L.34.

139 - Operators are required to give users and subscribers the option of these restrictions, and to communicate all of the requested restrictions to all of the publishers that have access to its subscriber and user list. Publishers are, in turn, obligated to incorporate these requests into their published listings. By addressing themselves to their operator, subscribers and users are thus guaranteed that their choice of restrictions will be communicated to all publishers.

140 - In cases where a user other than the subscriber is included in these lists, these rights apply to the user's data as well.

141 - Cf. CPCE Article R. 10.

142 - To respect other subscribers' rights, the request for non-publication of the address will be satisfied only on condition that it does not create confusion with subscribers who have the same name.

143 - To respect other subscribers' rights, the request for non-publication of the first name will be satisfied only on condition that it does not create confusion with subscribers who have the same name.

144 - Cf. CPCE Article R. 10-3.

145 - Automatic listing occurs after the subscriber has been informed of these provisions, and if he or she has not indicated an objection.

146 - Electronic communications operators' obligation to inform consumers regarding inclusion in subscriber listings is specified in CPCE Article R. 10.

1.2 Subscriber rights

All fixed and mobile¹³⁷ telephone subscribers, whether physical persons or legal entities, have the option to appear, free of charge, in the directory compiled by their operator¹³⁸. They can also decline inclusion in the list.

To appear in the universal directory lists, the minimum information that an individual (service subscriber or user) must provide their operator when subscribing to a service is: their last name, first name, address and phone number. Subscribers may, however, request that certain optional information be included (email address, profession, etc.) and impose¹³⁹ a certain number of restrictions on their operator with respect to the publication of information of a personal nature¹⁴⁰. Subscribers can exercise this right at any time¹⁴¹.

They may request that their operator:

- ◆ include only their town of residence (and postcode), and not their complete address¹⁴²;
- ◆ publish only the initial of their first name¹⁴³;
- ◆ forbid personal information from being used for commercial purposes;
- ◆ forbid personal information from being used for reverse searches based on the telephone number.

Subscribers may also choose to have information on the line's other users included in the listing, provided they have the users' consent¹⁴⁴.

Although all subscribers enjoy identical rights, the registration system used for mobile subscribers is different from that used for fixed subscribers. Mobile operators must obtain the prior consent from their subscribers before including them in their directory listing, whereas fixed telephone subscribers are included automatically unless they explicitly express their opposition to having certain information of a personal nature included in the directory¹⁴⁵.

1.3 Operator obligations

Operators are responsible for informing subscribers of their rights, especially their right to a restricted listing, and for obtaining subscribers' publishing preferences. This obligation to inform subscribers is essential for mobile operators given that a mobile directory listing requires explicit subscriber consent. The quality of the information mechanism is therefore critical to allowing subscribers to exercise their rights¹⁴⁶.

In addition, all operators must ensure that information contained in directory listings is accurate¹⁴⁷ and up to date. Here again, the quality of the mechanism is crucial to the overall quality of the directory services made available to consumers, and to protecting their rights.

In the same vein, directory publishers and information services that use directory listings transmitted by operators must respect subscriber and user choices and process all data contained in such lists in a uniform and non-discriminatory way. In particular, in printed and online directories each user's data must be published using a common format and neutral sort orders (for example, alphabetically). Likewise, the information provided by directory services must be of the same nature and should not favour certain subscribers. If the option of a preferential listing (in a customised format, including advertising, etc.) is given to subscribers, it must be offered to all subscribers on the same terms.

1.4 Access to universal directory data

Consumers can access universal directory data via the various products offered by the different publishers. If these publishers wish to do so, they can offer services such as reverse lookup, assisted search, call filtering, advertising inserts, text messaging, etc. provided subscribers' listing preferences are respected.

Other services, such as international directory information, can be offered either on the same platform as the universal directory (by dialling numbers starting with 118 for example) or on another one (e.g. using 3BPQ short numbers).

There is no restriction on the fees charged for these various services, but the operator responsible for providing the universal directory and the universal directory service must distribute a free, printed local directory (or covering the *département* if requested by the subscriber) to all telephone subscribers, and make universal directory data available for a reasonable fee through an electronic service and a telephone directory assistance service.

The various universal directory products must be edited and published in a non-discriminatory fashion, which is to say that subscribers appear in them in a uniform way. In particular, the data pertaining to each user must be published using the same format and according to neutral sorting orders (e.g. alphabetically) in both the print and online versions. In the same vein, information provided by directory assistance services must be equally neutral, and not give preferential treatment to certain subscribers. As a result, when consulting a directory, it must not be possible to identify the operator(s) associated with any subscriber, and the same degree of information must be supplied on all subscribers – unless otherwise requested by the latter.

These universal directory products, which are made available to consumers, are the result of the compilation of the subscriber and user lists of all fixed and mobile telephone service operators. Each universal directory publisher or provider of universal directory assistance services acquires the directory listings from each of the operators under bilateral agreements. No central database exists.

147 - CPCE Article R.10-3 requires that all operators, to the extent they are involved in this activity, take the necessary precautions to ensure the accuracy of the information appearing in their listings and the quality – especially from a technical point of view – of these lists, except when the data concerns business-related references that the operator includes but for which the requesting party is responsible.

2. ARCEP actions

2.1 Reminder of the measures implemented by ARCEP

Since 2004, ARCEP has held regular discussions with stakeholders (fixed and mobile operators, universal directory publishers, universal directory service providers, consumer associations, French national commission on computing and freedom, CNIL, etc.) aimed at defining the method for collecting information from subscribers, and the mechanism for selling subscriber and user lists to publishers, as required for the swift and satisfactory supply of universal directory services.

These consultations first led the Authority to publish:

- ◆ guidelines, in December 2004,
- ◆ a decision in November 2006¹⁴⁸ specifying the terms for the sale of subscriber lists users for the purpose of publishing universal directories or providing universal directory services.

148 - ARCEP Decision No. 06-0639 of 30 November 2006.

In addition, the Authority regularly reminds operators of their obligation to compile directory listings to be able to satisfy requests from universal directory publishers and universal directory assistance service providers. To this end, every month since January 2006 it has published a scorecard of the state of progress in operators' implementation of the universal directory¹⁴⁹.

149 - Available on the ARCEP website: www.arcep.fr.

ARCEP is also careful to stress to operators, and particularly cellular operators, the importance of informing their subscribers of their rights and the terms for being listed in the universal directory, and to collect their decisions on whether or not to appear in the universal directory.

2.2 Reinforced efforts

Having become aware of certain failures on the part of operators in their compilation of universal directory listings (lateness, incomplete data, low percentage of subscribers listed), in early 2007, the Authority took several steps to remedy the situation:

- ◆ enforcement of the Decision of 30 November 2006, which was approved by the minister in March 2007¹⁵⁰, whose stipulations provide elements of legal clarification and increased security that are necessary to improve the quality, comprehensiveness and reliability of universal directory products and services from a consumer viewpoint;
- ◆ the launch of procedures which would likely result in penalty procedures against operators that did not meet their obligation to provide their subscriber and user lists to universal directory publishers and universal directory service providers. Several penalty procedures have been instigated since December 2005, most of which resulted in official orders to comply. At the start of 2008, only three of these procedures had yet to be resolved;

150 - ARCEP Decision No. 06-0639 of 30 November 2006, approved by Ministerial Order of 9 March 2007 and published in the JO of 24 March 2007.

- ◆ expansion of the scorecard to MVNOs and operators in the overseas territories and *départements*. At the start of 2008, some 40 fixed and mobile telephony operators were informing the Authority of the number of their subscribers included in the universal directory listings, and on the status of the sale, in effect or being negotiated, of these listings to universal directory publishers and universal directory service providers;
- ◆ the launch of administrative enquiries¹⁵¹.

2.3 Administrative enquiries into the leading mobile operators

151 - See below.

The Authority noted that the increase in the number of mobile telephony subscribers included in the universal directory listings was very low, remaining below 3%.

In November 2007, ARCEP thus elected to institute administrative enquiries into the leading mobile operators. Several Authority agents thus visited some forty shops across Metropolitan France to verify whether operators were indeed meeting their obligations, notably with respect to the information provided to new subscribers.

At the outcome of these investigations, the Authority revealed gaps and approximations that prevented new subscribers from obtaining complete information. The operators concerned were thus invited to devise solutions to be put into place to improve the situation.

After consulting with the Authority, operators announced plans to:

- ◆ make it a general policy to record new subscribers' and customers' listing choices in the computer database at the moment of subscription or the purchase of prepaid formulas, and expand this policy to all computer-based tools;
- ◆ reassess and reorganise the place given to the universal directory in in-house training programmes;
- ◆ underscore the importance of the quality of the information provided to subscribers and customers on their rights with respect to the universal directory, and the restrictions.

The Authority is and will continue to be vigilant in its bid to ensure that fixed and mobile telephony service operators effectively meet their obligations for the consumer's benefit.

ARCEP decision disputed by AFORST

In May 2007, the French association of telecommunications network operators and service providers, AFORST (*Association française des opérateurs de réseau et services de télécommunication*) filed an appeal with the Conseil d'Etat against the ARCEP Decision of 30 November 2006.

The Association disputes the Authority's regulatory power to specify and clarify the contents of the universal directory listings that operators sell to universal directory publishers and universal directory assistance service providers, and the definition of the pricing model to be used.

According to AFORST, the Authority does not have the right to expand the

fields that make up the universal directory listings, even if these fields allow subscribers to record personal information.

As to the pricing model presented, AFORST regrets that the Authority is seeking to impose and dictate a tariff when the reference model only indicates the costing principles and definitions to be taken into account, in order to facilitate agreements and the signature of contracts between operators and those entities that benefit from the supply of universal directory listings.

G. Value-added and “118” services

1. The value-added services market

1.1 A complex and specific value chain

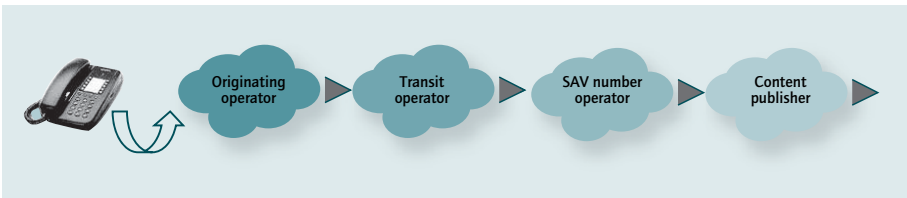
Value-added services (VAS) are services that are accessed via 10-digit numbers beginning with 08 (except 087B) and 118 (directory services), and four-digit numbers starting with 3 or 1. These numbers allow customers to access different types of service over their fixed or mobile phone: pre-recorded (e.g. weather forecasts) or personalised (information, ticket sales...) messages, as well as narrowband Internet access.

They constitute a large segment of the electronic communications market: VAS generated roughly €2.4 billion in revenues in 2007¹⁵².

152 - Source: ARCEP, cf. Part 4, Chapter 2, B.

The value-added services market is also a complex one: a great many players are involved in providing VAS, from the originating operator (1) which provides the telephone service, to the service provider (3) which operates the number on behalf of the content provider (4). The operator that operates the number aggregates the traffic coming from all local loops, or sub-contracts this activity to a “collection” operator. When the operator that operates the VAS number is not physically capable of collecting traffic coming from certain local loops, a transit operator (2) intervenes in the value chain.

The different players along the value chain



Furthermore, these services have a number of specific features: unlike a classic person-to-person call, the retail calling tariff applied to a VAS number is set jointly by the calling operator providing the telephone services, and the operator that operates the number selected by the content publisher with, in some cases, the latter earning a portion of the income.

1.2 Issues to be addressed

The analysis of the VAS value chain's operation, performed by ARCEP in 2006, revealed that the growing number of fixed and mobile local loop operators and of service and content providers has led to increasingly complex contractual relationships between the different players (multiple roles, disparate billing and contract models). In addition, the asymmetrical regulation imposed on the incumbent carrier has revealed its limitations¹⁵³.

153 - See below.

At the outcome of the public consultation launched in late 2006, the Authority confirmed several market malfunctions:

- ◆ growing dissatisfaction among consumers, particularly in terms of understanding how the market works, the clarity of tariffs and the code of professional ethics governing the content that can be accessed via VAS numbers and the use of these numbers (variety of numbering formats, diversity of associated services);
- ◆ the lack of an explicit obligation to route calls to all VAS numbers;
- ◆ billing and collection problems between market players. Some content publishers encounter difficulties in establishing contracts for access to their service offer originating on certain local loops, and in receiving payment of a portion of the sums billed to consumers.

This type of service can only function and develop if a climate of trust is created between the players that provide the services and consumers.

2. Measures taken by ARCEP

To address these market malfunctions revealed by its analysis, in 2007 the Authority proposed two main lines of action:

- ◆ the implementation of symmetrical regulation¹⁵⁴ which will make it possible to clarify the legal framework applicable to all operators for end-to-end access to VAS, and to inter-operator relationships;
- ◆ adaptation of the asymmetrical regulation¹⁵⁵ applied to France Telecom.

154 - Cf. Part 1, Chapter 3, A.

155 - Cf. Part 1, Chapter 3, A.

A third line of action, to be carried out in 2008, involves consultation and joint regulation efforts to improve tariff transparency and clarity, both of which are needed to regain consumers' trust in the use of VAS.

The Authority is also keen to stress the importance of **reinstating supervision of VAS content in terms of a professional code of ethics**, which was previously provided by the French Authority for Telematic Services, CST (*Conseil supérieur de la télématique*) and the Committee for Anonymous Telematics, CTA (*Comité de la télématique anonyme*) – the first being in charge of code of ethics recommendations and the second for ensuring compliance in the agreements signed between the different market players. To date, however, and for the past two years, the chairman's position at the CST has been vacant and the two bodies are no longer able to fulfil their mandate. During debates over the "Chatel" Act, the government announced the creation of a national commission dedicated to a professional code of ethics for online public communication services, which will be in charge of handling instances of abuse in the value-added services market.

2.1 Implementation of “symmetrical” regulation

156 - ARCEP Decision
No. 07-0213
of 16 April 2007.

In April 2007, ARCEP adopted a decision¹⁵⁶ aimed at implementing symmetrical regulation, (i.e. which applies equally to all operators) to be able to provide a framework for the methods use to route and bill calls to value-added service numbers.

Approved by the minister on 11 May 2007, this decision imposes two types of obligation:

- ◆ an obligation of VAS number accessibility imposed on operators present at either end of the value chain (i.e. originating operators and VAS number operators), which will need to comply with *reasonable* requests for access to numbers under objective, transparent and non-discriminatory conditions, without prejudice to the right to discontinue or suspend in case of fraud or failure to adhere to the code of professional ethics;
- ◆ an obligation for originating operators to invoice the calls in question including, when applicable, recovery of outstanding sums. These operators must comply with *reasonable* requests from other operators under objective and non-discriminatory conditions.

These obligations should provide a remedy for issues concerning access to VAS numbers from all networks, and for billing and recovery issues concerning all VAS numbers. Their overall aim is to ensure the interoperability of VAS, which benefits consumers, and the ability to access VAS from any local loop.

The ARCEP decision does not, however, impose any given marketing method or contractual framework to be implemented by all content providers. It aims only to specify that, in a situation where an VAS provider makes a marketing request via the originating operator, and on the condition of a remuneration agreement, the operator must satisfy the request provided it is reasonable. This is thus not an obligation to satisfy any and all requests, but only reasonable requests that leave the parties free to agree upon the details of their business relationship.

In accordance with this decision, France Telecom updated its VAS sales offer, which now systematically includes details on billing, collection, recovery, management of outstanding balances and the payments of a portion of the monies billed for all value-added services originating on its local loop, regardless of the associated tariffs involved.

2.2 Changes in the obligations imposed on France Telecom

The Authority decided to impose additional obligations on France Telecom – given the competitive edge it enjoys – and to specify the correlation between its specific obligations and those imposed by the Decision of 16 April 2007.

Because the new France Telecom repayment offer is connected to the call origination market, the decision¹⁵⁷ adopted by ARCEP in September 2007 imposes several obligations on the incumbent carrier:

157 - ARCEP Decision
No. 07-0667
of 6 September 2007

- ◆ non-discrimination;
- ◆ transparency;
- ◆ cost accounting;

- ◆ accounting separation;
- ◆ non-excessive pricing.

This decision also lifted France Telecom's earlier obligation to provide a third-party billing offer (*facturation pour compte de tiers*, or FCT) once its repayment offer was operational and complied with the obligations imposed by the regulator.

The Authority notified France Telecom of its decision on 7 September 2007, and the operator published a reference offer for its repayment offering on 6 October 2007. The technical switchover from the FCT offer to the repayment offer occurred on 3 December 2007.

ARCEP believes that it will take some time before the impact of this new VAS repayment scheme can be measured. It nevertheless already makes it possible to render France Telecom customers' bills much clearer as all calls to VAS are now displayed on the detailed invoice in the same way with no indication, for instance, of the intermediate collection operators.

Under France Telecom's previous third-party billing system, VAS calls managed by other operators were listed in a separate section of the incumbent carrier's invoice. The section displayed the names of the technical intermediaries between France Telecom and the content provider, in theory invisible and generally unknown to the consumer. Moreover, these items sometimes appeared on the France Telecom invoice several months after the call was made.

Since December 2007, France Telecom customer invoices list all calls to VAS together. France Telecom bills all VAS calls in its own name and responds to all queries concerning these calls through its customer service department, as do all other fixed and mobile operators.

3. Other areas of ARCEP involvement in the VAS sector

ARCEP has also taken part in other efforts that concern the VAS sector, particularly the draft legislation on the development of competition for the consumer's benefit which addresses the issue of billing for technical hotline services – chiefly the issue of billing for customers' waiting time – and the terms of telecommunications service contract cancellation¹⁵⁸.

¹⁵⁸ - Cf. Part 4, Chapter 5, A, 1.2.

