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Part

Introduction to ARCEP

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Part 2

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CHAPTER 1

ARCEP's organisation

A. The Executive Board

The Board in January 2008



Front row, from left to right: Joëlle Toledano, Paul Champsaur (Chairman), Gabrielle Gauthey.
Back row, from left to right: Nicolas Curien, Patrick Raude, Denis Rapone, Edouard Bridoux.

ARCEP's Executive Board is composed of seven members. To guarantee the institution's independence, members of the Board cannot be dismissed and their six-year mandate is not renewable. This independence also applies to the way in which members are appointed to the Board: three of the members are appointed by the President of the Republic; the other two are appointed by the President of the National Assembly and the President of the Senate.

Three members of the Board were appointed by decree of the President of the Republic:

- ◆ Chairman Paul Champsaur;
- ◆ Members Edouard Bridoux and Patrick Raude.

Two members of the Board were appointed by the President of the Senate:

- ◆ Members Nicolas Curien and Denis Rapone.

Two members of the Board were appointed by the President of the National Assembly:

- ◆ Members Gabrielle Gauthey and Joëlle Toledano.

B. Organisation chart

As of 17 March 2008



CHAPTER 2

Part

How ARCEP operates

A. ARCEP performance indicators

1. Opinions and decisions

ARCEP's activity culminates in the adoption of opinions and decisions.

In 2007, the ARCEP Board adopted 1,114 opinions and decisions.

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Opinions and decisions adopted	458	1,047	1,159	1,365	1,299	1,200	1,340	1,126	1,160	1,287	1,114

Source : ARCEP.

1.1 Opinions

The Authority is consulted for opinions on draft legislation, decrees and regulations concerning the postal and electronic communications sectors. It may also provide opinions to the Competition Authority when called upon to do so¹.

¹ - CPCE Articles L.5-8 and L. 36-10..

ARCEP issued 69 opinions in 2007:

- ◆ 21 opinions on draft legislation, decrees and orders;
- ◆ 9 opinions submitted to the Competition Authority;
- ◆ 3 opinions on La Poste tariff decisions;
- ◆ 23 opinions on France Telecom tariff decisions;
- ◆ 10 opinions submitted to the National Frequency Agency, ANFr;
- ◆ 3 opinions on various requests submitted to the Authority;

1.2 Decisions

One important activity for the regulator in the field of electronic communications is awarding operators numbering and frequency resources. This accounts for

more than half of the decisions adopted by the Board.

ARCEP establishes and administers the national telephone numbering plan, and assigns numbers and blocks of numbers in an objective, transparent and non-discriminatory fashion to operators requesting these resources². Every number assignment results in an individual decision. The same is true of frequency allocations to operators³.

2 - CPCE Article L.44.

3 - CPCE Article L.42-1.

Of the 1,114 decisions adopted by ARCEP in 2007:

- ◆ 239 were decisions on numbering resources, of which 3 were of general application;
- ◆ 793 were decisions relating to frequency resources, of which 4 were of general application;
- ◆ 10 were decisions relating to postal authorisations;
- ◆ 3 were decisions relating to dispute settlements, of which 1 concerned the postal sector;

16 dispute resolution procedures were also opened in 2007.

2. Licensed operators

2.1 Electronic communications operators

Declaration regime

The Act of 9 July 2004⁴ fundamentally altered the regulatory framework that applies to electronic communications in France, not only with respect to the system of authorisations itself, but also as concerns the scope of players subject to declaration.

CPCE Article L. 33-1 provides for the freedom to establish and operate public networks and supply the public with electronic communications services, provided that the operators declare themselves to the Authority beforehand.

The previous system of having to obtain an authorisation to engage in telecommunications activities was thus replaced by a system where freedom to operate is granted immediately upon simple declaration.

The licensing system has nonetheless been kept for allocating scarce resources (spectrum and numbers).

4 - Act 2004-669, dated 9 July 2004, concerning electronic communications and audiovisual communication services, JO of 10 July 2004.

5 - The complete list of telecom operators declared with ARCEP is available online at: www.arcep.fr.

6 - NB: some operators may be both a mobile network operator and an MVNO, with a single authorisation covering both activities. One case in point is Afone.

As of 31 December 2007, ARCEP had recorded 762 licensed or declared⁵ operators: 737 fixed operators, 22 mobile operators and 3 integrated, fixed and mobile operators.

The sharp rise of the number of declared operators in 2007 is the result of the experimental nature of public WLAN (Wi-Fi) networks having been lifted in April 2007.

Since then, operators have needed only declare their activity to the Authority to operate a wireless network open to the public. The switch from an experimental system to a system of general application for electronic communication operators concerned 201 operators in 2007.

364 new operators declared themselves in 2007.

At the end of 2007, there were eight declared or authorised mobile operators in the overseas territories, and 12 mobile virtual network operators (MVNO)⁶.

Over the course of the year, 18 fixed operators ceased their activities: 12 of them had been providing a telephone service.



















2.2 Postal operators

ARCEP issued 10 postal authorisations in 2007.

There were a total of 20 authorised postal operators in France as of 18 March 2008⁷. Two of them are authorised to operate nationwide: La Poste and Adrexo.

Worth noting is that, in early 2008, the Adrexo parent company, Spir Communication group, announced plans to put an end to its Adrexo Mail dedicated mail network in the coming months, due to the additional two-year delay (1 January 2011 instead of 1 January 2009) voted by the European Parliament and Council for the full deregulation of the postal sector⁸, and to the setbacks experienced by private companies in Europe that operate in the addressed mail distribution market⁹.

Postal authorisations issued by ARCEP as of 18 March 2008

Company name	Authorisation issuance date	Authorised activity	Brand/Logo
Adrexo	13 June 2006	Internal mail	
Alternative Post	19 april 2007	Internal mail	
Althus	7 september 2006	Internal mail	
Courrier Plus	2 october 2007	Internal mail	
Courrier Services 03	28 june 2007	Internal mail	
De Post-La Poste (Belgique)	5 december 2006	Outbound cross-border mail	
Deutsche Post AG	29 june 2006	Outbound cross-border mail	
Deutsche Post Global Mail France	15 march 2007	Outbound cross-border mail	
DHL Express France SAS	25 october 2007	Outbound cross-border mail	
G3 Worldwide France	5 december 2006	Outbound cross-border mail	
IMX France	22 june 2006	Outbound cross-border mail	
JS Activ'	19 april 2007	Internal mail	
La Poste (France)	26 october 2006	Internal mail and outbound cross-border mail	
LET France routage	25 october 2007	Internal mail and outbound cross-border mail	
Press' tissimo	31 may 2007	Internal mail	
ProCourrier	28 june 2007	Internal mail	
Royal Mail	15 march 2007	Outbound cross-border mail	
Solgeco 26	5 december 2006	Internal mail	
Stamper's	7 september 2006	Internal mail	
Swiss Post International	7 september 2006	Outbound cross-border mail	

6 - NB: some operators may be both a mobile network operator and an MVNO, with a single authorisation covering both activities. One case in point is Afone.

7 - The complete list of authorised postal operators is available online at: www.arcep.fr.

8 - Cf. Part 3, Chapter 1, Para. 2.

9 - Cf. The Groupe Spir annual report for 2007, published on 20 February 2008, is available online at: www.spir.fr.

3. Disputes

Any ARCEP decision may be appealed in an administrative court (either the Conseil d'État for Executive Board decisions or the *Tribunal Administratif* for decisions made, in accordance with their powers, by the Chairman or the Director General). Decisions concerning dispute settlements fall under the jurisdiction of the *Cour d'Appel de Paris* (Paris Court of Appeal).

In 2007, seven Authority decisions were appealed before the *Conseil d'État* and six were brought before the *Tribunal Administratif*. One appeal of a dispute settlement decision was filed with the *Cour d'Appel de Paris*, and one ruling by that court was brought before the Court of Cassation.

In addition, four proceedings concerning dispute settlements and 16 concerning sanctions were initiated.

Decisions appealed to the Conseil d'Etat on which a ruling was issued in 2007

Applicant	Appeal filing date	Subject of the appeal	Subject of the dispute	Decision on appeal
SFR	28 march 2006	The Authority's implicit decision	Application for annulment of the implicit decision from ARCEP rejecting the appeal requesting that the Authority make a decision within a reasonable timeframe on the state of competition in the wholesale call origination market on mobile networks.	Order: 25 April 2007: rejection
Rhône-Alpes Region	14 february 2007	Authority decision of 6 July 2006	Application for annulment of Decision no. 06-0666, dated 6 July 2006, concerning the outcome of the selection procedure for candidates applying for a licence to use available WLL frequencies in the 3.4-3.6 GHz band, with the view of establishing and operating services in the Rhone-Alps region, and which rejected the application of the Rhone-Alps region.	Order: 16 November 2007: rejection

B. ARCEP's resources

1. Budgetary resources

For 2007, ARCEP was allocated a budget of €21.95 million in authorised commitments, and €21.75 million in payment credits, of which €13.77 million for personnel expenses. Routine operating expenses are set at €8.18 million and €7.98 million are allocated to payment credits (excluding carried-over operating credits).

In 2007, budget requirements were determined under the LOLF (*Loi Organique des Lois de Finances*), the organic law for finance. ARCEP is accounted for in Action 08 (*Régulation des electronic communications et des postes, regulation covering electronic and postal communications*) of Programme 199

(*Régulation et sécurisation des échanges de biens et services, regulation and security of trade in goods and services*). This programme is one of the components of the ministerial mission of MINEFI, the Ministry of Economy, Finance and Industry (*Développement et régulation économiques*) which covers economic development and regulation).

For 2008, the total budget amounts to €22.43 million in authorised commitments and €22.23 million in payment credits, of which €8.43 million of the authorised commitments and €8.23 million of the payment credits are earmarked for operating expenses. The maximum budgeted headcount determined in accordance with LOLF guidelines is 174 full-time-equivalent personnel. The slight increase (2%) in the budget allocated to ARCEP is due essentially to the increase in postal sector regulation activities, and to the legal and contractual increase in rental fees for the Authority's offices.

For 2007, total authorised costs¹⁰ – in other words actual expenditures during the year – amount to €20.8 million, of which €6.5 million were for ARCEP's monitoring and management of general and individual authorisation regimes. The amount of administrative taxes and management fees invoiced to sector players in 2007 was €7 million.

10 - These are ARCEP's costs only, and do not take into account the costs incurred by other administrative bodies, such as the Ministry of Industry or the National Frequency Agency (ANFr), which share responsibility for certain issues with ARCEP.

Taxes and fees

The Authority is responsible for issuing payment orders for taxes and fees, which are deposited into the State's general budget.

Apart from the administrative tax that all electronic communications operators must pay, number assignments and reservations are also subject to a numbering tax. Spectrum licence holders are also required to pay fees for access to and management of the frequencies they use.

In 2007, ARCEP billed **€238 million** in fees, the bulk being frequency licensing fees (WiMAX licence awards, GSM frequency licence renewals) and **€40 million euros** in numbering and administrative taxes: the **totality of this sum is deposited into the State's general budget**.

2. Information system

In 2007, the Authority equipped itself with an information system based on virtual server technology. This innovative approach enables more flexible use of resources while guaranteeing data security. Staff can thus access their office e-mail online, from home for instance, and via their mobile phone.

3. Documentation

ARCEP's documentation centre houses a highly specialised body of European and international regulatory, economic and technical literature devoted to both telecommunications and postal issues. It processes both internal and external requests.

The centre is open to the public in the afternoon, by appointment (tel.: + 33 1 40 47 70 48).

A third of the external requests come from the telecommunications sector, the remainder being from members of the legal profession, administrations, academics, consultants, banks, journalists and individuals.

In addition to creating a system of legal, economic and technical monitoring to be able to disseminate the most up-to-date information on the sector, the documentation centre also purchased some 20 reports from around a dozen market analysts in 2007.

It has also installed a selective data dissemination system on the Authority's Intranet, which sends staff members alerts in real time on the arrival and availability of documents that are relevant to their area of activity (Alexandria database).

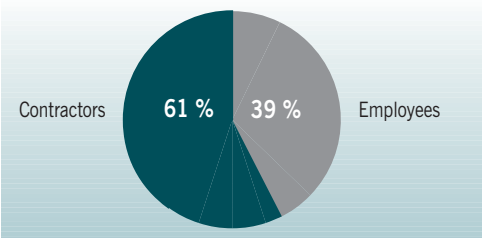
4. Human resources

In 2007, 20 new staff members were hired.

ARCEP's staff has grown from 163 on 31 December 2006 to 165 as of 31 December 2007 (75 women, 90 men).

As of 31 December 2007, ARCEP staff comprised 64 employees and 101 contractors, compared to 66 employees and 97 contractors one year earlier. The number of category A employees has decreased slightly since the previous year: accounting for 74.4% of personnel at the end of 2007, compared to 77.3% of personnel at the end of 2006.

Breakdown of personnel as of 31 December 2007



The average age of ARCEP personnel as of 31 December 2007 is 41 (48 for employees and close to 36 for contractors).

The cost of professional training and conference participation for Authority personnel totalled €172,100 in 2007.

The Authority's joint technical committee, the CTP (*Comité Technique Paritaire*) was consulted on two occasions:

- ◆ in June 2007, on the professional code of ethics provisions applicable to ARCEP staff;
- ◆ in December 2007, on changes to the remuneration policy and on transferring the Consumer Relations division from the Administration and Human Resources department to the Directorate General.

The second meeting of the joint consultative committee, which was formed in 2005 to examine individual contractor cases, was held in December 2007.

5. Surveys and reports commissioned by ARCEP

The pace of the changes at work in the sector and the highly technical nature and importance of regulatory issues have led ARCEP to seek outside technical, economic, statistical and legal expertise.

The work of consulting firms has allowed ARCEP to benefit from specialised skills and unbiased outside advice. For ARCEP, this usually results in the appropriation of tools for internal use which are not intended to be made public. However, certain reports and consumption or quality of service surveys are intended as a means of informing the sector, and consumers in particular, and are thus available to all on the Authority's website.

In 2007, the report budget amounted to €1,464,514. Twenty four reports were commissioned at an average cost of €61,021 and an average duration of six months.

The how and why of reports

What purpose do they serve?

Calling on outside technical, economic, statistical or legal experts provides the Authority with assistance that is essential to the performance of its duties. They provide a response to a number of requirements that are difficult to satisfy in-house due to a lack of time or specific expertise, and fulfil the need for a "neutral" interface with operators.

Other studies are devoted to satisfying regulatory commitments in the areas of auditing and quality of service measurement surveys (mobile telephony, 118 services, etc.) for the benefit of consumers. And, finally, the Authority commissions studies to obtain data not found in publicly-available market reports.

Some 60 consultants have provided ARCEP with expertise since 1997, the year when the Authority was created.

Is the neutrality of the consulting firms ensured?

A great deal of care is given to ensuring that the services provided by the consultancy chosen to perform a study involves no conflict of interest, and the Authority takes steps to ensure that the consultant and his/her colleagues respect the confidentiality agreement that they sign.

Are studies carried out in collaboration with other bodies?

Yes, and the benefits of it are twofold: the scope of the report is broader and it is a lot less costly.

Since 2003, ARCEP has commissioned an annual survey with the CGTI (*Conseil Général des Technologies de l'Information*/Committee for information technologies) on information technology coverage and take-up levels in France, which allows the Authority to monitor, year after year, the telecom equipment levels amongst consumers (fixed phone lines, mobile phones, Internet access) and to provide information on the rate of adoption and development of new services (SMS+, WAP, Wi-Fi, e-commerce, TV over DSL, e-payment systems, etc.).

A further example is the surveys on the quality of mobile services which are always co-financed by operators, although ARCEP remains the sole owner of the methodology, the results and the use made of these surveys, and which data is communicated to the public.

How doe one keep up to date with the reports that ARCEP will be commissioning?

The titles of the reports are published in the BOAMP (*Bulletin Officiel d'Annonces des Marchés Publics*/Official gazette of public service announcements) and online on the ARCEP website (www.arcep.fr): consultants are invited to subscribe to the site's mailing list to receive regular updates, including the reports that ARCEP plans on commissioning.

Chief external reports in 2007

Regulation
Assessment of the parameters needed to determine the rate of return for fixed and mobile operators and a broadcaster

Fixed and mobile market regulation
Assistance with mobile call termination regulation
European regulatory models for mobile call termination
Monitoring fixed and mobile residential calling market tariffs
International benchmark of number portability and directory compilation

Broadband market regulation and local authorities
Survey of duct availability
European models for bitstream/unbundling regulation
Technical specifications for FTTH network civil engineering infrastructure

Universal service
Audit of electronic communications services turnover in 2006
Geographical breakdown of the civil engineering costs of France Telecom's local loop

Consumption, usage and markets
Benchmark of new mobile services and markets, fixed-mobile convergence
Radio network infrastructure market (satellite)
Information and communication technologies availability and usage in French society*
Survey of mobile users' behaviour patterns
Definition of statistical indicators tied to electronic communications flat rates and to service convergence
Comparison of a selection of the main statistical analysis methods used in different countries

Quality of service and consumers

Quality of mobile operators' (2G-3G) voice services in 2006/2007

Quality of mobile operators' (2G-3G) data services in 2006/2007

Assistance

Spectrum management

Competition in vertically integrated oligopolies

Quality assessment process

Postal sector regulation

Economic analysis of routing in France

Audit of postal traffic lists

Impact on customers of new tariff schedules for "CQC" (quality plan) direct marketing correspondence

*Survey performed jointly by the CGTI (Conseil Général des Technologies de l'Information/Committee for information technologies) and ARCEP.

C. Consultation and transparency

For it to be efficient and indisputable, the business of regulation requires that the responsible body take an impartial approach to its environment. Sustaining a dialogue with the various interested parties (elected officials, consumer associations, economic actors, etc.) and the dissemination of information are essential to the success of the actions performed, and to ensuring that these actions are understood by all of the players involved.

To carry out its missions in a comprehensive manner, ARCEP relies on a vast array of information mechanisms, which it has implemented and upgrades as the need arises. It also calls upon the sector for input on a regular basis, encouraging dialogue and even debate on the issues for which it is responsible.

1. Professional code of ethics

ARCEP is an independent administrative authority. For Authority Board members, this independence from both political bodies and economic and social actors translates – both during and after the performance of their duties – first, into upholding the code of ethics that applies to all public agents and, second, into satisfying obligations specific to the performance of their duties.

This is why in 2007 the Authority adopted a professional code of ethics¹¹ that applies to the Executive Board. It lists the ethical principles that apply to all public agents and sets down those ethical provisions that apply specifically to ARCEP employees.

The code of ethics that applies to all public agents, and therefore Members of the Board, includes the following:

- ◆ Members of the Board must respect professional secrecy;

11 - ARCEP Decision n° 07-0461, dated 7 June 2007, adopting the professional code of ethics applicable to ARCEP employees.

- ◆ Members of the Board must show discretion, particularly during dispute settlement procedures and penalty procedures, in order to uphold the impartiality that is required of all ARCEP Board Members;
- ◆ Members of the Board must be reserved, which demands that the Chairman of ARCEP be notified of all plans for public commentary to ensure that no position will be expressed that contradicts the Authority's actual position;
- ◆ Members of the Board must withdraw from proceedings when they believe in all conscience, and in accordance with the principles of impartiality and independence, that they cannot take part in discussions on topics included in the order of the day;
- ◆ Members of the Board are forbidden from having illegal corporate interests, as stipulated in the Act of 13 July 1983 which forbids civil servants from, *"acquiring shares, either personally or through a third-party, in an enterprise which is subject to governance by the administration to which she/he belongs or with which it maintains a relationship, and whose nature would compromise his/her independence."*

The code of ethics also includes provisions that apply specifically to members of ARCEP Board:

- ◆ Members of the Board are forbidden from acquiring, directly or indirectly, shares in enterprises operating in the postal sector, the electronic communications sector, the audiovisual broadcasting or IT sector;
- ◆ incompatibilities. Deemed incompatible with the function of Member of the ARCEP Executive Board: all national mandates as well as all business activity and any other position in the public service;
- ◆ Members cannot be a member of the Commission Supérieure du Service Public des Postes et des Communications Électroniques (CSSPPCE), the public service commission for posts and electronic communications;
- ◆ ethics board: former members of ARCEP must solicit the opinion of the ethics board before seeking a position in the private sector, after having left ARCEP's employ less than five years previously.

2. Informing interested parties

The Authority has a variety of means of communication which guarantee that the sector receives the most exhaustive body of information possible, on both the content of the work being performed by the regulator and on the sector itself.

2.1 www.arcep.fr, ARCEP online



ARCEP's website is the preferred platform for disseminating information, in both French and English. Acting as the Authority's memory bank, it contains all of the publicly available information, both past and present. Updated on a daily basis, it satisfies the essential requirement of instantaneous information on a sector in a state of constant evolution.

The dedicated "Accès ciblés" (targeted access) section provides target audiences with all of the crucial informa-

tion on their relationship with ARCEP (forms, FAQ, etc.) on one page, along with the latest news relating to their particular centres of interest. Three categories of user are targeted: local authorities, consumers and operators.

The main information that can be accessed online is also distributed via e-mail to users who sign up for the update mailing list. There are two mailing lists: telecommunications and the postal sector, and both are available in French and English.

www.arcep.fr: hit count doubled in 2007

- ◆ 2,732,710 unique visitors in 2007, or 1.5 million more than in 2006, for an average daily log of 7,486 visitors and a total 9.9 million hits in nine years;
- ◆ over 24 million page views in 2007 (double the number in 2006), or a daily average of 67,222 pages;
- ◆ the home page accounts for 73% of hits. The most widely viewed page in 2007 was the legal guide for local operators and local authorities (viewed 62,055 times), followed by the Lettre de l'Autorité dedicated to consumers (56,050 hits);
- ◆ at the end of March 2008, the site's telecom mailing list had 14,877 French language subscribers (over 1,000 for the English language version), and its mailing list devoted to the postal sector had 1,477 subscribers (73 for the English language version).

2.2 www.appe118.fr, the directory services site

Since 3 April 2006, consumers have had access to new phone directory services by dialling 118, followed by three digits.

To inform users, ARCEP created a website¹² that provides a list of open 118 services, their main tariffs and, since 30 November 2006, a history of the changes to these tariffs.

12 - www.appe118.fr.

Also included on the site is an FAQ on 118 numbers (access, choice, billing, etc.) and on the universal directory (registration in the directory, subscriber rights, etc.), and which is updated on a regular basis.

The appe118.fr site had far fewer visitors in 2007: only 161,977 unique visits for the entire year. The site has registered a total 990,000 visitors since its launch in late 2005.

2.3 La Lettre de l'Autorité

La Lettre de l'Autorité is the ARCEP newsletter, which is published every two months and has a circulation of 6,000¹³.

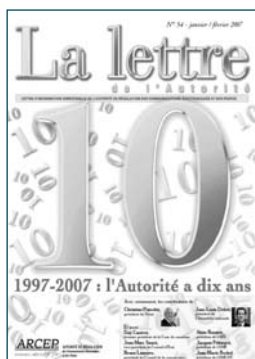
Each edition is devoted to a **specific subject** that falls under ARCEP's jurisdiction, providing a view of key issues: ARCEP's 10th anniversary, functional separation, consumers and the digital dividend were the main topics addressed in 2007.

Also included are **regular rubrics** which provide readers with key points of reference that allow them to better understand ARCEP's actions, role and operations (economic analysis, postal sector, legal aspects, consumers, ARCEP's day to day activities).

13 - A PDF version is also available on ARCEP's website (the mailing list currently has 10,000 subscribers, as large a readership as for the electronic version of *La Lettre*).

Lastly, to broaden readers' perspective on current debates, La Lettre de l'Autorité regularly publishes interviews with industry players.

In January 2007, ARCEP celebrated the 10th anniversary of La Lettre with a special issue featuring insights from a number of industry players on the role and impact of regulation on the telecommunications sector since 1997. The then Presidents of the Senate and National Assembly, respectively, Messrs Christian Poncelet and Jean-Louis Debré also contributed to the issue.



2.4 Les Entretiens de l'Autorité

Since 1997, ARCEP has organised regular discussions (*Entretiens*) on topics that are directly or indirectly tied to its areas of responsibility. These discussions provide an opportunity for open debate on often-complex issues, for exchanging potentially conflicting views – particularly thanks to input from foreign actors – and for exploring the possible shape of things to come.

The latest edition of this exercise, the 11th *Entretiens de l'Autorité*¹⁴, was held in Paris on 26 March 2007. Some 20 industry experts, representing economic actors, the academic world, consumers and other NRAs, gathered to discuss mobile economics before an audience of around 200 participants.

Previous *Entretiens de l'Autorité*¹⁵ had addressed the challenges of postal regulation (2005) and the issues and challenges of local authorities' involvement in the telecom market (2004).

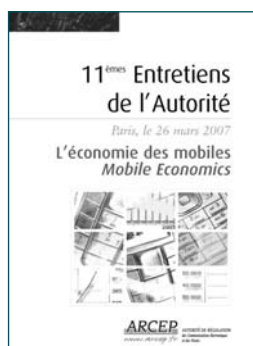
2.5 Dialogue with local authorities: CRIP

Digital equipment of the regions is a major economic and political necessity.

With the adoption of the Law on confidence in the digital economy of 21 June 2004¹⁶, local authorities can now invest in telecommunications by either creating or subsidising the establishment of broadband networks in their region.

In light of this new situation, and given the significance of the issue and players' expectations, ARCEP created a forum in late 2004 for local authorities and operators to meet and exchange ideas: CRIP (*Comité de Réseaux d'Initiative Publique*), the committee for public-initiative networks.

At the end of 2007, 86 public-initiative networks had been launched or planned. These projects led by local authorities in 2007 represented a combined total investment of 1.4 billion euros, from both public and private sources.



14 - The entire conference can be viewed on ARCEP's website:

<http://www.arcep.fr/index.php?id=9145>.

15 - The complete list of the *Entretiens de l'Autorité* symposia is available online at: www.arcep.fr.

16 - Cf. Law n°2004-575 of 21 June 2004 on confidence in the digital economy, JO of 22 June 2004.

CRIP met on four occasions in 2007: in plenary session on 15 March and in limited sessions on 23 January, 27 June and 19 November. Two major issues were addressed over the course of the past year: broadband coverage in dead zones and ultra-broadband rollouts in business parks and residential areas. These topics were explored in greater depth by two working groups that were created specifically for that purpose.

The work performed by the committee was also the subject of several publications¹⁷, notably a legal guide aimed at operators and local authorities, which provides a summary of the rights and obligations to which network operators and electronic communication service providers are subject¹⁸.

2.6 Consumer committee

The Consumer committee is a structure that was created in late 2007, and devoted to working, discussion and exchange in order to find solutions to consumer issues that fall under the purview of ARCEP's responsibilities.

The committee is made up of consumer associations and public institutions (INC, DGCCRF and DGE, the electronic communications mediator), while operators may be called upon to participate if the topic under discussion so warrants.

The Consumer committee meets once a year in plenary session to review the work of the past 12 months and to set the agenda for the coming year. Specific work is performed by groups and sub-groups that meet on a regular basis throughout the year.

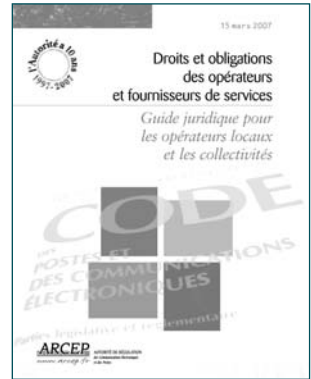
The first meeting of the Consumer committee was held on 17 December 2007, followed by three more technical meetings in the first half of 2008:

- ◆ in February 2008, on the topic of ultra-fast broadband (optical fibre sharing, future legislation);
- ◆ in March 2008, on issues pertaining to the postal sector (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.

3. Consultation with market players

3.1 Public consultations

Since its creation in 1997, the Authority has held regular consultations with the sector on a range of topics, notably on draft decisions concerning relevant market analyses. The goal is to obtain opinions and comments from the interested parties, thereby guaranteeing that the principle of transparency is upheld – which is of prime importance to the regulator.



17 - All of the documents published as part of the committee's work are available on the ARCEP website, in the section devoted to local authorities: <http://www.arcep.fr/index.php?id=2097>.

18 - Published in March 2007, and available online at: http://www.arcep.fr/uploader/tx_gspublication/guide-juridique_crip-2007.pdf.

19 - Cf. ARCEP's website:
www.arcep.fr.

In 2007, ARCEP consulted the sector on 27 occasions¹⁹.

8 mars 2007 : 8 March 2007: public consultation on value-added services.

14 March 2007: public consultation on analysis of the wholesale market for voice call termination on mobile networks.

6 April 2007: public consultation on accounting system specifications, pursuant to Article L. 5-2.6 of the French postal and electronic communications code, CPCE.

4 May 2007: public consultation on the introduction of UMTS in the 900 and 1800 MHz mobile frequency bands in Metropolitan France.

10 May 2007: public consultation on changes to the obligations imposed on France Telecom in inter-regional transit markets.

24 May 2007: public consultation on the introduction of third-generation (UMTS) mobile communication systems in the overseas *départements* of Mayotte and Saint-Pierre and Miquelon.

1 June 2007: public consultation on easing the regulations applied to fixed telephony retail markets.

8 June 2007: public consultation on the costing method used by mobile operators in Metropolitan France for setting mobile voice call termination tariffs.

13 June 2007: public consultation on information concerning the quality of the universal postal service.

14 June 2007: public consultation on the re-examination of obligations imposed on France Telecom with respect to calls to value-added services.

20 June 2007: public consultation on the draft decision concerning changes to obligations imposed on France Telecom in inter-regional transit markets.

4 July 2007: public consultation on determining definitive contributions to universal service funding for the years 1997 to 2000.

13 July 2007: public consultation on the issues surrounding new frequencies for electronic communication services access networks.

24 July 2007: public consultation on analysis of the wholesale market for voice call termination on overseas mobile networks.

24 July 2007: public consultation on analysis of the wholesale market for voice call termination on mobile networks in Metropolitan France.

26 July 2007: public consultation on the state of competition for ducts used for electronic communication and their future regulation.

26 July 2007: public consultation on sharing the termination portion of optical fibre local loop networks.

10 October 2007: public consultation on the costing model used by Internet access providers.

26 October 2007: public consultation on the timetable for accounts submission imposed on Orange France, SFR, Bouygues Telecom, Orange Caraïbe and

SRR for 2008 to 2010, given their significant market power in the wholesale call termination markets on their respective networks.

29 November 2007: public consultation on accounting rules, pursuant to Article L. 5-2.6 of the French postal and electronic communications code, CPCE.

30 November 2007: public consultation on cost accounting and accounting separation obligations imposed on TDF.

30 November 2007: public consultation on accessing letter boxes installed in buildings equipped with an access control system.

3 December 2007: public consultation on the rate of return for regulated activities in the fixed, mobile and television broadcasting sectors.

6 December 2007: public consultation on mobile number portability in Metropolitan France (accounting, collection and cost pricing methods tied to mobile number portability).

19 December 2007: public consultation on broadband and ultra-broadband wholesale market analysis.

19 December 2007: public consultation on the quality of fixed telephone services.

24 December 2007: public consultation on the rules that will be employed to apply the methods listed in Articles R. 20-33 A R. 20-39 of the CPCE for assessing the cost of the universal service in 2006.

3.2 Meetings and committees

3.2.1 Working groups

The Authority chairs a number of working groups on sometimes highly specialised technical issues. These forums enable dialogue with operators in particular, providing an opportunity to address certain problems and examine ways of remedying them.

To give an example: the expert committee for the introduction of new technologies into the local loop (*Comité d'experts pour l'introduction de nouvelles techniques dans la boucle locale*), which was created in 2002, brings together local copper loop unbundling operators, the top equipment suppliers and the incumbent carrier, France Telecom. Chaired by Catherine Mancini (Alcatel-Lucent), its task is to issue opinions on technical questions relating to the introduction of new technologies into the local loop. In 2007, it issued favourable opinions on the introduction of ADSL2+ to the sub-distribution cabinet, the introduction of VDSL2 on the France Telecom local loop and the introduction of E-SDSL at the MDF level.

In the postal sector, the Authority chaired a working group in 2006 devoted to the technical and operational aspects that could facilitate the implementation of the principle of access to residential letter boxes, with the players concerned (operators, building management representatives), before launching a public consultation on the subject²⁰.

²⁰ - Cf. Part 3, Chapter 6, A.

3.2.2 Specialised advisory committees

The advisory committees for electronic communications networks and services, CCRSCE (*La Commission consultative des réseaux et des services de electronic communications*) and for radiocommunications, CCR (*Commission consultative des radiocommunications*), operating under the aegis of the Minister responsible for telecommunications and ARCEP, pursuant to the Law of 26 July 1996²¹, are forums for institutional dialogue on telecommunications issues.

21 - CPCE Article L. 33-4.

A decree determines the composition, remit and operating conditions of both advisory committees²², for which the Authority ensures the secretarial duties.

22 - Decree n°2005-399 of 27 April 2005, *Journal Officiel* of 30 April 2005.

They are composed of representatives of service providers, service users and qualified experts, appointed by the Ministry for a three-year term.

These committees have the specific task of examining draft regulation concerning mobile telephony, on the one hand, and electronic communications networks and services on the other. They are consulted by the Minister in charge of electronic communications and by ARCEP on all matters that fall under their area of responsibility.

CCR met on three occasions in 2007. It devoted its efforts primarily to the creation of a new working group dedicated to the digital divide. It also focused on the call for candidates procedure for the fourth 3G licence. The composition of the CCR was set by decree in early 2007, renewing the chairmanship of honorary telecommunications engineer, Mr. Marc Houéry.

CCRSCE also held three meetings in 2007, under its chairman, Mr. Alain Bravo, President of Supélec. Questions relating to number portability in the overseas territories, to value-added services and the practice of automatic callback on public payphones were submitted for consultation by the Authority. Appointed in 2008, Charles Rozmaryn is the new chairman of CCRSCE.

There are no equivalent bodies in the postal sector.

3.2.3 Interconnection and access committee

The interconnection and access committee (Comité de l'interconnexion et de l'accès) is made up of representatives of network operators active in the interconnection market, telephone service providers and consumer associations, appointed by ARCEP decision. The Authority's Chairman presides over the committee, and the Authority itself ensures its secretarial duties.

The interconnection and access committee is a forum for discussion and exchange between the sector's players on current issues relating to fixed or mobile interconnection.

The committee met four times in 2007. The topics discussed included the Authority's draft decision on mobile voice call termination, preparatory works on the second cycle of fixed telephony market analysis, value-added services²³ and the practice of automatic callback on public payphones²⁴.

23 - ARCEP Decision 07-0213, dated 16 April 2007, concerning the obligations imposed on operators that control access to end users for routing calls to value-added services, approved by the ministry.

24 - Cf. ARCEP communiqué, dated 9 March 2007, concerning the results of the public consultation on putting an end to the use of automatic callback systems for calls originating on public payphones.

4. Relationship with Parliament, the judicial system, public authorities and other public institutions

As with any State institution, ARCEP is subject to Parliamentary oversight (its chairman thus addressed Parliament and parliamentary committees on several occasions in 2007) and to judiciary power (some fifteen decisions were appealed to the courts in 2007).

The Authority also maintains regular contact with the government, the competition authority and other public institutions.

4.1 Parliamentary oversight

4.1.1 Parliamentary oversight of ARCEP activities

Members of Parliament have the power of oversight over ARCEP activities – a necessary power to ensure the regulator's independence. What form does parliamentary oversight take?²⁵

25 - CPCE Article L.135

- ◆ the Authority has an obligation to submit an annual public report to Parliament before 30 June of each year, providing information on the application of legislative and regulatory provisions pertaining to the telecommunications and postal sectors;
- ◆ it is also obliged to submit an account of its activities and results to competent, permanent parliamentary committees, as requested by them. These committees can consult with ARCEP on all matters that fall under the Authority's jurisdiction.

In 2007, ARCEP Chairman, Paul Champsaur, was called upon to address parliamentary committees on several occasions:

- ◆ in March, by Bruno Retailleau, rapporteur to the Senate Commission on Economic Affairs (*commission des Affaires Economiques du Sénat*), to report on the results of the work performed by ARCEP and the scope of its activities;
- ◆ in October, by the National Assembly Commission on Economic Affairs, the Environment and Regional Development (*commission des Affaires économiques, de l'Environnement et du Territoire de l'Assemblée nationale*), on the issue of the Postal Directive and national digital coverage (mobile telephony and broadband Internet);
- ◆ in November, by the National Assembly Commission on Economic Affairs, the Environment and Regional Development, on the new law for the development of competition for the benefit of consumers.

Paul Champsaur was also consulted by the parliamentary commission on the digital dividend in January 2008²⁶.

26 - The Chairman's speech is available online at: www.arcep.fr.

4.1.2 Relationship with the CSSPCE (*Commission Supérieure du Service public des Postes et Communications électroniques*)

27 - Act 90-568,
dated 2 July 1990,
concerning the
organisation of the
public postal and
telecommunications
service.

The High Committee for the Post and Electronic Communications Public Service, CSSPCE (*La Commission Supérieure du Service public des Postes et Communications électroniques*) was created by the Act of 2 July 1990²⁷, with the goal of establishing a new method of parliamentary oversight in the postal and telecommunications sector.

It is composed of seven deputies, seven senators and three experts.

Its mandate is to guarantee the quality and adaptation of the public service in two economic areas born of a State monopoly. It thus has the capacity to request that ARCEP monitor whether operators and postal service providers are meeting their public service obligations.

The committee is also consulted on postal and electronic communication sector regulation (draft directives, draft bills).

4.2 Judicial powers

All ARCEP decisions are subject to appeal before administrative courts, or the Paris Court of Appeal (*Cour d'Appel de Paris*).

4.2.1 Appeals brought before administrative courts

In its capacity of administrative authority, ARCEP makes decisions whose judicial oversight falls to the administrative courts:

- ◆ pursuant to Article R311-1 of the Code of Administrative Justice, ARCEP decisions (i.e. those of the Board which represents the Authority) fall under the authority of the *Conseil d'Etat*. Such is the case, for instance, of market analysis decisions, those assigning or refusing frequencies, and the numbering plan. In the same manner, penalty decisions made by ARCEP may be appealed either in the courts or through a request for suspension to the *Conseil d'Etat*²⁸. Decisions to reject a request for penalties that were initiated by a third-party²⁹ can also be appealed before the *Conseil d'Etat*;
- ◆ decisions by the ARCEP Chairman, which are made in accordance with his powers, such as those made in his capacity of authorising officer for ARCEP expenditure and income³⁰ and decisions from the Director General of ARCEP departments, fall under the authority of the administrative court.

Seven decisions were appealed to the *Conseil d'Etat* and six to the Administrative Tribunal of Paris in 2007.

4.2.2 Appeals brought before the Paris Court of Appeal

Dispute resolution decisions made by the Authority have the particularity of being subject to the authority of the Paris Court of Appeal³¹.

The Constitutional Council (*Conseil Constitutionnel*) recognised³² that this departure from the fundamental principle recognised by the laws of the Republic – whereby the reversal or amendment of decisions made by administrative authorities exercising their prerogative of public power are subject to the authority of administrative courts – was made in the interests of the proper administration of justice.

28 - CE, 17 March 2006,
Le Renseignement français
(plaintiff) No. 289403.

29 - CE, July 2000, *Copper Communication* (plaintiff)
No. 199773.

30 - CPCE Articles L.133
and D.291

31 - CPCE Articles L.5-6
and L.36-8.

32 - Constitutional Council
Decision 96-378 DC, dated
23 July 1998, No. 22

The procedural rules that apply to ARCEP and the Court of Appeal in matters of dispute resolution are specified in Articles R.11-1 through R. 11-9 of the CPCE³³.

The terms defined for this procedure require that ARCEP, and the parties, submit a brief in writing and attend the hearing during which they will be given the opportunity to present their case. This is due to the fact that, when acting in cases of dispute resolution, ARCEP is not a jurisdictional authority³⁴ – defending its ruling before the appellate court judge – but rather an administrative authority, defending the legality of its decision.

A petition to appeal the Appeals Court ruling can be filed, should circumstances warrant³⁵.

In 2007, an appeal was filed with the Paris Court of Appeal against a dispute settlement decision, and a ruling by this same Court was appealed to the Court of Cassation.

4.3 Relationship with the French government

The French government consults ARCEP on draft legislation and regulations that concern the telecommunications and postal sectors. One such instance occurred in October 2007 concerning the draft legislation for the development of competition for the benefit of consumers³⁶, referred to as the *loi Chatel* (Chatel Act).

At the request of the Minister responsible for electronic communications³⁷ or the Minister responsible for postal affairs³⁸, the Authority assists in drafting the French position on international negotiations, and helps represent France at international and European organisations.

It also participates in specialised advisory committees such as CCRSCE and CCR³⁹, alongside the ministry representative.

As concerns the telecommunications sector, the scope of application of the Authority's regulatory powers is defined by the minister⁴⁰. ARCEP decisions specifying the rights and obligations pertaining to the operation of different categories of network and services are thus subject to the minister's approval.

4.4 Relationship with other independent administrative authorities, and other institutions

4.4.1 Relationship with the Conseil de la Concurrence

The Competition Authority (*Conseil de la Concurrence*) is the guardian of competition law and so intervenes *ex post facto* on competition matters in the telecommunications, broadcasting and postal sectors. The sector-specific regulations that ARCEP is responsible for in these markets are destined to disappear as competition progresses, to be replaced, when justified, by a single and common competition law. It is thus particularly important that the Competition Authority and ARCEP work in close collaboration.

It is with this in mind that the French postal and electronic communications code, CPCE, contains provisions for the structure of the relationship between the two institutions. ARCEP is thus obligated to solicit the opinion of the *Conseil de la Concurrence* when defining relevant markets and designating SMP operators as part of its market analyses. In return, the Competition Authority must solicit the Authority's opinion on all matters concerning the electronic communications sector that it is called upon to regulate.

33 - For postal issues, it is Articles R.1-2-11 through R.1-2-13 of the Code which refer to Articles R.11-3 through R.11-6 and R.11-8 and R.11-9 of the Code..

34 - Which naturally does not mean that, as with a great many administrative authorities ruling on issues that fall under the scope of Article 3-1 of the European Human Rights Convention, it is not viewed as a "tribunal" as defined in this article.

35 - In its rulings of 14 November 2000 (*v. Copper*) and 5 March 2002 (*v. Spacotel Communications*), the Court of Cassation recognised the admissibility of a statement and commentary presented for the Authority, which is viewed as the defendant in cassation proceedings.

36 - ARCEP Opinion 07-0857, dated 22 October 2007, on three draft legislation articles concerning the development of competition for the benefit of consumers.

37 - CPCE Article L.36.5.

38 - CPCE Article L.5.

39 - Cf. Part 2, Chapter 2, C., 3.

40 - CPCE Article L.36.6.

The Chairman of ARCEP must also apprise the *Conseil de la Concurrence* of any cases of abuse or anti-trust behaviour occurring in the electronic communications sectors, of which it is aware.

The Authority issued opinions on several Competition Authority decisions in 2007:

41 - ARCEP opinion
07-0112,
dated 8 February 2007

- ◆ the request for conservatory measures filed by the company Emettel concerning the practices being employed by the company TDF in the digital terrestrial television broadcasting sector⁴¹;

42 - ARCEP opinion
07-0706,
dated 6 September 2007.

- ◆ France Telecom and Orange France business practices in the mobile telephony retail sector⁴²;

43 - ARCEP opinion
07-0276,
dated 26 April 2007.

- ◆ the request for conservatory measures filed by the company Towercast concerning the practices being employed by the company TDF⁴³;

44 - ARCEP opinion
07-0130,
dated 15 February 2007.

- ◆ the request for conservatory measures filed by the company Solutel concerning France Telecom practices in the areas of engineering consulting services and technical inspection of passive infrastructure for connecting a building to the France Telecom network⁴⁴;

- ◆ complaint filed by Free against France Telecom for its refusal to provide access to its civil engineering network for deploying optical fibre⁴⁵.

4.4.2 Relationship with the Conseil Supérieur de l'Audiovisuel (CSA)

45 - ARCEP opinion
07-0745,
dated 20 September 2007.

ARCEP and the French broadcasting regulatory body, CSA (*Conseil Supérieur de l'Audiovisuel*) have distinct areas of responsibility, with ARCEP being in charge of regulating infrastructure and CSA of regulating content.

The regulatory framework nevertheless provides for collaboration between the Authority and CSA. When settling disputes, both bodies can solicit the opinion of the other⁴⁶, and ARCEP must obtain the CSA opinion when making decisions that will have a significant impact on the broadcast of radio and television services⁴⁷.

46 - CPCE Article L.36.8.

47 - CPCE Article L.36.6.

In 2007, no CSA decision was the subject of an ARCEP opinion, and CSA did not issue any opinions on decisions taken by the Authority.

4.4.3 Relationship with other institutions

Generally speaking, ARCEP works with other institutions whenever it is addressing issues of concern to both the Authority and those other bodies.

The institutions with which ARCEP collaborated in 2007 included:

- ◆ the *Caisse des dépôts et consignation*, on matters concerning the universal service, broadband and local authorities;
- ◆ the French national commission on computing and freedom, CNIL (*Commission nationale de l'informatique et des libertés*) on privacy protection issues associated with location-based services and the universal directory;
- ◆ the commission for energy regulation, CRE (*Commission de régulation de l'énergie*), on issues pertaining to powerline carrier technology.