

Consumers

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Taking consumer interests into account

ARCEP is responsible, by law, for ensuring “*effective and loyal competition which is beneficial to consumers*”¹. The creation of a competitive market, which allows consumers to choose their electronic communications service provider, is a necessary first step, but it is not enough. This first stage of market competition is based essentially on asymmetrical regulation that imposes obligations on SMP operators so that lasting competition can develop. As the market becomes increasingly competitive, sector-specific regulation is gradually replaced by common competition law. This stage needs to be completed by symmetrical regulation which defines the obligations that apply to all market operators so that consumers can benefit from network interoperability, a minimum quality of service level, adequate information and fluid operator switching procedures as well as the opportunity to benefit from market competition as much as possible.

1 - Cf. CPCE Article L.32-1.

A. Taking account of demand adapted to changes in the marketplace

From the courts to consumer associations, by way of the national consumer agency, CNC (Conseil national de la consommation), 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*) and ARCEP, a variety of players are involved in the various areas which can have an impact on consumers – development of competition, consumer information and advice services, contractual practice monitoring, claims processing, consumer representation with businesses, regulators and government – each with different objectives and responsibilities.

One of ARCEP's central missions is to instil lasting competition. Although having no powers in the area of consumer rights, the Authority does intervene to improve consumer information and to change certain contractual practices in its bid to create free-flowing retail markets. Although it does not have the power to process individual claims, ARCEP did draft a report, at the request of the Minister-delegate of Industry, on mediation in the electronic communications sector, which it published in December 2005.

Not all forms of intervention carry the same weight or the same complexity.

1. Asymmetrical regulation

Going from a highly concentrated – if not monopolistic – market, the first goal was to create choice for consumers by encouraging the development of lasting competition based on investment and innovation. This first phase of opening up the market, which relied largely on asymmetrical regulation (i.e. imposing obligations on SMP operators) was an indispensable one. Starting in 1997, by overseeing the opening up of France Telecom's network and allowing new entrants to gain access to the markets – chiefly via interconnection and unbundling – the Authority put into motion this first stage which has played a major part in improving the well-being of consumers in electronic communication markets. At the same time, the obligation to provide universal service makes it possible to ensure that consumers have access to a quality telephone service at an affordable price.

2. Shift to symmetrical regulation

When a market becomes more competitive from a structural standpoint, asymmetrical regulation becomes less necessary and the primary goal is then to maintain a competitive environment that is beneficial to consumers over the long term by imposing rules that apply to the entire sector, i.e. symmetrical regulation. This regulation can address a number of issues. Consumer protection and information are two major areas of concern – allowing consumers to fully exercise their freedom of choice, and to take the utmost advantage of a competitive market. Monitoring contractual clauses, number portability, the operation of universal directory services and the universal directory, and providing information on the quality of operators' services are all covered by symmetrical regulation. As concerns information, ARCEP encourages a transparency that benefits consumers while preventing certain, notably personal, data from being made available – which could lead to collusive behaviour.

Now that competition in France's electronic communications market is more mature, ARCEP is moving gradually to this new stage – while maintaining asymmetrical regulatory measures when justified.

B. Examples of ARCEP actions that benefit consumers

1. Regulation that stimulates investment and innovation

In accordance with the European regulatory framework, the Authority encourages the development of facilities-based competition on the portions of the network where it is economically viable. By enabling alternative operators to become gradually independent of the incumbent carrier, facilities-based competition creates lasting competition which, in turn, makes it possible to lighten regulation, or even do away with it entirely. It also enables differentiation of operators' services and provides an incentive to innovate, which in turn stimulates the markets and benefits consumers – as revealed by the evolution of the electronic communications sector over the past ten years, and the broadband market in particular. Through coordinated regulation of wholesale markets at different levels, the Authority stimulates competition by encouraging alternative operators to invest progressively in their own networks as their customer base grows. The efficiency of this model, referred to as the ladder of investment, is based on an obligation of interoperability and interconnection imposed on all operators.

The dynamic implementation of this process requires that France Telecom provide adequate wholesale offers (e.g. local loop unbundling, VGAST wholesale line rental) so that alternative operators can replicate the incumbent's retail offers at the same pace as they are deployed.

2. Competition benefiting consumers: an estimated 10 billion euros in savings between 1998 and 2005

Another area of focus for ARCEP is making it easier for users to switch operators, as reflected in its work on fixed and mobile number portability, unlocking mobile handsets and contractual periods. Making it easier to switch operators allows consumer to benefit from market competition and so to stimulate it, and to take advantage of the different services on offer.

Consumers have thus been able to take advantage of a plethora of innovative offers: fixed and mobile broadband, convergence offers, TV and VoIP. This growth in innovation is also being stimulated by a drop in both calling and access prices.

Estimates point to an average decrease in consumer prices of just over 30% between 1998 and 2005, while consumption has increased close to 2.5 times – which translates into an increase in savings for consumers of over 10 billion euros during that period (see Annex p 449).

The remarkable broadband penetration rate is a perfect illustration of the positive effect that the stimulation of market competition through the introduction of new entrants has on innovation and prices. Unbundling made great strides between 2000 and 2006, 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, phone calls and, in many cases, TV. The market took another step forward in 2006 thanks to full unbundling (2.1 million lines) which allows eligible customers to no longer depend on France Telecom for any of their services.

3. Strengthened direct actions

One of the Authority's responsibilities has a more direct impact on consumers, namely its supervision of retail markets.

a. Price

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 calls, or those that mobile operators charge one another for routing text messages. 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.

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

b. 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, to the contrary, should improve. 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, which it subsequently publishes, and is in the process of drafting a survey methodology for fixed operators, which will be submitted to consultation in 2007.

c. Improving relations between consumers and operators

The Authority also works to improve the relationship between consumers and operators, and between operators themselves, notably as concerns the mechanisms for switching operators and value-added services. It may also suggest changes that fall outside the scope of its direct responsibility, as it did in the case of subscription cancellation waiting periods, which it deemed too long.

d. Making a quality universal directory and universal directory service available to the public

Since 2004, the Authority has been engaged in a sizeable task with operators and universal service directory publishers, devoted to making a quality universal directory and universal directory service available to the public². The goal is to guarantee the protection of subscriber, user and consumer rights (including the right to be listed in the directory, free of charge) and of their personal data, while ensuring the relevance and clarity of the directory content, along with an efficient and reliable system for sharing subscriber and user lists between operators and publishers. This

² - See below (Chapter 5).

work led to the production of a draft decision for regulatory purposes, which was put up for public consultation in summer 2006. After having consulted the various stakeholders, including consumer associations, ARCEP adopted its decision on 30 November 2006³ – a decision which was approved by the Minister responsible for electronic communications on 8 March 2007.

e. Informing consumers

The Authority is also dedicated to informing consumers, notably through its website (www.arcep.fr) and the website devoted to telephone directory services (www.appel118.fr), but also through meetings with consumer associations⁴.

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

g. Network rollouts

ARCEP is particularly mindful of taking into account regional interests with respect to service access.

By creating and chairing the committee for public-initiative networks, CRIP (*Comité des Réseaux d'Initiative Publique*)⁵, the Authority has created a forum for dialogue with local authorities and operators on issues relating to regional digital development – an area where local authorities play a major role, particularly in terms of broadband deployment.

To strengthen these efforts, ARCEP has awarded spectrum licences to facilitate broadband delivery in sparsely populated zones, via wireless local loops.

The Authority is also working to eradicate mobile telephony “dead zones” and to improve the quality of the coverage information supplied by operators.

C. Assisting consumers on a daily basis

ARCEP has no direct power in the area of consumer rights, and is thus not able to rule on a complaint resulting from a conflict between consumers and their operator. Since its inception the Authority has, however, provided consumers with indirect support. The goal has been to provide a direct response when consumers request clarification on offers resulting from regulatory decisions, and to back consumer requests for dispute settlement with their operator – in which case the Authority forwards the file to the operator.

3 - ARCEP Decision No 06-0639 of 30 November 2006 specifying the terms for making subscriber and user lists available for the purpose of publishing universal directories or providing universal directory services, published in the JO of 24 March 2007 by ministerial order.

4 - Cf. Part 2, Chapter 2, D.

5 - Cf. Part 9, Chapter 2.

In 2006, ARCEP received 11,000 queries from consumers, by post, e-mail and phone, an increase of 30% compared to 2005.

This increase can be attributed to the growing number of ICT users and new services (triple play, etc.) about which consumers sometimes require additional information. While once used only by technophiles, these new services are now widely available to one and all which means that, as the number of customers grows, the likelihood of consumer issues increases.

ARCEP has nevertheless also noted that it is often called upon too early on in the claims process: a considerable number of conflicts brought to the regulator's attention could have been addressed by the operators' customer service departments. These queries are thus being added to the relatively unchanged number of queries from customers who were unable to reach a satisfactory solution with their operator, before forwarding their complaint to ARCEP.

It may also be that the growing number of complaints being sent to the Authority is due to its greater exposure to the public: in 2006, ARCEP created a section devoted to consumers on its website⁶.

6 - Cf. [http://www.arcep.fr/con](http://www.arcep.fr/con consommateurs)
[sommateurs](http://www.arcep.fr/con).



It should be mentioned that this stream of queries can prove useful in pinpointing and resolving specific dysfunctions revealed by consumers' complaints. One case in point is the case of slammed ASDL lines, for which the Authority demanded that connections be re-established, without charge and as quickly as possible.

However, the bulk of user complaints concern consumer rights, an area for which ARCEP is not responsible. Issues of this nature should be resolved in the first instance by operators' customer service departments.

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.

In its bid to inform consumers as well as possible⁷, ARCEP performs quality of service surveys on a regular basis.

⁷ - Cf. CPCE Article L32-1, Para. 12.

A recent decree⁸ 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.

⁸ - Decree No 2005-862 of 26 July 2005, JO of 29 July 2005.

Article D.98-4 of the CPCE also specifies that all operators are obligated to report on the quality of their service, based on indicators defined by ARCEP. The Authority is currently working on defining QoS indicators for fixed telephony⁹.

⁹ - See below.

A. Mobile telephony

In 2006, ARCEP conducted, for the ninth year in a row, a quality evaluation survey on 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).

The 2006 survey was conducted by the firm Directique, 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 six months, from January to June 2006, based on over 11,000 points of measurement on each of the operators' GSM networks.

The results of the survey, which were published in October 2006, reveal:

- ◆ good overall quality of second generation mobile networks is being maintained, at a time when traffic volume is increasing by 10% to 15% a year;
- ◆ steady development of third generation networks for two of the three operators being examined.

Concurrent with this survey, the Authority also conducted a survey on an experimental basis on the quality of 3G networks in 2006, in the cities of Paris, Lyon and Marseille. Performed by the firm GET, this survey covered telephony, text messaging, videophony, file downloads and mobile TV services on Orange France and SFR 3G networks. With the prime objective of validating 3G assessment methods, the survey led to the following observations:

- ◆ bitrates delivered by 3G are well above those offered by GPRS;
- ◆ the videophony service is satisfactory on the whole, as is the interoperability between the two operators;
- ◆ the quality of phone calls and text messaging has reached virtually the same level as that observed on second generation networks.

From a methodological standpoint, the many lessons learned from this enquiry open up the prospect of assessing 3G offers in the next annual quality of service survey, to be performed in 2007.

B. Fixed telephony

In 2006, in concert with the different operators concerned, ARCEP devoted itself to defining QoS indicators that the operators will be required to measure and make public. This mechanism will be the subject of an ARCEP decision¹⁰.

ARCEP's goal here is to:

- ◆ define telephone service quality indicators to be measured by the operators;
- ◆ satisfy principal user expectations with respect to new telephony offers, and VoIP offers in particular;

¹⁰ - Cf. CPCE

Article D.98-4, setting operators' obligations with respect to the quality and availability of networks and services.

- ◆ encourage operators to monitor and improve the quality of the services provided.

Discussions with the various players concerned by the quality of the fixed telephone service (operators, consumer associations...) were launched in 2006. These talks underscored the need to perform in-depth technical analysis to carefully define the quality measurement indicators to be taken into account. They also revealed a general willingness to monitor and improve the quality offered to users.

Assessing the quality of the service delivered on a telecommunications network is based on the following three principles in particular: availability of the service components, the timeframe for implementing all of the service components and the reliability of content transmission. With this as its starting point, the Authority launched a background study in late 2006 devoted to specifying the list of indicators to be used for measuring and assessing the various measurement methods to be put into place.

ARCEP wants to define the indicators for measuring the quality of the fixed telephone service, and particularly voice over broadband services offered as part of triple play bundles¹¹. According to Afutt¹², these services generate roughly 60% of consumer complaints.

These indicators are strictly technical in nature. They make it possible to assess the quality of the telephone service from a functional viewpoint, but not to evaluate the way that customers are treated in terms of contractual relations with their service provider. The issues tied to the obligation to inform customers on the quality of the services on offer fall under the responsibility of the Ministry of the Economy's general directorate for fair trading, consumer affairs and fraud control, DGCCRF (*Direction générale de la Concurrence, de la Consommation et de la Répression des Fraudes*).

11 - Offers that allow users to access three services over their broadband connection (generally ADSL): Internet, fixed telephony and TV.

12 - French association of telecommunications users (Association Française des Utilisateurs de Télécommunications), website: www.afutt.org.

C. Directory services

Two studies designed to monitor the quality of telephone directory services¹³ were performed in 2006¹⁴. They extend the process of monitoring the quality of directory services begun with the survey conducted in November 2005 on the old directory assistance numbers¹⁵.

The first study, carried out in March, measured the quality of 118 numbers, just prior to the definitive shut-down of the old directory service numbers. It revealed that the quality of the 118 numbers that were in service at that time was comparable to the quality of the old directory assistance numbers, as revealed in the survey in 2005. For the three indicators measured by the Authority (service availability, accuracy of the information supplied and speed of response) the performance of 118 numbers was comparable to the performance of old directory assistance numbers in late 2005 and, in many cases, provided slightly shorter response times:

- ◆ 99% of calls answered;
- ◆ 88% of serviced calls gave an accurate response;
- ◆ the speed indicator was 89, compared to 100 in 2005 (which indicates a shorter response time).

13 - See below, Chapter 3..

14 - The quality surveys on directory services are all available on ARCEP's website: www.arcep.fr.

15 - Namely: 12 (France Telecom); 222 (SFR); 612 (Bouygues Télécom); 712 (Orange); 3200 (Scot France); 3211 (Intra Call Center) and 3912 (universal directory).

These good results nevertheless needed to be verified after the “12” number was shut down and the number of calls to 118 numbers increased.

This is why the Authority conducted a second follow-up study on the quality of directory services in October 2006, based on the same criteria. The results of this survey confirmed that the overall quality of the directory services had been upheld since the launch of 118 numbers in November 2005, despite the closure of the old directory services numbers in April 2006. Depending on the number, significant disparities were found, however:

- ◆ speed: the new services provided by 118 numbers were faster, on the whole, than those offered via the old numbers: the shorter response time observed in March 2006 was confirmed;
- ◆ availability: the availability of 118 numbers continued to be very high (98% on average) and this despite the increase in the number of calls. This held true for the main numbers, although some 118 numbers suffered from a lower rate of availability and a response time that was significantly longer than the average;
- ◆ accuracy: the increased number of calls to 118 numbers after 3 April 2006 led to a slight decline in the accuracy of several services widely used by consumers. The market average was 87% in October 2006, compared to 88% for the 118 numbers tested in March 2006. Nevertheless, if the accuracy rate of certain very popular 118 numbers did drop more than the average, others stood out for having increased their accuracy rate.

As concerns the new players which have come on the market since April 2006, the results varied depending on the operator and the number: some services were more accurate, but had availability and response time issues, whereas others guaranteed swift access to their service but did not necessarily stand out in terms of accuracy.

Telephone directory services

A. The introduction of 118 numbers

Pursuant to a *Conseil d'Etat* Order of June 2004, ARCEP began the process of closing down France Telecom's "12" directory assistance number when the first new numbers beginning with 118 were launched on 2 November 2005. It had provided for a five-month transitional period during which the old and the new directory assistance numbers would co-exist¹⁶.

16 - ART Decision
No 05-0061
of 27 January 2005..

In 2006, the Authority devoted itself to monitoring the opening up of the market and the development of new directory services. To do so, it monitored the transitional period by publishing, on two occasions, the volume of calls made to the old and the new numbers. It also specified the content of the message to be played on the old numbers after they had been shut down¹⁷.

17 - ARCEP Decision
No 06-0259
of 28 February 2006..

Moreover, ARCEP maintained ties with the sector's players to respond to any issues that might arise. Throughout the process, the Authority's decisions were preceded by a consultation with the sector, public consultations, multilateral meetings and meetings with the players.

B. The end of the number "12"

On 3 April 2006, all of the old numbers that supplied directory assistance¹⁸ were put definitively out of service, and the majority of users had begun to use the numbers beginning with 118.

18 - i.e. France Telecom's 12, Bouygues Télécom's 612, SFR's 222, Orange's 712, the Universal Directory's 3912, Scoot's 3200 and Intra Call Center's 3211.

This change to the numbering plan marked a significant step forward for consumers. A considerable number of them still use directory assistance, in fact, despite the growing number of directories available online. In 2005, 16 million of the 23 million households equipped with a fixed line called a directory assistance service at least once, with 225 million calls having been made to these services.

Major marketing campaigns were run on the closure of the 12 number and its replacement by 118 numbers to inform consumers of the services and tariffs offered by directory service providers.

The Minister of the Economy conducted an institutional information campaign, in tandem with ARCEP, which took the form of a brochure on the new numbering format, of which several million copies were distributed. The Authority also created a website (www.appel118.fr)¹⁹ where users could look up the service tariffs for each number, along with information on any changes made.

19 - Cf. Part 2, Chapter 2, D.

In addition, ARCEP checked that the content of the message played on the old numbers did not discriminate against other service providers.

And, finally, the Authority implemented a process for monitoring the quality of the service²⁰. This allowed it to note that the offer's development and the arrival of new service providers did not affect the quality of the services offered to consumers.

20 - ARCEP has conducted three surveys on the quality of directory services. Details can be found in Chapter 2, C.

C. Assessment

1. An enhanced service offering

If the majority of 118 numbers can be accessed at tariffs which are equal to or slightly higher than those charged by the old numbers, consumers now have a broader choice in terms of services and tariffs, and no longer have to depend solely on their operator when using their mobile phone, for instance.

Prior to the introduction of 118 numbers, the main directory assistance numbers offered only responses sent to the user's mobile phone via text message, and connection to the number requested. Now, for the same price, the main 118 numbers offer international directory services and reverse lookup which had previously been offered only by more expensive, specialised providers. Most of the numbers have no limit on the number of enquiries that users can send, and a number of innovations have been introduced, such as sending an MMS containing a map to the address being searched and automated information services.

2. Diversified tariffs

Whereas the old directory assistance numbers were billed on a per-call basis, at tariffs ranging from €0.56 to €1.20 per call ('12' calls were billed €0.90/call), 118 numbers offer a wider array of tariffs than before. A considerable number of them use a mixed tariff (per-call price + per-minute billing), and all the services add on mobile calling minutes.

3. Quality maintained but traffic on the decrease

Despite the support given to the market, the introduction of 118 numbers led to a significant drop in the number of calls to directory services after 3 April 2006. As in other countries where the same process was implemented, the end of the '12'

number in France increased the use of other sources of information, such as the Internet. These changes in user habits undoubtedly account, in part, for the decrease in the volume of calls.

Furthermore, the results of the quality of service surveys conducted by the Authority reveal that the new 118 numbers are as available and accurate as the old numbers, even after 3 April 2006. In addition, 118 numbers, on the whole, provide a faster response than the services accessed by the old numbers. The higher number of players does, nevertheless, mean greater disparities when looking at individual results.

Universal directory

A. Background

1. Legislative and regulatory framework

The principles of implementing universal directory services (printed directories, online directories, directory assistance services...) are defined by law²¹: 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.

²¹ - Cf. CPCE Article L.34.

The mechanism for their implementation was specified by a decree²², on which the Authority had issued a favourable opinion²³.

²² - Decree No 2005-606 of 27 May 2005 concerning directories and directory services.

2. ARCEP actions

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

²³ - ART Opinion No 04-1039 of 7 December 2004, on the draft decree amending Decree No 2003-752 of 1 August 2003, concerning universal directories and universal directory services and the CPCE.

These consultations first led the Authority to publish guidelines, in December 2004, on the terms for the sale of subscriber lists between operators and publishers. These guidelines defined the steps to be taken to facilitate the process of compiling and making subscriber and user lists available.

Following the publication of the Decree of 27 May 2005, ARCEP requested operators to quickly compile their subscriber lists and organise the sale of these lists to universal directory publishers and to universal directory service providers.

At the start of 2006, however, a significant number of operators had yet to deliver their subscriber lists (some stating issues concerning uncertainties surrounding the pricing of their lists and their content). In addition, some user and subscriber lists – particularly those compiled by mobile operators – contained a much smaller number of subscribers than their total customer base.

As a result, the Authority undertook several initiatives:

- ◆ the launch of procedures that could lead to penalties for operators that do not fulfil their obligation to make their user and subscriber lists available to universal directory publishers and universal directory service providers. Eleven procedures against operators were instigated in December 2005 and January 2006. A number of them concluded with formal notices to comply. At the start of 2007, only two cases were still open – the other operators having complied with their obligations. In 2007, the Authority expanded its policy of vigilance, and was forced to launch new penalty procedures;
- ◆ the creation of performance indicators, to be published each month, to measure the progress being made by the universal directory;
- ◆ the launch in January 2006 of enquiry procedures involving the main mobile operators, which had compiled subscriber lists containing a visibly small number of registered customers, to bring to light any shortcomings in their procedures for providing information and compiling subscriber choices. These procedures led mobile operators to change their methods;
- ◆ the adoption of a decision²⁴ for regulatory purposes, on 30 November 2006, in a bid to bring clarification and legal security to the sector, and to guarantee that consumer interests were being served. Following a very broad consultation²⁵, this decision replaced the guidelines of 2004. It provides details on the technical and financial terms under which operators must make their user and subscriber lists available.

24 - ARCEP Decision

No 06-0639 of 30 November 2006, specifying the terms for making user and subscriber lists available for the purpose of publishing universal directories and providing universal directory services, published in the JO of 24 March 2007 by ministerial order.

25 - *Following the work performed from February 2005 to June 2006 by a working group composed of industry players, ARCEP conducted a public consultation on its draft decision that ran from 7 July to 29 August 2006. To ensure transparency, the Authority consulted with CCR (radiocommunications consultative committee), CCRSCE (consultative committee on electronic communication networks and services) and CNIL (national commission on computing and freedom).*

B. Subscriber rights; operator and universal directory publisher obligations

1. Subscriber rights

All fixed and mobile²⁶ telephone subscribers, whether physical persons or legal entities, have the option to appear, free of charge, in the directory compiled by their operator²⁷. 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. This information enables publishers to identify and differentiate each of the subscribers wishing to appear in the directory. Subscribers may, however, impose²⁸ a certain number of restrictions on their operator with respect to the publication of information of a personal nature²⁹. Subscribers can exercise this right at any time³⁰.

They may request that their operator:

- ◆ include only their town of residence, and not their complete address³¹;
- ◆ publish only the initial of their first name³²;
- ◆ 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 other users of the line included in the listing, provided they have the users' consent³³.

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**

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

27 - Cf. CPCE Article L. 34.

28 - 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.

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

30 - Cf. CPCE Article R. 10.

31 - 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.

32 - 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.

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

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

express their opposition to having certain information of a personal nature included in the directory³⁴.

2. Operator and publisher obligations

a. Informing subscribers and respecting user and subscriber listing preferences

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 rights³⁵.

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

In addition, all operators must ensure that information contained in directory listings is accurate³⁶ 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.

36 - 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.

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.

b. Making subscriber and user lists available

Operators that assign one or several numbers from the national numbering plan to their customers are required to issue a list of their subscribers, at a cost-oriented price³⁷ and under non-discriminatory conditions, to companies wanting to publish a universal directory or provide a universal directory assistance service.

37 - The principle of cost-oriented pricing appears in CPCE Articles L. 34 and R. 10-6.

3. Consumer 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 a different 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 service³⁸ 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.

38 - See above.

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. Thus, 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.

C. Terms for supplying subscriber lists

1. Preparatory work

The task of creating a universal directory is a complex one, 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.

Because of this diversity, it became not only preferable but necessary to establish common standards, particularly for the content and format of directory listings.

As a result, in 2006, in tandem with universal directory operators and publishers, the Authority pursued its efforts to make it easier to provide the public with a quality universal directory and directory services. The working group created for this purpose addressed a variety of technical issues, with the goal of guaranteeing:

- ◆ 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.

Following this work, on 7 July 2006, ARCEP submitted to public consultation a draft decision for regulatory purposes on the terms for making subscriber and user lists available. The consultation provided the Authority with input from a number of the players concerned (fixed and mobile operators, directory publishers, directory service providers, intermediate operators, list integrators, CNIL and local fire departments). In a bid to ensure transparency, the Authority then consulted with the radiocommunications consultative committee, CCR, the consultative committee on electronic communication networks and services, CCRSCE, the French national commission on computing and freedom, CNIL, and consumer associations before adopting its decision.

The decision was adopted on 30 November 2006³⁹.

39 - ARCEP Decision
No 06-0639
of 30 November 2006,
specifying the terms for
making user and subscriber
lists available for the
purpose of publishing
universal directories or
providing universal directory
services, published in the
JO of 24 March 2007 by
ministerial order.

2. Content of the decision

a. Operators concerned

40 - Affected operators are those which have assigned numbers to their own subscribers as well as those which have numbering resources for their own use which they wish to have published in the directory (such as 118 numbers).

All operators that assign⁴⁰ one or several numbers from the national numbering plan, either directly or indirectly through a retailer, are concerned⁴¹.

The Authority thus seeks to ensure that “new operators” in particular (especially alternative fixed operators, MVNOs, VoIP operators, etc.) properly inform their subscribers of the option of being included in the directories, and that they have the resources in place to be able to collect and distribute personal data on their subscribers.

b. Informing subscribers and collecting personal data

41 - Cf. CPCE Article L.34, concerning the compilation and distribution of subscriber and user lists.

The decision specifies the obligations incumbent upon operators and their distributors in terms of informing subscribers of their rights and options with respect to their inclusion in directories and the collection of their personal data.

42 - “Opt-out: The subscriber is passive and the subscriber’s directory listing is automatic (unless he or she expresses a preference to the contrary). Opt-in: The subscriber is active and must give his or her consent in order to be listed in the directory.

The decision distinguishes the opt-in⁴² mechanism, which currently applies to mobile subscribers, while proposing a data gathering mechanism that protects subscriber rights.

c. Content of the universal directory

The main changes were enacted by the Decree of May 2005, including the right of subscribers and users to limit the information contained in their listing⁴³ or to have their e-mail address and profession listed. The scope of information to be contained in directory listings was detailed in the ARCEP Decision of 30 November 2006.

43 - Non publication of the full address, replacing the first name with an initial, protection against telephone canvassing and reverse search.

The information contained in the listings distinguishes residential and business subscribers (enterprise or administration). The level of detail included in the directory listings was set to guarantee a balance between the necessary minimum amount of information that appears in all directories – which allows consumers to look up a given business, which is included free of charge in the universal directory – and publishers’ freedom to enhance this data in order to differentiate their services.

The decision also specifies a common format for the listings that are sent to publishers which, in particular, allows the latter to harmonise information on a given user which has been sent by different operators⁴⁴.

d. Publishers with access to subscriber and user lists

44 - For example, with respect to the management of publishing restrictions for users that subscribe to various operators’ services.

The obligation incumbent upon operators to make their user and subscriber lists available to anyone “who so requests, in view of publishing a universal directory or providing a universal directory service”, combined with the sensitive nature of the data communicated to end users through a universal directory service, underscored the need – and operators’ desire – to establish criteria that allowed them to evaluate whether those requesting the listings were in fact eligible to receive them⁴⁵.

45 - Cf. CPCE Article L.34.

The Decision of 30 November 2006 therefore lists a set of criteria used to determine whether an applicant company has the status of universal directory publisher, notably:

- ◆ has the applicant declared its business with CNIL (national commission on computing and freedom)?

- ◆ has the applicant committed to providing full access to universal directory data?
- ◆ does the applicant offer non-discriminatory access to the data contained in the universal directory?
- ◆ does the applicant respect the listing restriction choices expressed by subscribers?
- ◆ does the applicant sell its directory products and services only to end users?
- ◆ has the applicant put reasonable means in place to detect and prevent third-parties from easily reproducing directory listings based on the marketed services?
- ◆ does the applicant only provide its services in countries where data transfers have been authorised by CNIL, pursuant to the Law of 6 August 2004?

Furthermore, the decision defines the terms under which an intermediate operator can provide third parties with access to the data, on a case by case basis, in exchange for payment. This access is authorised only if the third party uses the listings to provide a universal directory service or to publish a universal directory, in which case the intermediate operator must inform operators of the third parties which have been given access to the listings, and factor the third parties' utilisation of the listings into their payment to operators. A publisher operating in foreign markets may also gain access to operators' listings by acquiring an intermediate operator's complete database. The decision also proposes criteria for enabling operators to assess whether such an intermediary has the proper status to be able to access directory listings.

e. Tariffs and agreements

The obligation on operators to transfer subscriber lists to publishers on a non-discriminatory basis and at a reasonable and cost-oriented price has been the subject of much debate between operators and publishers. The players differ in their interpretations of existing jurisprudence and Authority guidelines on the applicable rules and tariffs.

To clarify the terms of making lists available, ARCEP defined in its decision the pricing principles that operators must apply to their lists.

The Authority defined the scope of operator costs to be financed by publishers: relevant data collection costs, the cost of compiling, utilising and maintaining directory listings, and the cost of transferring the listings to universal directories and directory services.

The Authority also provided a reference assessment of the total cost that an operator could recover. This amount depends on the number of subscribers registered in their lists. ARCEP also detailed how an operator's costs should be broken down between the different directory publishers and directory service providers: a directory service that receives a large volume of calls will be billed more than a service that processes a smaller number of calls.

D. An ongoing process

2006 was the year that the universal directory was effectively put into place:

- ◆ broader dissemination of subscriber and user lists by electronic communication operators;
- ◆ adoption (on 30 November 2006) of the ARCEP decision on the terms for making subscriber and user lists available for the purposes of publishing a universal directory or providing universal directory services, approved by the Minister responsible for electronic communications.

The Authority will nevertheless work to ensure that the principles defined in its decision are put properly into action, notably through careful supervision of the quality of the published directories, the frequency with which operators' subscriber lists are updated, and by verifying that operators are making their subscriber and user lists available to universal directory publishers that have requested them, and that ported numbers are kept.

In the coming years, therefore, the Authority will work in tandem with the entire sector to ensure that the universal directory is put into place under the best possible conditions.

Number portability

A. 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 by 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 2005⁴⁶, 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.

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

As a result, to introduce a more flexible and streamlined process for number portability, new provisions⁴⁷ 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;

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

- ◆ a period of a **maximum 10 days** for a number to be ported (unless otherwise requested by the customer);
- ◆ legal concomitance of the effective portage date of the number 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.

B. Mobile number portability (MNP)

1. In Metropolitan France

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

a. Impact of legislative and regulatory changes

48 - See above. The application of the new legislative and regulatory provisions⁴⁸ 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*) thus undertook 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 2006⁴⁹, the Authority defined⁵⁰ the obligations incumbent on operators in Metropolitan France. These obligations include:

- ◆ 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 requests.

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.

b. Practical methods of the new MNP process

The practical procedures of the new mobile number portability process have been in effect since 21 May 2007.

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

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

(a) Request simultaneous with new subscription

Subscribers request portability of their number when subscribing to a service with a new operator, which 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.

(b) 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 therefore 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 operator⁵¹.

For business and public-entity 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.

(c) Portability with 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.

51 - 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.

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.

Customer eligibility

Customers must satisfy certain criteria to be eligible for number portability. The recipient operator must send the portability request to the donor operator to verify its eligibility.

The recipient operator cannot refuse subscribers' requests to retain their number except in the following cases:

- ◆ incapacity of the applicant: a porting request must be submitted by the contract-holder, or by his or her legal representative;
- ◆ request incomplete or containing erroneous information: a porting request must contain the mobile number to be ported and the corresponding operator identity statement (RIO).

The donor operator can only refuse a porting request submitted by the recipient operator in the following cases:

- ◆ data incomplete or containing erroneous information: a porting request must contain the mobile number to be ported and the corresponding operator identity statement (RIO);
- ◆ the mobile number is inactive on the day of the portage: porting requests must concern numbers that are active on the day of porting;
- ◆ the mobile number is already the subject of a yet-to-be-executed porting request.

If the eligibility criteria are satisfied, the request is validated by the donor operator, which then notifies the recipient operator before completing the customer's request.

52 -The economic interest group devoted to managing portability, GIE EGP, was created on 24 March 2006 by 10 mobile operators which combined their resources to minimise the cost of creating a centralised computer system for managing portability. This centralised system is interconnected with the 10 operators' IT systems for routing the messages exchanged between operators when processing customers' porting requests. It also keeps the ported numbers database up to date, with each entry containing the reference of the operator providing the service to the customer.

c. Operational launch of the new mobile number portability process

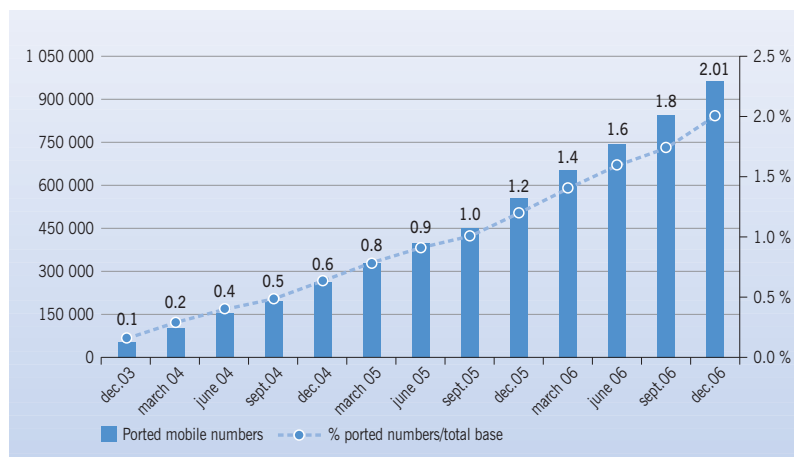
In September 2006, a progress report initiated by the Authority on the implementation of the new MNP mechanism for Metropolitan France revealed that, for technical reasons, neither the operators nor the economic interest group devoted to managing portability, GIE EGP⁵² (*Entité de gestion de la portabilité*) 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, targeting a launch in spring 2007, was necessary to ensure the successful introduction of this new process.

d. Quantitative data for 2006

As of 31 December 2006, 971,400 mobile numbers had been ported (or 2.01% of the total active base of mobile customers) since the implementation of the MNP process on 1 July 2003.

Growth of the number of mobile numbers ported in Metropolitan (since July 2003)



Source : ARCEP

2. Overseas

a. Antilles-Guyana region

One-step portability was introduced in the Antilles-Guyana⁵³ zone on 1 April 2006, in accordance with the Decree of 27 January 2006⁵⁴.

Ten months after its introduction, some 10,000 mobile numbers had been ported in these *départements* – i.e. roughly 1% of customers had exercised their MNP rights in Antilles-Guyana, compared to around 2% in Metropolitan France – more than three years after the launch of the “dual point of contact” system. The implementation of a fast and simple process thus appears to be enjoying a degree of success with customers.

As in Metropolitan France⁵⁵, 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 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 designed to protect them against risks of error concerning the number to be ported. Implemented relatively recently 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.

⁵³ - The Antilles-Guyana region includes the overseas *départements* of Martinique, Guadeloupe and Guyana, as well as the communes of Saint Martin and Saint Barthélemy.

⁵⁴ - Decree No 2006-82 of 27 January 2006 concerning number retention as provided for by CPCE Article L.44.

⁵⁵ - See above.

Nonetheless, if the RIO proves effective in Metropolitan France, ARCEP will assess its possible implementation in the Antilles-Guyana region.

Moreover, as it has already done in Metropolitan France, in 2007 the Authority will provide a framework for the portability process in the Antilles-Guyana region through a decision that will specify operator obligations.

ARCEP is committed to ensuring that this next, decisive step be consistent with the work performed by the region's mobile operators, as part of the Antilles-Guyana mobile portability group, GPMAG (*Groupe portabilité mobile Antilles-Guyane*), and has taken into account the effective implementation of mobile number portability in Antilles-Guyana since 1 April 2006, and the rules that prevail in Metropolitan France.

The goal of this decision will thus be to consolidate existing mobile number portability practices in these overseas *départements* by providing operators with a sound legal framework.

b. Département of Reunion and the territorial collectivity of Mayotte

The commercial launch of number portability in Reunion took place on 31 March 2005⁵⁶.

56 - At the time, Mayotte was not affected by portability since it had only one mobile operator.

The customer process employed dual points of contact, which means that:

- ◆ customers request a porting order from their existing operator (donor operator), while also requesting cancellation of their contract;
- ◆ customers receive the porting order concerning their request;
- ◆ customers present the porting order to the new operator (recipient operator) when subscribing to a new service, within the porting order's period of validity;
- ◆ number porting becomes effective on the date that the contract with the first operator (the donor operator) expires.

The Authority stated on several occasions that this “dual point of contact” process hampered customers' ability to exercise their right to keep their number when switching operators, and thus hampered the existence of a free-flowing market.

57 - Decree No 2006-82 of 27 January 2006 concerning number retention as provided for by CPCE Article L.44, JO of 28 January 2006.

In 2006, joint efforts with mobile operators present in Reunion were rekindled to help them incorporate the latest legislative and regulatory changes⁵⁷ – particularly the implementation of a one-stop process that lasts less than 10 days - as of 1 July 2007. The affected operators are currently working on defining specifications which are similar to those applied by operators in Metropolitan France, notably the operator identity statement (RIO).

Moreover, following the launch of new mobile networks since March 2005, these regulatory changes have extended portability to the territorial collectivity of Mayotte.

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.

C. Fixed number portability

1. Affected numbers

Portability for fixed telephone numbers became available in 2003. It affects 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).

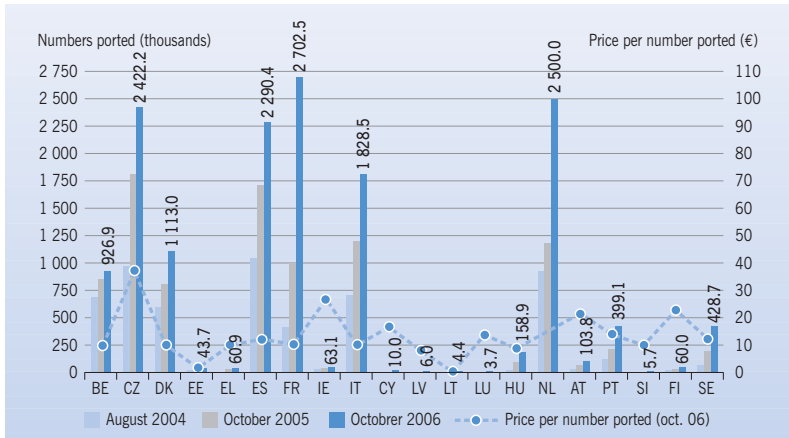
Since its implementation, fixed portability has been a one-stop process, which means that the new legislative provisions did not require a major overhaul of the system, but rather encouraged increased efforts to optimise the process and improve the quality of the service, to comply with the legal waiting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

The portability process currently employed by operators concerns chiefly operations between the incumbent carrier and alternative telcos.

2. Fixed numbers ported in 2006

The significant growth in unbundled fixed lines in 2006 was a decisive factor in the development of fixed number portability: as of October 2006, 2.7 million fixed numbers had been ported since the introduction of fixed portability in 2003.

Total number of ported fixed numbers, and price per number ported, in the European Union as of October 2006



Source: 12th European Commission Report.

3. Outlook and impact of regulatory changes

a. Defining a common and global framework for operators

The growing use of unbundling and of alternative telephony offers on cable and fibre optic networks, along with the development of new multimedia applications demanded that the technical architecture to support portability be updated.

This is why, in 2006, the Authority began working with sector players to review the inter-operator processes involved in portability. As part of this review, ARCEP pointed out that fixed and mobile number portability need to follow the same logic, even if the timetables cannot be the same given that mobile number portability is at a more advanced stage.

To this end, a questionnaire was sent out to all of the sector's fixed operators, asking them to specify, among other things, the mechanisms currently in place to allow customers to keep their existing fixed telephone number when switching operators should they wish to do so.

In November 2006, the Authority presented the fixed telephony sector's players with a summary of the responses to the questionnaire. It emerged that the residential market accounted for the majority of porting operations, with the incumbent carrier playing a leading role in the implementation processes.

As to the operational processing of fixed number porting requests between alternative operators, the responses revealed a lack of harmonised methods which can make processing the number portability requests they receive a complicated affair.

These elements underscored the need for work to be done on providing all of the players with a framework and common methods for responding in a coordinated, reliable and future-proof manner (with a degree of technical and legal security) to porting requests, in such a way as to serve consumers' interests. Among other things, this work needs to enable a response to "second generation" portability in both the residential market and the business and public administration market.

This inventory of the current state of affairs also revealed that it is urgent to address the mechanisms for routing calls to ported numbers. The sharp rise in ported numbers has, in some cases, led to a loss of incoming calls for customers, hence a decline in the quality of the service being provided.

In late 2006, under the aegis of the Authority, a first meeting gave operators an opportunity to begin discussing the definition of a common and global system for implementing the application procedures for fixed number portability (individual obligations, cases of ineligibility, associated quality of service, subscriber information, etc.). This work must also help establish the technical means and conditions to allow all operators to implement direct call routing to ported numbers if they wish to do so.

b. Work underway on the customer-operator process and call routing

The sector's fixed operators created working groups devoted to several issues:

- ◆ the "customer-operator process" which involves defining the methods used to implement and process number porting requests, from the customer and the operator's perspective, by taking account of the technical specificities of fixed networks and of subscriber access modalities. The goal of this working group is to define a framework and common principles that allow customers to take advantage of fixed portability in a fast and simple fashion;

- ◆ the modalities for implementing “direct routing” for calls to ported numbers, in particular to limit the inherent inefficiencies of indirect “re-routing” of calls to ported numbers. This work also needs to provide all players with a choice between the two call routing methods.

Most importantly, direct call routing to ported numbers makes it possible to reduce the inherent technical inefficiencies of indirect routing (“tromboning”) and to prevent possible quality of service problems on the recipient operator’s network.

Operators also need to have the option of choosing between the two call routing solutions for ported fixed numbers (“make-or-buy” logic), namely: direct routing (which presupposes that the calling operator knows the recipient operator’s network, hence the availability of this information) or indirect routing (which, in all instances, must be possible and ensured by the operators that assigned the numbers).

With this in mind, it appears necessary to eventually implement a system that allows operators to streamline the bipartite obligation to communicate the ported numbers for which they are responsible – through the creation of a ported numbers database, for instance.

The existence of a shared database for ported fixed numbers would enable:

- ◆ the efficient implementation of direct call routing to ported numbers;
- ◆ easier verification of inter-operator billing, and inform customers (call origination) of the tariff applicable to calls to ported numbers;
- ◆ fewer and less complex agreements, and the bilateral exchanges needed to gain access to the information held by recipient operators.

c. Improving the process of porting from the incumbent carrier to alternative telcos

A working group was created to achieve the short-term improvement of the process of porting a France Telecom number to the sector’s other operators, particularly in the business market. The group’s work is focused notably on:

- ◆ increasing the reliability of porting requests for DDI (direct dialling-in) ranges attached to an IDN (installation designation number) gateway. This would be a swift change making it possible to prevent the ineligibility of certain requests in the business market;
- ◆ the possibility of making porting requests for reserved inactive numbers;
- ◆ implementing computerised procedures for porting requests made to France Telecom;
- ◆ implementing specific porting (“super NWH”: non-working hours) time periods over and above existing non-working hours;
- ◆ the portability of additional DDI for businesses which have reserved inactive numbers.

These new functionalities will have a major impact on operators' information systems, which will undoubtedly require that certain access offers undergo a technical upgrade and be implemented gradually.

Effective dates for the new number portability process

Mobile telephony			Fixed telephony (geographic and non-geographic numbers)
Metropolitan France	Guadeloupe, Guyana, Martinique	Réunion, Mayotte, Saint-Pierre-and-Miquelon	Metropolitan France and overseas
1 January 2007			
NB: this date was postponed to 21 May 2007 by the Minister-delegate of Industry ⁵⁸	1 April 2006	1 July 2007	1 April 2007

58 - Minister-delegate of
Industry press release:
[http://www.industrie.gouv.fr/
portail/ministre/comm.
php?comm_id=7241](http://www.industrie.gouv.fr/portail/ministre/comm.php?comm_id=7241).

Value-added services

In 2006, ARCEP organised a series of bilateral meetings and exchanges with players from the value-added services sector (VAS)⁵⁹. These encounters helped fuel the Authority's thinking on this complex issue, and led to the launch in late 2006 of a public consultation comprised of several specific parts:

59 - Also called "special services" and "on-line telephone services".

- ◆ an assessment of the way the market is currently operating and issues to be addressed;
- ◆ the proposal of a symmetrical regulatory mechanism that imposes obligations on operators at each end of the value chain, to remedy these issues;
- ◆ topics for debate over other possible areas of improvement, but which would not be the sole responsibility of the Authority.

ARCEP also contributed to other work devoted to the sector, including debates over not billing for waiting time on operators' customer support lines⁶⁰.

60 - ARCEP Opinion No 06-0847 of 7 September 2006 on draft legislation in favour of consumers.

Through all of these actions, the Authority's goal was to improve the way that the value-added services market operates, and the transparency and clarity of tariffs, for the benefit of consumers.

A. The value-added services market

1. A complex and specific value chain

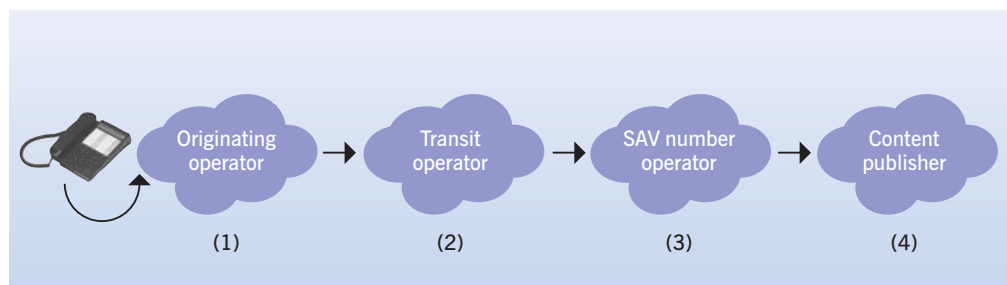
VAS are services that are accessed via 10-digit numbers beginning with 08 (except 087B) and 118 (directory services), and four-digit numbers starting with 3 or 1. These numbers allow customers to access different types of service over their fixed or mobile phone: pre-recorded (e.g. weather forecasts)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

They constitute a large segment of the electronic communications market: VAS generated €2.6 billion in revenues in 2006⁶¹.

61 - Cf. Part 5, Chapter 2.

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.

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.

2. Problems to be addressed

The growing number of fixed and mobile (real and virtual) local loop operators and of service and content providers has led to increasingly complex contractual relationships between the different players. In addition, the asymmetrical regulation imposed on the incumbent carrier has revealed its limitations.

In its analysis, the Authority noted the current 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;
- ◆ the lack of an explicit obligation to route calls to all VAS numbers;
- ◆ billing and collection problems between market players.

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.

B. ARCEP proposals in the public consultation

To address these issues, the Authority proposed two lines of action:

- ◆ symmetrical regulation of inter-operator relationships – an area for which ARCEP is responsible;
- ◆ creating forums to discuss issues for which it is not directly responsible.

ARCEP received input from some forty players, including operators (originating operators, collection operators and service providers), content providers, business associations, consumer associations and from consumers themselves. Virtually all of these contributions confirmed the need to act to improve the way the sector operates in terms of relations between operators, other areas of discussion concerning codes of professional ethics and usage and tariff transparency and clarity, even if these lines of action do not all necessarily converge at this stage.

1. Symmetrical regulatory obligations proposed by ARCEP

The Authority proposed the application of two types of obligation⁶²:

- ◆ 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 calling 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, insofar as these services employ public resources, namely the national numbering plan.

These obligations concern all operators, fixed and mobile, regardless of SMP, and thus constitute a symmetrical regulatory mechanism. They are not, therefore, part of a market analysis exercise.

ARCEP consulted the consultative committee on electronic communications networks and services, CCRSCE (*Commission consultative des réseaux et des services de communications électroniques*)⁶³ and the radiocommunications consultative committee, CCR (*Commission consultative des radiocommunications*)⁶⁴ in February 2007, and notified the European Commission on its draft decision in March 2007 – on which the EC returned a favourable opinion on 10 April 2007. ARCEP's decision should thus come into effect after having received the minister's approval.

62 - These obligations are based on CPCE Articles L. 34-8 III and D. 99-11, by virtue of which ARCEP can impose obligations on operators that control access to end users, in view of ensuring access to services on other networks and the interoperability of the services. To the extent that the goal of these obligations is to specify the terms of access and interconnection, they are also subject to the approval of the Minister responsible for electronic communications, pursuant to CPCE Article L. 36-6.

63 - Cf. Part 2, Chapter 2, D, 3.

64 - *Idem*.

2. Other proposed areas of improvement to consumer protection

During its public consultation ARCEP also proposed several topics of discussion concerning ways to improve consumer protection and tariff clarity, which the sector could adopt to better serve consumer interests. This portion of the consultation received a great many comments, particularly from consumers.

a. Code of professional ethics with respect to content

Applying a code of professional ethics to the content that can be accessed via these national numbering plan numbers, and to their usage, is an indispensable tool for ensuring consumer protection, in addition to being a central component in the development of the market. The Authority has no power to regulate the content of value-added services: it is the responsibility of bodies such as the French authority for telematic services and the telematics committees, CST-CTA (*Conseil Supérieur de la Télématique and the Comité de la Télématique Anonyme*).

ARCEP has underscored the importance of ensuring the operational nature of the institutions in charge of oversight. The different players have confirmed the need to update the recommendations in the code of professional ethics to take new uses into account. Several players would also be in favour of creating classifications for the content and dedicated number blocks in the national numbering plan to be able to offer targeted services to consumers.

b. Improving tariff transparency and clarity

The Authority also submitted to public consultation further topics of debate geared to improving the clarity of tariffs for consumers:

- ◆ the promotion of a “C+S” retail tariff schedule common to all networks, both fixed and mobile. It is ARCEP’s view that this type of scheme would be beneficial to consumers as it would make it possible to identify those responsible for the different services being provided: communication “C component”, on the one hand, and the content service, “S component”, on the other. This is also an element of competition between “originating” operators in terms of calling tariffs. The pricing scheme could be put into place without undermining existing interconnection schemes.
- ◆ the harmonisation of common tariff levels for the “S” component. It is the Authority’s belief that, in the interests of consumer protection, it would be entirely justified to request that the current wide array of tariffs being charged by operators become more harmonised.

In their response, contributors were divided with respect to the advantages and drawbacks of the proposed “C+S” tariff scheme for the different players, whereas the proposal of harmonised tariff levels met with favour from the vast majority. In both cases, the players felt that self-regulation in these areas was not workable, and called for at least co-regulation.

In addition, they submitted several suggestions of their own for improving tariff transparency and clarity, such as the creation of colour codes that would be used by the whole sector, imposing an obligation to inform callers of VAS tariffs at the start of the call, or restructuring the national numbering plan to control “high risk” services (i.e. those that could prove very costly to consumers).

3. ARCEP's other areas of involvement in the sector

Consumer protection is one of ARCEP's top priorities. To this end, the Authority took part in a series of meetings with consumers and electronic communications service providers organised by the Minister of Industry, concerning the issue of technical support call billing, notably the question of billing customers' waiting time and the terms of electronic communication service contract cancellation.

Of particular note, ARCEP stated that it was in favour of not billing users for their waiting time on freephone VAS numbers (those starting with 0800, 0805 or 0809) when calling customer support lines⁶⁵. Providers would nevertheless remain free to invoice their customers directly for these services, which could be on a per-call or flat rate basis, or included in the monthly subscription fee.

65 - ARCEP Opinion
No 06-0847
of 7 September 2006
on pro-consumer draft
legislation.

