

Introduction to ARCEP

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The creation of an independent administrative authority to regulate competition in the telecommunications sector came as the result of the sector's transition – with the exception of the mobile telephony sector – from a legal monopoly to a deregulated market. In France it was the Law of 26 July 1996¹ that organised the telecommunications sector's full opening up to competition on 1 January 1998 and which created l'Autorité de Régulation des Télécommunications (ART), which was put into place on 5 January 1997.

1 - Cf. Law No 96-659 concerning telecommunications regulation of 26 July 1996; JO of 27 July 1996.

The Law of 9 July 2004² altered the regulatory framework governing electronic communications by transposing the European directives of 2002. This framework was completed on 20 May 2005 with passage of the postal regulation law³ expanding the responsibility of the regulator now named ARCEP (Autorité de Régulation des Communications Electroniques et des Postes) and entrusting the Authority with the mission of overseeing the postal market's liberalisation and correct operation.

2 - Cf. Law No 2004-669 of 9 July 2004 on electronic communications and audiovisual communication services, JO of 10 July 2004.

In the area of electronic communications, ARCEP is responsible for:

- ◆ enabling competition that is effective, fair and benefits consumers. Competition stimulates innovation and investment, allows markets to develop and enables the diversification of offerings in terms of price and quality thereby benefiting consumers.
- ◆ overseeing the provision and financing of universal service in the context of public telecommunications service. Universal service has four components: quality service at a price that is affordable and includes social tariffs; a directory information service and universal directory; access to telephone booths in public places; special measures for disabled persons and for particular groups, especially certain income groups.
- ◆ ensuring the development of employment, innovation and competitiveness in the telecommunications sector. In its opinions and decisions, ARCEP strives to promote employment and innovation in the sector by maintaining an environment that encourages businesses to be competitive.

3 - Cf. Law No 2005-516 of 20 May 2005 concerning postal activity regulation, JO of 21 May 2005.

- ◆ addressing regional and user interests with respect to service and equipment access. Regional development is an ongoing concern for the Authority, whether it concerns extending broadband to scarcely populated areas or expanding national mobile coverage.

Under the law regulating postal activities, ARCEP is entrusted with the mission of overseeing the opening and correct functioning of the postal sector by:

- ◆ authorising postal activities;
- ◆ issuing public opinions on universal service tariffs and quality objectives;
- ◆ approving tariffs for reserved areas.

ARCEP's organisation

A. The Executive Board

The Board in January 2007



Front row: Joëlle Toledano, Paul Champsaur (Chairman), Gabrielle Gauthey.
Back row: 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 named 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 named by decree of the President of the Republic:

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

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

- ◆ Members **Nicolas Curien** and **Denis Rapone**.

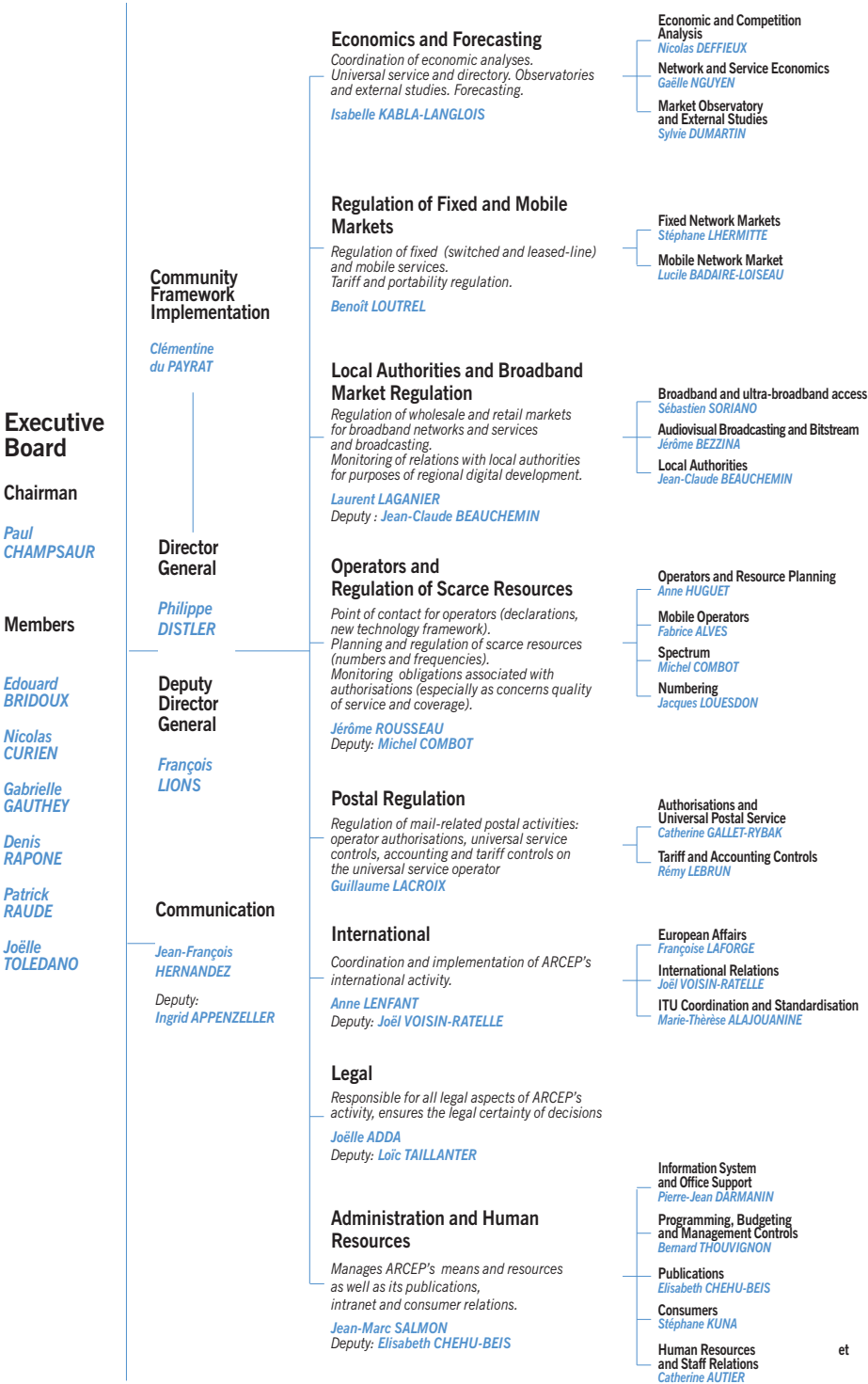
Two members of the Board were named by the President of the National Assembly:

- ◆ Members **Gabrielle Gauthey** and **Joëlle Toledano**.

On 31 December 2006, former Minister, **Jacques Douffiagues**, and telecommunications engineer, **Michel Feneyrol**, left the Executive Board as their term had come to an end. They had been members since January 2001.

B. Organisation chart

As of 5 April 2007



How ARCEP operates

A. New internal regulation

In early 2006, the Authority modified its internal regulation⁴ to incorporate new provisions in the code governing electronic and postal communications, introduced by the Laws of 9 July 2004⁵ and of 20 May 2005⁶.

- ◆ **Executive Board operations:** several changes were made to the internal regulation concerning the Executive Board's operation, notably the number of members – which has been increased from five to seven – and the resulting quorum⁷ rule. Other changes concern the rules of procedure applied to dispute resolution and sanctions.
- ◆ **Dispute resolution:** the new internal regulations define the applicable rules of procedure for requests for dispute resolution relating to electronic communications and postal activities. Among other things, the new internal regulations incorporate the possibility of conducting consultations or seeking outside expertise, as provided for in the Law of 9 July 2004. These measures of inquiry must adhere to the adversarial principle.
- ◆ **Arbitration:** the new internal regulations set the procedure for arbitration. This procedure concerns only the postal sector – the Law of 9 July 2004 having eliminated the arbitration procedure for electronic communications.

4 - ARCEP Decision No 06-0044 of 10 January 2006.

5 - Law No 2004-669 of 9 July 2004 concerning electronic communications and audiovisual communication services, JO of 10 July 2004.

6 - Law No 2005-516 of 20 May 2005 concerning postal activity regulation, JO of 21 May 2005.

7 - i.e. the minimum number of members present, required for ARCEP's Executive Board to be able to conduct valid discussions and make a decision. The minimum number of members is now five.

8 - Cf. CPCE Article L. 5-3 concerning postal activities and Article L. 36-11 concerning electronic communications.

◆ **Sanctions** : the new internal regulations define the rules of procedure applicable to sanctions provided for by the Code⁸. The regulation incorporates the change set by the Law of 9 July 2004, which gives the Authority's Director General the power to order the sanctioned entity to comply with obligations. It is now the task of the Director General to assess the need to follow up on a request for sanction, except in cases where the sanction derives from non-compliance with a dispute resolution decision. Similarly, as provided for by Article 20 of the internal regulations, the Director General can at any time put an end to the sanction procedure.

B. ARCEP performance indicators

1. Opinions and decisions

ARCEP's activity culminates in the adoption of opinions and decisions.
In 2006, the ARCEP Board adopted 1,287 opinions and decisions.

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

Source : ARCEP.

a. Opinions

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

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 so⁹.

ARCEP issued 88 opinions in 2006:

- ◆ 25 opinions on draft legislation, decrees, orders, reports, or at the request of the Minister-delegate of Industry;
- ◆ 7 opinions submitted to the Competition Authority;
- ◆ 1 opinion on a draft CSA decision;
- ◆ 49 opinions on France Telecom tariff decisions;
- ◆ 4 opinions on La Poste tariff decisions;
- ◆ 2 opinions on various requests submitted to the Authority;

b. 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.

10 - CPCE Article L.44.

11 - CPCE Article L.42-1.

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 resources¹⁰. Every number assignment results in an individual decision. The same is true of frequency allocations to operators, which are also made objectively, transparently and without discrimination¹¹.

In 2006, ARCEP adopted 1,199 decisions:

- ◆ 285 decisions on numbering resources, of which 11 were of general application;
- ◆ 823 decisions relating to frequency resources, of which 7 were of general application;
- ◆ 10 decisions relating to postal authorisations;
- ◆ 13 decisions relating to dispute settlements;
- ◆ 2 decisions relating to sanctions.

2. Operators

a. Electronic communication operators

As of 31 December 2006, 398 operators were authorised or had registered under the declaration procedure¹². Of these, 374 were fixed operators, 24 were mobile operators and three were both fixed and mobile operators.

12 - Cf. Part 10,
Chapter 1, A.

At the end of 2006, 10 of the operators were declared or authorised to operate in the overseas territories and 11 were mobile virtual network operators (MVNO).

Among the 374 fixed operators:

- ◆ 57 declared the operation of a network (electronic communications open to the public);
- ◆ 133 declared the provision of a service (electronic communications open to the public);
- ◆ 90 declared the provision of at least one telephony service open to the public.

Over the course of the year, 16 fixed operators declared that they had put an end to their operations: eight network operators and eight service providers.

b. Postal operators

13 - Cf. Part 4,
Chapter 2, C.

In 2006, ARCEP issued 11 postal authorisations¹³. Two of the authorised postal operators conduct their business nationwide: La Poste and Adrexo.

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 by the Chairman, in accordance with his powers), except those whose dispute falls under the jurisdiction of the *Cour d'Appel de Paris* (Paris Court of Appeals).

In 2006, nine Authority decisions were appealed before the court of the *Conseil d'État* and seven were brought before the *Tribunal Administratif*. Four appeals of dispute settlement decisions were filed with the *Cour d'Appel de Paris*, and one ruling by that court was brought before the *Court of Cassation*.

In addition, six proceedings concerning dispute settlements and 25 concerning sanctions were initiated.

**Decisions appealed to the Conseil d'Etat,
on which a ruling was issued in 2006**

Applicant	Appeal filing date	Subject of the appeal	Subject of the dispute	Decision on appeal
RTF	24/01/2006	Decision n° 06-0019 of 10/1/06	Application for suspension of Decision No 06-0019 of 10/01/06, made on completion of the proceedings against the firm RTF, pursuant to CPCE Article L. 36-11	Order: 17/03/06 rejection
RTF	24/01/2006	Decision n° 06-0019 of 10/01/06	Illegality proceedings against Decision No 06-0019 of 10/01/06 made on completion of the proceedings against the firm RTF, pursuant to CPCE Article L. 36-11	Order: 04/10/06 rejection
Neuf Telecom	27/01/2006	Decision of 24/11/05	Application for annulment of Decision of 24/11/05, pursuant to which the Authority rejected a request for reversal of Decisions 03-742, 03-1294 allocating spectrum Altitude Télécom	Judgement: 30/06/06 rejection
PISIOU	06/02/2006	ARCEP decision of 27/01/06	Illegality proceedings against the Operators and Regulation of Scarce Resources Department's Decision of 27/01/06 concerning use of WLL frequencies	Judgement: 24/11/06 rejection
Western Telecom	14/02/2006	Director general's decision of 14/12/05	Illegality proceedings against the DG's Decision of 14/12/05 demanding that Western Télécom comply with CPCE provisions	Order: 14/11/06 withdrawal
SEIRTEL	21/03/2006	Application for suspension	ARCEP Decision No 06-259 of 28/02/06 defining the content of the message to be played on old directory service numbers, concerning use of WLL frequencies to inform consumers of their closure	Order: 31/03/06 rejection
Free SAS	24/03/2006	Decision 05-1085 and 05-1086 of 15/12/05	Application for suspension of Decisions No 05-1085 and 05-1086 defining use of categories of numbers in the national numbering plan, setting aside the range of numbers starting with 07, eliminating the range starting with 087 and creating the range starting with 09, and stating that the Authority will no longer assign 087BPQMCU numbers six months after the date of adoption	Order: 18/04/06 rejection
UPC France	12/04/2006	ARCEP decision n° 05-425 of 27/09/05	Application for annulment of ARCEP Decision No 05-425 of 27/09/05 concerning the definition of relevant geographic CT markets on alternative fixed networks and the Decision on SMP operators in this market	Judgement: 29/12/06 rejection

C. ARCEP's resources

1. Budgetary resources

For 2005, ARCEP was allocated a budget of €21.47 million in authorised commitments, and €21.07 million in payment credits, of which €13.42 million for personnel expenses. Routine operating expenses are set at €8.05 million and €7.65 million are allocated to payment credits (excluding carried-over operating credits).

In 2006, 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 communications électroniques 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 2007, the total budget amounts to €21.90 million in authorised commitments and €21.70 million in payment credits, of which €8.13 million of the authorised commitments and €7.93 million of the payment credits are earmarked for operating expenses. The maximum budgeted headcount determined in accordance with LOLF guidelines is 173 full-time-equivalent personnel.

For 2006, total authorised costs¹⁴ – in other words actual expenditures during the year – amount to €20.1 million, of which €6.6 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 2006 was €7 million.

Taxes and fees

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

Aside from the administrative tax that all electronic communications operators must pay, spectrum licence holders are also required to pay fees for access to and management of the frequencies they use. Use of numbers (assignment, reservation) is now also subject to a tax (up to 31 December 2006, a fee was charged).

In 2006, ARCEP billed €383 million in taxes and fees, the bulk being frequency licensing fees (WiMAX licence awards, GSM licence renewals) and numbering: the totality of this sum is deposited into the State's general budget.

14 - 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.

2. Information system

The architecture of ARCEP's IT network has evolved to allow the 180 workstations and 22 file and application servers to operate at speeds of between 100Mbps and 1 Gbps. In 2006, server management was given a complete overhaul to provide users with greater resource capacity. With this new management system, the Authority is now equipped with one of the most reliable and powerful technologies currently available.

3. Documentation

ARCEP's documentation centre houses a highly specialised body of European and international regulatory, economic and technical literature. 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, universities, 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 a dozen market analysts in 2006.

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).

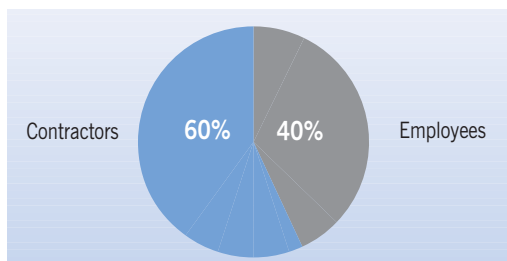
4. Human resources

In 2006, 17 new staff members were hired – the majority of them for their economic expertise.

ARCEP's staff has gone from 168 on 31 December 2005 to 163 as of 31 December 2006 (71 women, 92 men), with several vacancies to be filled in early 2007.

The breakdown between employees and contractors has changed from 67 employees and 101 contractors on 31 December 2005 to 66 employees and 97 contractors as of 31 December 2006. The number of category A employees remains unchanged: 131 (77.9% of personnel at the end of 2005 and 77.3% of personnel at the end of 2006).

Breakdown of personnel as of 31 December 2006



The average age of personnel as of 31 December 2006 is 39.5 (close to 47 years of age for permanent staff, and close to 35 for contractors).

The cost of professional training and conference participation for Authority personnel totalled €150,698 in 2006.

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

- ◆ in June 2006, on an inter-departmental transfer of operations;
- ◆ in December 2006, on a department's internal reorganisation and the smoking ban inside ARCEP's offices as of 1 January 2007.

The first meeting of the joint consultative committee, which was formed in 2005 to examine individual contractor cases, was held in December 2006.

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 pattern 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 2006, the report budget amounted to €1,323,422. Twenty six reports were commissioned at an average cost of €50,901 and an average duration of six months.

Chief external reports in 2006

Topics
Fixed and mobile market regulation
Technical-economic modelling of interconnection tariff control
Residential tariff monitoring
Mobile market regulation
Valorisation of mobile pricing data
Technical support, mobile operating costs and cost accounting
Broadband market regulation and local authorities
TDF accounting separation
Variability of broadband tariffs offered to small and medium enterprise

Universal service

Audit of 2005 telecommunications service revenue

Assessment of the intangible benefits of electronic communication services

Outlook and technologies

Transition of mobile networks to IP

Capacity-service interfaces

Current status of Wi-Fi and outlook for meshed network development

New telecom services and software suppliers (MSN, Yahoo, Google, Skype) vs. operators/ISPs

Consumption, applications and markets

Information technologies take-up and usage*

Operator search and switching costs

Service quality and consumers

Quality of telephone directory services*

Quality of fixed network services (methodology)

3G mobile network coverage survey

Quality of 2G operators' voice and data services*

Resource management

Low power and short-range device market

Streamlining spectrum and numbering allocation processes

Postal sector regulation

Audit of the quality of service measure for letter delivery in D+1*

Impact of competition on industrial mail pricing models

* Reports available on ARCEP's website: www.arcep.fr.

D. 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. 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.

a. www.arcep.fr, website updated in 2006

ARCEP's website is the preferred platform for disseminating information. 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.

In August 2006, ARCEP launched a new version of its website. In addition to a redesign of the graphic charter and the switch from a static to a database driven site, the creation of a powerful update tool was the centrepiece of the site's upgrade. This technological leap is the fruit of longstanding efforts to harmonise and maintain all of the data, without making any concessions on the site's quality or performance. The motivation behind this transformation was not only the desire for a fresher look and more streamlined navigation for the eight-year-old site, but also the desire for greater autonomy and reactivity.

The new site is clearer and provides easier access to information, while the creation of specific sections makes it more user-friendly. The "Accès ciblés" (targeted access) section provides target audiences with all of the crucial information 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 service on the site. There are two mailing lists – telecom-munications and the postal sector – and both are available in French and English.

In addition, ARCEP's website is now registered under a European domain name: www.arcep.eu.

A few figures on www.arcep.fr:

- ◆ 1,412,840 unique visitors in 2006; a total of 7.2 million unique visitors in nine years;
- ◆ 12,735,513 page views in 2006;
- ◆ The three most widely-viewed pages (excluding the home page) in 2006: numbering database, unbundling (FAQ and main issues) and data figures (Observatories and Performance indicators);
- ◆ At the end of February 2007, the site's telecom mailing list had 10,649 French language subscribers (802 English language), and its mailing list devoted to the postal sector had 928 subscribers (around 60 English language).

b. www.appe118.fr, a new directory services site

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



15 - www.appe118.fr.

To inform users, ARCEP created a website¹⁵ that provides a list of open 118 services, their main tariffs and, since 30 November 2006, a history of the changes to these tariffs.

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.).

Since its launch in late 2005, the site has had 660,000 unique visitors¹⁶ and over 11 million page views.

c. 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 7,000¹⁷.

16 - Unique visitors are measured by counting each different IP address connected, regardless of the number of visits from this same address, contrary to the notion of multiple visits whereby several connections can correspond to the same visitor, in which case that visitor is counted several times.

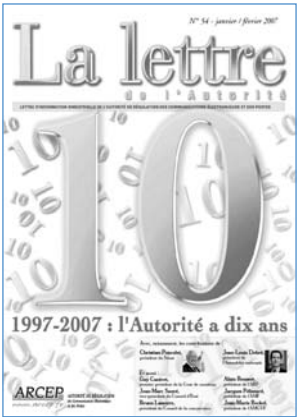
17 - A PDF version is also available on ARCEP's website (12,000 potential readers).

Each edition is devoted to a specific subject that falls under ARCEP's jurisdiction, providing a view of the central issues involved: fixed-mobile convergence, EU Regulatory Framework Review, telecommunications and postal markets, standardisation, broadband dead zones and fibre optic were the main topics addressed in 2006.

Also included are regular sections 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).

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

In January 2007, ARCEP celebrated *La Lettre*'s 10th anniversary 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.

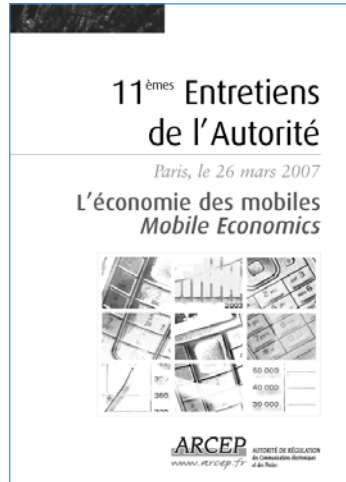


d. Les Entretiens de l'Autorité

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*¹⁸ were 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*¹⁹ had addressed the challenges of postal regulation (2005) and the issues and challenges of local authority involvement in the telecom market (2004).



18 - The entire conference can be viewed on ARCEP's website: <http://www.arcep.fr/index.php?id=9145>.

19 - The complete list of the *Entretiens de l'Autorité* symposia is available on ARCEP's website: www.arcep.fr.

2. Consultation

a. 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 2004²⁰, local authorities can now invest in telecommunications by either creating or subsidising the establishment of broadband networks in their region.

Local authorities' contributions in this area have been unflagging ever since: in 2006, over 70 public-initiative networks have either begun construction or are in the planning stage, representing a total budget of around €1.5 billion.

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

In 2006, CRIP's efforts focused on assessing public action, on local operators and on ultra-broadband²¹. The subjects to be examined were defined during CRIP's second plenary session on 15 March 2006, and were the topic of the debates held during the three subsequent working meetings during the year.

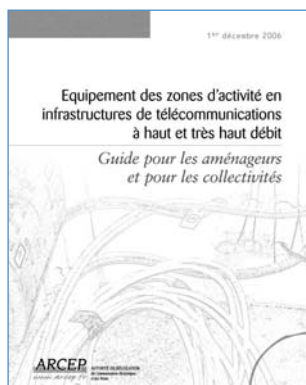
20 - Cf. Law No 2004-575 of 21 June 2004 on confidence in the digital economy, JO of 22 June 2004.

21 - Details on the work performed by CRIP can be found in Part 9, Chapter 2, B.

22 - All of the documents published as part of the committee's work are available on ARCEP's website (in French), under the "accès ciblés" section devoted to local authorities: <http://www.arcep.fr/collectivites>.

The Committee's work resulted in the publication of several documents²², including:

- ◆ a guide for regional developers and local authorities on equipping business parks with broadband and ultra-broadband telecommunications infrastructures²³;
- ◆ a legal guide for operators and local authorities, which provides a summary of the rights and obligations attached to the business of network operator and electronic communications service provider²⁴.



Held on 15 March 2007, the Committee's third plenary session was devoted to two themes: "radio technologies and covering dead zones" and "ultra-broadband networks in business parks and residential zones".

23 - Published in December 2006, available on ARCEP's website: <http://www.arcep.fr/fileadmin/reprise/dossiers/collectivites/pdf/crip-ptrep-011206.pdf>.

24 - Published in March 2007, available on ARCEP's website: http://www.arcep.fr/uploads/t_x_gspublication/guide-juridique-crip2007.pdf.

25 - See below.

26 - CNC is a joint advisory committee operating under the aegis of the Minister responsible for consumption.

It has a dual mission: consultation with consumers, users and businesses, and consultations for orienting public authorities' consumer policies.

27 - Available on CNC's website: <http://www.conseilconsommation.minefi.gouv.fr>.

28 - ARCEP press release of 25 January 2007: www.arcep.fr.

b. Listening to consumer associations

The Authority regularly invites consumer associations to share their opinions and submit queries on a range of topics.

In 2006, ARCEP held discussions with consumer associations on issues relating to the universal directory and value-added services.

Worth noting is that during the public consultation²⁵ on value-added services, launched in December 2006, ARCEP called on consumers, either on their own or via associations, to provide their input – which a number of them did.

Also in 2006, the Authority monitored the work being done by the national consumer agency, CNC (*Conseil national de la consommation*)²⁶ in the area of electronic communications, and attended the meetings devoted to preparing a handbook for consumers, which was published in July 2006²⁷.

In early 2007, the Authority organised a meeting with consumer associations to outline its actions, particularly concerning cases of telephone and/or broadband access service "slamming" to which some subscribers have fallen victim – an issue about which the regulator is being particularly vigilant²⁸.

c. Consulting with operators

(a) Public consultations

The Authority holds 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.

In 2006, ARCEP consulted the sector on 21 occasions²⁹.

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

27 January 2006: public consultation on two draft decisions concerning analysis of the wholesale market for terrestrial TV broadcasting offers.

31 January 2006: public consultation on the message to be played starting on 3 April 2006, to explain the closure of the old directory services numbers.

17 March 2006: public consultation on an ARCEP draft decision concerning the technical and pricing system for the wholesale telephone access service.

14 February 2006: public consultation on the mechanism for issuing frequency authorisations for fixed terrestrial service point-to-point links.

13 April 2006: public consultation on three draft decisions concerning analysis of operator Outremer Télécom and Tel Cell's wholesale mobile voice call termination markets.

16 June 2006: public consultation on a draft decision concerning analysis of the wholesale market for SMS call termination on mobile networks.

21 June 2006: public consultation on a draft decision concerning wholesale and retail capacity services markets.

29 June 2006: public consultation on a draft decision concerning cost accounting and accounting separation obligations imposed on France Telecom.

7 July 2006: public consultation on a draft decision specifying the terms for making subscriber and user lists available for the publication of universal directories and providing universal directory services.

20 July 2006: public consultation on a draft decision on lifting wholesale market regulation for broadband access offers delivered at the national level.

25 July 2006: public consultation on lightening the regulation applied to retail fixed telephony markets.

25 July 2006: public consultation on a draft decision to amend Decision No 05-0571 of 27 September 2005 concerning fixed telephony market analysis.

25 July 2006: public consultation on a draft decision concerning a framework for "direct" voice call termination tariffs on mobile networks in Metropolitan France in 2007.

5 October 2006: public consultation on the offer for connecting MDFs with a fibre optic link (FOL).

5 October 2006: public consultation on reuse of the 900 and 1800 MHz frequency bands for 3G, and on the fourth 3G licence in the 2 GHz band.

5 October 2006: public consultation renewing Bouygues Telecom's GSM licence.

16 October 2006: public consultation on draft rules employed for application of the methods mentioned in Articles R.20-33 to R.20-38 and R.20-39 of the CPCE.

17 October 2006: public consultation on a draft decision concerning cost accounting and accounting separation obligations imposed on France Telecom.

2 November 2006: public consultation on fixed satellite services.

23 November 2006: public consultation on value-added services.

22 December 2006: public consultation on the practice of automatic callback on public payphones.

(b) 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 by what was then ART³⁰, brings together local copper loop unbundling operators, the top equipment suppliers and the incumbent carrier, France Telecom. As its name implies, its task is to issue opinions on technical questions relating to the introduction of new technologies into the local loop. In 2006, it issued favourable opinions on the introduction of E-SDSL and the extension of ADSL2 under certain conditions.

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 boxes³¹. The group brought together distribution operators (letters, newspapers, periodicals, parcels), collective building manager representatives (co-owners and social housing), the Enterprise Directorate-General (Ministry of the Economy) and the *Commission supérieure du service public des postes et des communications électroniques* (State postal and electronic communications policy committee).

3. Specialised consultative 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 1996³², are forums for institutional dialogue on telecommunications issues.

A decree determines the composition, remit and operating conditions of both consultative committees³³, for which the Authority ensures the secretarial duties.

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

30 - L'Autorité de Régulation des Télécommunications (ART), became l'Autorité de Régulation des Electronic communications et des Postes (ARCEP) in May 2005.

31 - Cf. Part 4, Chapter 4.

32 - CPCE Article L. 33-4.

33 - Decree No 2005-399 of 27 April 2005, *Journal Officiel* of 30 April 2005.

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 2006. Its members' mandate expired on 10 November 2006, and its new membership was set by decree on 29 January 2007. Its new chairman is honorary telecommunications engineer, Marc Houéry.

CCRSCE also held three meetings in 2006; its chairman is Alain Bravo, President of Supélec.

There are no equivalent bodies in the postal sector.

4. Interconnection and access committee

The interconnection and access committee (Comité de l'interconnexion et de l'accès) is made up of representatives of open 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 2006. The topics discussed included value-added services (ARCEP draft decision³⁴), public payphones (practice of automatic callback), portability and accounting separation.

34 - Cf. ARCEP draft Decision No 07-0213 notified to the European Commission on 9 March 2007.

35 - Cf. ARCEP's Press release of 22 December 2006.

A brief look back at 2006

A. Highlights

1. WiMAX licence awards

On 7 July 2006, ARCEP published the results of the WLL (using WiMAX³⁶ technology) licence awards. After five months of evaluation, the Authority selected 15 operators (from among the 35 candidates) to share the available frequencies in the 3.4-3.6 GHz band in the 22 regions in Metropolitan France, in Guyana and in the overseas territory of Mayotte. ^{36 - Cf. Part 8, Chapter 1, B, 1.}

The candidates were judged on three criteria: contribution to regional broadband development, the project's ability to stimulate broadband competition and the sum that the candidate proposed to pay³⁷. A sign of the significance given to regional development: six local councils (of the 14 that filed an application) were awarded a licence. ^{37 - Cf. Part 8, Chapter 1, B, 2.}

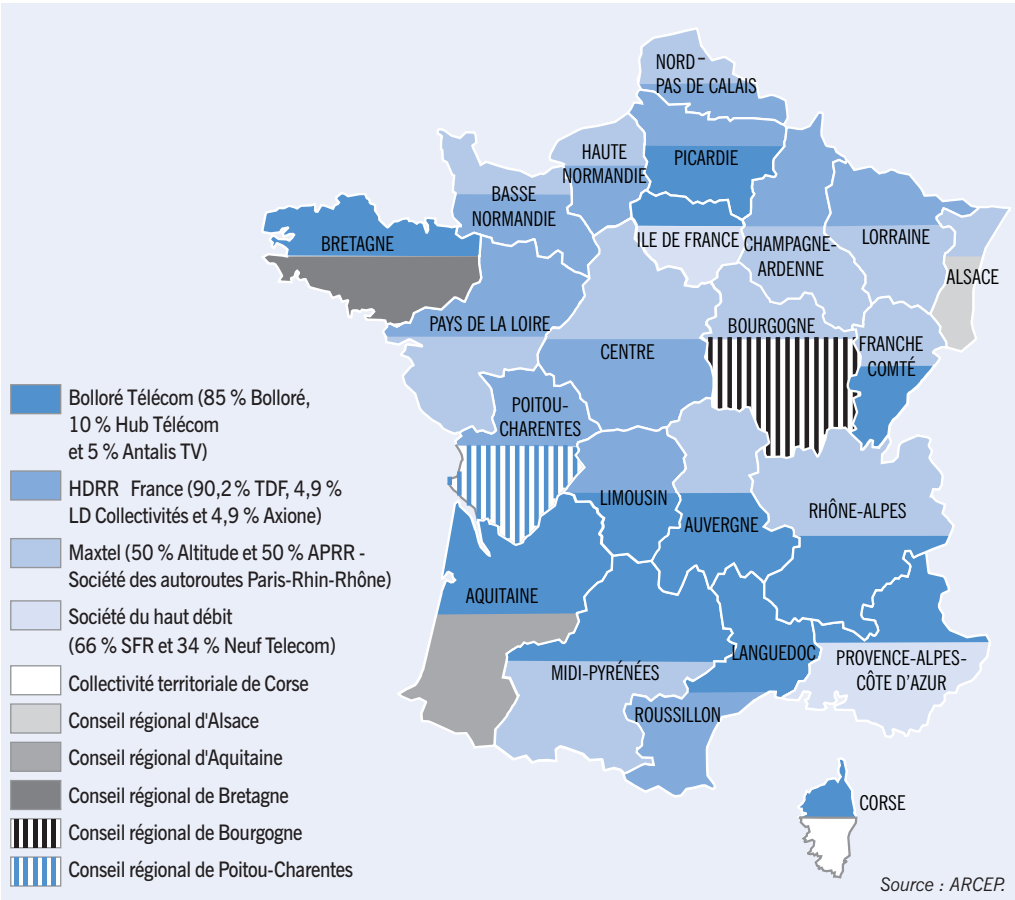
In exchange for the use of these frequencies, the selected operators have committed to vast rollouts, with a total of 3,500 transmission sites (as many as for a GSM or a 3G network) due to be opened starting in June 2008. These rollouts concern dead zones in particular, i.e. areas with no DSL coverage.

38 - Cf. Part 3,
Chapter 2, B, 2.

These results are not definitive, however, as plans are in place for frequency sharing to evolve thanks to a spectrum trading mechanism provided for in the licences³⁸, which will be under the Authority's control.

The State earned a total €125 million from the licensing fees that the winning candidates have committed to pay for their frequencies, in addition to the annual fee for accessing and using WLL frequencies.

Map of the results in Metropolitan France (31-12-2006)



Results in overseas territories (07-07-2006)

Overseas territories	Authorisations awarded to		
French Guyana	France Télécom	Guyatel (50 % OMTSL et 50 % Infotech Net)	
Mayotte	France Télécom	Guet@li haut débit (99,99 % SFR)	STOI Internet (4 particuliers)

NB: Aside from the operators that appear on this map, Iliad subsidiary, IFW, also holds a WLL licence for the whole of Metropolitan France, and XTS Telecom subsidiaries, BLR Antilles Guyane and BLR Réunion, hold spectrum licences in overseas départements

2. Postal regulation

Significant strides were made in implementing postal regulation in 2006, notably the publication of a decree from the *Conseil d'Etat*³⁹ and a ministerial order⁴⁰ specifying the procedure for ARCEP awards of authorisations to postal service providers.

The Authority was thus able to issue the first postal authorisations⁴¹, endowing operators with rights that are indispensable for their operations (e.g. access to residential mailboxes) and imposing obligations that guarantee users a reliable service (e.g. the obligation to ensure the confidentiality of the mail). These authorisations constitute a promise of consumer protection, at a time when postal activities are being opened up to competition. On 31 December 2006, 11 postal operators were awarded an authorisation⁴².

In addition, for the first time ARCEP set the ceiling for the rise in universal postal service tariffs, for a three-year period (2006-2008)⁴³. La Poste – by law⁴⁴ the operator in charge of the universal service – is thus forbidden from increasing the overall price of services which are part of the universal service by more than 2.1% on average, per year. A fraction of these tariffs are subject to ARCEP's control. The price of a stamp therefore increased from 53 to 54 eurocents in October 2006.

3. More symmetrical regulation, less asymmetrical regulation

In 2006, ARCEP began a process of reducing asymmetrical competition regulation, in other words regulation imposed on an SMP operator (France Telecom, in this case) to prevent it from hampering the development of competition.

The Authority thus undertook deregulation of the wholesale market for broadband access delivered at the national level, and lightened regulation governing retail communications markets⁴⁵.

As competition increases, asymmetrical competition regulation must gradually be replaced, when justified, by symmetrical regulation governed by common competition law. If asymmetrical regulation is still necessary in certain markets, it is largely so only in wholesale markets. This changing situation requires continued collaboration between ARCEP and the Competition Authority (*Conseil de la concurrence*).

Diminishing, or even eradicating asymmetrical regulation does not, however, mean a total absence of regulation. The Law confers other missions on the Authority which will still need to be performed, notably managing scarce resources (numbers, spectrum), universal service provision, consumer protection and regional development.

More generally, as the market becomes an oligopoly, ARCEP's actions will be devoted increasingly to symmetrical regulation, in other words regulation that applies to all of the market players.

ARCEP will also be called upon more and more frequently by the Ministry responsible for the sector for regulatory decisions that specify the rules governing the rights and obligations of operators engaged in operating categories of networks and services, the technical and financial terms of interconnection and access, and the terms for establishing wireless installations and independent networks⁴⁶, in the same manner as the decisions made on number portability, the sale of directory listings and value-added services.

39 - Decree No 2006-507 of 3 May 2006 concerning postal authorisations, JO of 5 May 2006.

40 - Order of 3 May 2006, pursuant to CPCE Article R. 1-2-6 concerning authorised postal service providers' obligations, published in the JO of 5 May 2006.

41 - Cf. Part 4, Chapter 2.

42 - Cf. Part 4, Chapter 1, C.

43 - Cf. Part 4, Chapter 3, C.

44 - Article L.2 of Law No 2005-516 of 20 May 2005 on postal activity regulation.

45 - Cf. Part 7, Chapter 1, C.

46 - Cf. CPCE Article L.36-6, giving ARCEP the power to decree new regulatory acts, subject to the Ministry's approval.

4. The end of the number 12 and the birth of 118 numbers

On 3 April 2006, France Telecom's "12" along with all of the old numbers that supplied directory assistance⁴⁷ were put definitively out of service, and were replaced by numbers beginning with 118.

Becoming operational starting on 2 November 2005, after two years of consultation with market players, 118 numbers were implemented by application of an order from the *Conseil d'Etat*⁴⁸ requesting that the Authority define a single number format for directory services.

Opening up the new range of 118 numbers enabled new players to enter the market and new services to be made available to users. This step represented a significant change for consumers. Although, in terms of communication and information, the transition was supported by both operators and ARCEP (through the creation of a dedicated website⁴⁹, distribution of a flyer and a quality survey⁵⁰), the end of the 12 number did lead to a substantial drop in the number of calls to directory services.

At the end of 2006, over twenty 118 numbers were opened, but the vast majority of calls were to only a few of them. The directory services market continued its shift to new business models.

47 - i.e. Bouygues
Télécom's 612, SFR's 222,
Orange's 712,
the Universal Directory's
3912, Scoot's 3200 and
IntraCallCenter's 3211.

48 - Cf. *Conseil d'Etat*
Order, Disputes Division,
dated 25 June 2004,
companies Scoot France
and Fonecta No 249300
and 249722, notified
to ART on 29 July 2004.

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

50 - Cf. Part 6, Chapter 2.

B. Market indicators for 2006

France's telecommunications services market: €41 billion .

Mobile telephony

Market growth

◆ in value:	€ 16.9 billion (+4.1%)
◆ in volume :	94,1 billion minutes (+15.2%)
◆ number of customers:	51.7 million (+7%)
◆ penetration rate:	80.8% (versus 74.9% at the end of 2005)

Trends

Average monthly customer invoice:	€ 28.2 (-3,3%)
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Internet

Market growth

◆ turnover (narrow and broadband):	€ 3.7 billion (+18,6%)
◆ number of subscribers:	15.3 million (+16,3%)
of which:	
broadband subscriptions:	12.7 million (+34%)
narrowband subscriptions:	2.6 million (- 31,7%)

Trends

◆ number of unbundled lines:	4 million (+41,6%)
of which:	
shared access:	1.8 million (-18,5%)
full unbundling:	2.2 million (+269,9%)

Fixed telephony

Market growth

◆ in value:	€ 11.4 billion (-5,4%)
◆ in volume :	105.5 billion minutes (-0,7%)

Trends

◆ number of phone service subscriptions:	38.2 million (+4,6 %)
of which:	
analogue and digital line subscriptions*, cable:	31.6 million (-4,7%)
VoIP subscriptions (over broadband):	6.6 million (+94, 8%)

* essentially France Telecom.

Source : Arcep.

