

Part 2

Introduction to ARCEP

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Part 2

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CHAPTER1

Missions

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ARCEP is an independent administrative authority which was created on 5 January 1997, under the name of ART¹ for *Autorité de régulation des télécommunications*, or Telecommunications Regulatory Authority – to accompany the French telecommunications sector as it was opened up to competition, and to regulate the markets created in the process.

1 - Cf. Law no. 96-659
on 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 new framework made it possible to extend – and to increase or lessen in some cases – the Authority's actions through more appropriate, more flexible and more efficient methods.

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

The Authority's chief role in this sector of activity is to ensure fair and effective competition in the electronic communications market, which benefits consumers.

The Authority's primary tool is market analysis.

It consists of defining relevant markets, of designating those operators that enjoy significant market power and setting the obligations to which they are subject, generally in wholesale markets – in other words markets where operators bill for services provided to one another – to resolve competition issues that have arisen.

This is a classic form of regulation, referred to as asymmetrical as it does not apply equally to all of the market's operators.

The Authority also has the power to set, within the scope defined by Law, general obligations that apply to all operators, provided they are approved by the Minister responsible for electronic communications. This is the underlying principle of symmetrical regulation, i.e. which applies equally to all of the market's operators – one example being mobile number portability (the ability for a customer to keep the same phone number when switching mobile operators).

In addition, the Authority has the power to impose sanctions on operators that do not satisfy their obligations, as well as the power to mediate to resolve disputes between operators on matters pertaining to network access (technical terms and tariffs).

3 - See below.

The allocation of spectrum and numbering resources is another key mission for the Authority³. Operators need these resources – which are qualified as scarce as they are physically limited – to exercise their activity. The Authority is responsible for managing these resources.

And, finally, the Authority sets the amount of the contributions to the universal service fund, defined by the Law of 1996, and ensures the oversight of these financing systems.

4 - Cf. Law no. 2005-516 of 20 May 2005 on postal activity regulation, JO of 21 May 2005.

In 2005, the Law on postal regulation⁴ expanded the Authority's powers. It thus became the Electronic communications and postal regulatory authority, or ARCEP (*Autorité de régulation des communications électroniques et des postes*), as it assumed the responsibility of overseeing the postal market's liberalisation and proper operation by:

- ◆ issuing authorisations to exercise a postal activity;
- ◆ issuing opinions, which are made public, on tariffs and universal service quality objectives;
- ◆ approving the tariffs applied in the reserved area.

CHAPTER 2

Organisation

Part

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A. The Executive Board

ARCEP's Executive Board is composed of seven members. Three of them are appointed by the President of the Republic; the other four are appointed by the President of the National Assembly and the President of the Senate.

The Board in May 2009



*Front row, from left to right:
Joëlle Toledano, Jean-Ludovic Silicani (Chairman), Edouard Bridoux
Back row, from left to right:
Denis Rapone, Nicolas Curien, Daniel-Georges Courtois, Patrick Raude.*

The Chairman of ARCEP is appointed by the President of the Republic, based on proposals from the Prime Minister. Following application of the Law of 5 March 2007 concerning television in the future¹, this appointment takes place after receiving the opinion of parliamentary commissions.

Members of the Board cannot be dismissed, their six-year mandate is not renewable and their position is incompatible with any other business activity, national appointment or civil service position.

¹ - Law no. 2007-309 of 5 March 2007 concerning modernization of audiovisual broadcasting and television in the future, JO of 7 March 2007.

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

- ◆ Chairman, Jean-Ludovic Silicani;
- ◆ Members, Edouard Bridoux and Patrick Raude.

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

- ◆ Members Nicolas Curien and Denis Rapone.

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

- ◆ Members Daniel-Georges Courtois and Joëlle Toledano.

In late 2008, Paul Champsaur, Chairman, and Gabrielle Gauthey, Member of the Executive Board, left the Authority upon completion of their six-year term. They were replaced by Jean-Claude Mallet and Daniel-Georges Courtois, respectively.

For strictly personal, health-related reasons, Jean-Claude Mallet tendered his resignation to the President of the Republic on 29 April 2009.

2 - In accordance with CPCE Article L.130. After receiving the approval² of the competent parliamentary commissions, Jean-Ludovic Silicani was appointed Chairman by decree of the President of the Republic on 8 May 2009.



Jean-Claude Mallet,
Chairman of ARCEP
from January to May 2009.



Jean-Ludovic Silicani,
Chairman of ARCEP
since 8 May 2009.

Professional code of ethics that applies to the ARCEP Executive Board

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

ARCEP has adopted a professional code of ethics that lists the ethical principles that apply to both areas.

The code of ethics that applies to all public agents includes the following:

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

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

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

B. Organisation chart

As of 1 June 2009

Institutional Relations

Patricia LEWIN

Coordination and Studies

Nicolas POTIER

Administration and Human Resources

Manages ARCEP's means and resources as well as its publications, documentation and intranet.

Claire BERNARD

Deputy: Elisabeth CHEHU-BEIS

Legal

Responsible for all legal aspects of ARCEP's activity, ensures the legal certainty of decisions

Joëlle ADDA

Deputy: Loïc TAILLANTER

International

Coordination and implementation of ARCEP's European and international activities.

Anne LENFANT

Deputy: Joël VOISIN-RATELLE

Economics and Forward Planning

Coordination of economic analyses. Universal service and directory. Observatories and external studies. Forward planning.

Isabelle KABLA-LANGLOIS

Deputy: Nicolas DEFFIEUX

Human Resources and Social Relations

Catherine AUTIER

Scheduling, Budget and Management Oversight

Bernard THOUVIGNON

Information Systems and General Affairs

Pierre-Jean DARMANIN

Documentation

Elisabeth CHEHU-BEIS

Procedures, Frequencies, Audiovisual Broadcasting, Interconnection and Consumers

Loïc TAILLANTER

New Regulation, New Networks, Local Authorities and Europe

Laurent PERRIN

European Affairs

Françoise LAFORGE

International Relations

Joël VOISIN-RATELLE

ITU Coordination and Standardisation

Marie-Thérèse ALAJOUANINE

Economic and Competition Analysis

Nicolas DEFFIEUX

Network and Service Economics

Gaëlle NGUYEN

Market Observatory and External Studies

Sylvie DUMARTIN

Executive Board

Chairman

Jean-Ludovic SILICANI

Members

Edouard BRIDOUX

Daniel-Georges COURTOIS

Nicolas CURIEN

Denis RAPONE

Patrick RAUDE

Joëlle TOLEDANO

Communication

Jean-François HERNANDEZ

Deputy: *Ingrid APPENZELLER*

Directorate-General

Director General

Philippe DISTLER

Deputy Director Generals

François LIONS

Benoît LOUTREL

Consumer Relations

Stéphane KUNA

Departments

Postal Regulation

Regulation of mail-related postal activities: operator authorisations, universal service controls, accounting and tariff controls on the universal service operator.

Guillaume LACROIX

Authorisations and Universal Postal Service

Catherine GALLET-RYBAK

Tariff and Accounting Controls

Emmanuel ROUX

Operators and Regulation of Scarce Resources

Point of contact for operators. Licence issuing and monitoring. Setting up and issuing calls for candidates. Scarce resource management (frequencies & numbers).

Jérôme ROUSSEAU

Deputy: *Sandrine CARDINAL*

Operators and Resource Planning

Anne HUGUET

Mobile Operators

Rémi STEFANINI

Spectrum

Sandrine CARDINAL

Numbering

Jacques LOUESDON

Local Authorities and Broadband Market Regulation

Regulation of wholesale and retail markets for broadband networks and services and broadcasting. Monitoring of relations with local authorities for purposes of regional digital development.

Sébastien SORIANO

Deputy: *Renaud CHAPELLE*

Local Authorities

Renaud CHAPELLE

FTTx and Unbundling

Bertrand VANDEPUTTE

Bitstream and Audiovisual

Broadcasting

Igor PRIMAUT

Regulation of Fixed and Mobile Markets

Regulation of fixed and mobile services. Tariff and portability regulation.

Benoît LOUTREL

Fixed Network Markets

Christophe COUSIN

Mobile Network Markets

Clémentine PESRET

CHAPTER 3

Operation

Part

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A. ARCEP performance indicators

1. Opinions and decisions

Most of ARCEP's activity culminates in opinions and decisions adopted by the Executive Board. In accordance with the rules of a quorum, the Board can only make a decision if at least five of its seven members are present during deliberations.

In 2008, the ARCEP Board adopted 1 457 opinions and decisions¹.

*1 - Of this total,
10 decisions were
subsequently rescinded.*

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Opinions and decisions adopted	458	1 047	1 159	1 365	1 299	1 200	1 340	1 126	1 160	1 287	1 114	1 457

Source : ARCEP.

1.1 Opinions

The Authority is consulted for opinions on draft legislation, decrees and regulations concerning the postal and electronic communications sectors. It may also provide opinions to the Competition Authority when called upon to do so².

*2 - CPCE Articles
L.5-8 and L. 36-10.*

ARCEP issued 66 opinions in 2008:

- ◆ 21 opinions on draft legislation, decrees and orders;
- ◆ 15 opinions submitted to the Competition Authority;
- ◆ 4 opinions on La Poste tariff decisions;
- ◆ 15 opinions on France Telecom tariff decisions;
- ◆ 11 opinions on various requests submitted to the Authority.

1.2 Decisions

Of the 1 391 decisions adopted by ARCEP in 2008:

- ◆ 277 were decisions on numbering resources, of which 1 was of general application;
- ◆ 1 012 were decisions relating to frequency resources, of which 10 were of general application;
- ◆ 2 were decisions relating to postal authorisations;
- ◆ 7 were decisions relating to dispute settlements;
- ◆ 93 were decisions pertaining to various requests.

12 dispute resolution procedures were also opened in 2008.

It should be noted that over half of the decisions adopted concerned the allocation of either numbering or spectrum resources to operators. This function accounts for a substantial portion of the regulator's activities in the area of electronic communications.

2. Licensed operators

2.1 Electronic communications operators

Declaration regime

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

The Act of 9 July 2004³ fundamentally altered the regulatory framework that applies to electronic communications in France, not only with respect to the system of authorisations itself, but also as concerns the scope of players subject to declaration.

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

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

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

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

As of 31 December 2008, ARCEP had recorded 823 licensed or declared⁴ operators: 793 fixed operators, 30 mobile operators and 8 integrated, fixed and mobile operators.

At the end of 2008, there were eight declared or authorised mobile operators in the overseas territories, and 14 mobile virtual network operators (MVNO).

A total of 103 new operators declared themselves in 2008.

Over the course of the year, 49 fixed operators ceased their activities: 17 of them had been providing a telephone service.

2.2 Postal operators

ARCEP issued 2 postal authorisations in 2008.

There were a total of 21 authorised postal operators in France in March 2009. Two of them are authorised to operate nationwide: La Poste and Adrexo.

Worth noting, however, is that in early 2008, the Adrexo parent company, Spir Communication group, announced plans to put an end to its postal sector activities due to the additional two-year delay (1 January 2011 instead of 1 January 2009) voted by the European Parliament and Council for the full deregulation of the postal sector⁵.

The firm Activ' Courrier withdrew from the postal sector in 2008.

5 - Adrexo does still have one remaining postal activity through its "Combimail" offer, which is why it continues to hold an authorisation.

Postal authorisations issued by ARCEP as of 5 March 2009

Company name	Authorisation issuance date	Authorised activity	Brand / logo
Adrexo	13 June 2006	Internal mail	
Alternative Post	19 April 2007	Internal mail	
Althus	7 September 2006	Internal mail	
Brunet	9 October 2008	Internal mail	
Ciblex	10 June 2008	Internal mail	
Courrier Plus	2 October 2007	Internal mail	
Courrier Services 03	28 June 2007	Internal mail	
De Post-La Poste (Belgique)	5 December 2006	Outbound cross-border mail	
Deutsche Post AG	29 June 2006	Outbound cross-border mail	
Deutsche Post Global Mail France	15 March 2007	Outbound cross-border mail	
DHL Express France SAS	25 Octobre 2007	Outbound cross-border mail	
G3 Worldwide France	5 December 2006	Outbound cross-border mail	
IMX France	22 June 2006	Outbound cross-border mail	
JS Activ'	19 April 2007	Internal mail	
La Poste (France)	26 October 2006	Internal mail and outbound cross-border mail	
LET France routage	25 October 2007	Internal mail and outbound cross-border mail	
Press'tissimo	31 May 2007	Internal mail	
ProCourrier	28 June 2007	Internal mail	
Royal Mail	15 March 2007	Outbound cross-border mail	
Solgeco 26	5 December 2006	Internal mail	
Stamper's	7 September 2006	Internal mail	
Swiss Post International	7 September 2006	Outbound cross-border mail	

3. Disputes

3.1 Background

6 - CPCE Article L. 36-8. ARCEP has the legal authority to resolve disputes between operators⁶.

It can therefore be called upon to settle a dispute between operators that concerns refusal to provide access or interconnection, when commercial negotiations break down or when there is a disagreement over the conclusion or execution of an agreement to provide interconnection or access to an electronic communications network.

Moreover, in the case of business negotiations that have reached an impasse, the Authority can also be called on to settle disputes concerning the implementation of operators' obligations as stipulated in the code, and notably those that pertain to:

- ◆ the possibilities and terms of shared use of existing installations on public or private property;
- ◆ the technical and financial terms of providing subscriber lists for the publication of a universal directory;
- ◆ the technical and tariff-related terms that apply to the activity of electronic communications operator or the terms that apply to local authorities with respect to establishing, making available or sharing electronic communications networks and infrastructure;
- ◆ the conclusion or execution of a local roaming agreement.

The Authority issues a decision on these disputes within four months, or up to six months under exceptional circumstances, after having given the parties the opportunity to present their arguments. ARCEP decisions are justified and are made public (subject to secrecy protection laws) and the parties are informed of the decisions. A request to appeal or amend the decision can be submitted to the Paris Court of Appeal within a month of receiving notification of said decision.

3.2 Decisions adopted in 2008

Requests for dispute settlement for which a decision was issued in 2008

Date of the request	Requesting party	Defendant	Subject of the dispute	Date of the decision rendered
19 November 2007	Neuf Cegetel	France Telecom	Technical terms and pricing of badges for accessing France Telecom sites	Decision no. 08-0004 of 8 January 2008 (withdrawn)
1 ^{er} April 2008	Neuf Cegetel	France Telecom	Pricing terms for tie cables in the local loop access agreement	Decision no. 08-0839 of 24 July 2008
5 June 2008	Prosodie	Free SAS	Invoicing terms for a short number	Decision no. 08-0897 of 29 July 2008 (nonsuit awaiting ruling)
18 July 2008	France Telecom	Numericable	Communication of network access offers to Numericable	Decision no. 08-1207 of 4 November 2008
18 July 2008	France Telecom	NC Numericable	Communication of network access offers to NC Numericable	
28 July 2008	Intercâble Réunion SAS	France Telecom	Access to France Telecom civil engineering infrastructure	Decision no. 08-1365 of 9 December 2008
16 October 2008	Intercâble Réunion SAS	France Telecom	Conservatory measures concerning access to France Telecom civil engineering infrastructure	Decision no. 08-1208 of 25 November 2008

3.3 Analysis of the dispute resolution decisions adopted in 2008

3.3.1 Dispute between Neuf Cegetel and France Telecom

On 24 July 2008, the Authority ruled on the dispute between Neuf Cegetel and France Telecom⁷.

Neuf Cegetel had filed a complaint with ARCEP on the agreement for accessing France Telecom's local loop, and notably on the provisions concerning the tariff applied to tie cables and connection cancellation fees.

The operator had requested that the Authority:

- ◆ order the discontinuation of billing for its base of tie cables installed before 1 January 2008 and the reimbursement of excess payment, namely the difference in the amount paid up to the date of enforcement of the decision and the actual costs determined by the decision for that same period;
- ◆ modify the unbundling agreement, notably to exonerate Neuf Cegetel from being invoiced for connection cancellation fees, subject to certain restrictions.

The Authority decided that, starting on 4 February 2008, France Telecom will apply the tariffs stipulated in the local loop access reference offer published on 15 May 2008 to the tie cable services billed to Neuf Cegetel.

Neuf Cegetel withdrew its request concerning cancellation fees.

⁷ - ARCEP

Decision no. 08-0839 of 24 July 2008.

3.3.2 Dispute between France Telecom and Numericable

8 - Although the company's brand is now "Numericable", its management continues to be administered by two distinct enterprises: Numericable SAS and NC Numericable SA (formerly Noos). The company is a wholly owned subsidiary of Ypso France.

On 4 November 2008, ARCEP issued its ruling on the dispute between France Telecom, on the one hand, and Numericable and NC Numericable⁸ on the other, concerning the communication of offers for accessing the cable operator's network⁹.

France Telecom filed a complaint concerning the refusal by Numericable and NC Numericable, which they opposed, to provide information on the network access solutions offered to operators, citing a misunderstanding of the provisions of Article D. 99-10 of the CPCE. These provisions require that operators communicate the technical terms and tariffs, as well as information concerning the availability in France of the network access offer(s) that they propose to other operators under objective, transparent and non-discriminatory conditions.

9 - ARCEP Decision no. 08-1207 of 4 November 2008.

The Authority rejected France Telecom's request.

3.3.3 Dispute between Intercâble Réunion SAS and France Telecom

10 - ARCEP Decision no. 08-1208 of 25 November 2008.

On 9 December 2008 the Authority ruled on the dispute between the companies Intercâble Réunion SAS and France Telecom¹⁰.

Intercâble Réunion had requested that ARCEP:

11 - LGC-DPR (civil infrastructure link on public roadways) and LGC-ZAC (civil infrastructure link in business parks) agreements.

◆ oblige France Telecom to comply with its contractual obligations by executing in good faith the agreements¹¹ it had signed with Intercâble;

◆ enjoin France Telecom to propose agreements for accessing its civil engineering infrastructure and its local loop which are adapted to the needs of Intercâble, under reasonable and non-discriminatory pricing and technical conditions, and to enjoin France Telecom to adapt these agreements in accordance with the amendments proposed by Intercâble in its letter of 30 May 2008, under administrative, tariff-related and technical conditions that are fair, transparent and non-discriminatory;

12 - ARCEP Decision no. 08-0835 of 24 July 2008.

◆ to enjoin France Telecom, in accordance with its obligations¹², to provide Intercâble with prior information on the status of its civil engineering infrastructure and, when applicable, to relieve saturated networks;

◆ to appoint an expert.

The Authority rejected the request from Intercâble Réunion.

4. Appealing an ARCEP decision

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

In 2008, eight Authority decisions were appealed before the court of the *Conseil d'Etat* and six were brought before the *tribunal administratif*. Appeals of two dispute settlement decisions were filed with the *Cour d'Appel de Paris*.

Decisions appealed to the *Conseil d'Etat* on which a ruling was issued in 2008

Applicant	Appeal filing date	Subject of the appeal	Subject of the dispute	Decision on appeal
La Poste	11 September 2007	ARCEP Decision no. 07-0443 of 15 May 2007	Application for annulment of the ARCEP Decision of 15 May 2007 concerning accounting system specifications, pursuant to CPCE Article L. 5-2, para. 6 and the Decision of 11 July 2007 rejecting La Poste's automatic right of appeal.	Order of 7 May 2008: rejection
UFC-Que choisir	4 December 2007	ARCEP Decision no. 07-0810 of 4 October 2007	Application for annulment (substance) of the ARCEP decision of 4 October 2007 concerning invoicing the average price of a mobile call termination.	Order of 19 May 2008: rejection
UFC-Que choisir	4 December 2007	ARCEP Decision no. 07-0810 of 4 October 2007	Application for annulment (referral) of the ARCEP decision of 4 October 2007 concerning invoicing the average price of a mobile call termination.	Ruling of 18 January 2008

4.1 La Poste appeal

In its Order of 7 May 2008¹³, the *Conseil d'Etat* specified that the Authority's¹⁴ responsibility to control and verify that the terms and conditions for financing the universal postal service are balanced allows it to request that La Poste provide it, each year, with the information it needs to assess the economic and financial conditions under which La Poste provides the universal postal service.

4.2 UFC-Que Choisir appeal

In its order issued on 19 May 2008, the *Conseil d'Etat* rejected the request submitted by UFC-Que Choisir (*Union fédérale des consommateurs*, Federal consumers union) to appeal the ARCEP Decision of 4 October 2007¹⁵ concerning voice call termination. The association had requested:

- ◆ cancellation of Article 25 of the ARCEP decision as it set ceiling tariffs that exceeded the costs incurred by the mobile operators;
- ◆ that ARCEP be ordered to make a new decision such that the reference ceiling tariff be reduced even further, to around one eurocent a minute, starting in 2008 for all operators.

Upon examination of the claim concerning an error of law, the *Conseil d'Etat* stipulated that, "[...] in accordance with the provisions contained in Article D. 311 of [the CPCE], ARCEP could legally take into account the prices being practiced in comparable foreign markets; that by taking account of the risks of an imbalance between European operators introduced by divergent call termination regulation across Europe, ARCEP committed no error of law".

13 - Order of 19 May 2008 rejecting the request submitted by La Poste against ARCEP Decision no. 07-0443 of 15 May 2007 concerning accounting system specifications, made in accordance with Article L. 5-2, Para. 6 of the French postal and electronic communications code, CPCE, and against the Decision of 11 July 2007 rejecting La Poste's administrative appeal against this decision.

14 - CPCE Articles L.2, L.5-2 and R.1-1-16.

15 - ARCEP Decision no. 07-0810 of 4 October 2007.

On the matter of the call termination tariffs, the Conseil d'Etat went no further than determining whether an assessment error had occurred.

On the matter of the grievance that the levels that were set necessarily allowed operators to abuse their dominant market position, the Conseil d'Etat rejected it in light of the system employed for setting the ceiling tariff. It also dismissed the grievance concerning price squeezes, State support and violation of the principle of equality of discharge of public burden as being *"unaccompanied by specific details that would enable an assessment of their merit"*.

B. The Authority's resources

1. Budgetary resources

For 2008, Parliament allocated ARCEP a budget of €22.36 million in authorised commitments, and €22.16 million in payment credits, of which €13.93 million was for personnel expenses. Routine operating expenses are set at €8.43 million and €8.32 million are allocated to payment credits. The Authority did not benefit from carried-over credits as it had done previously, due to a government decision in spring 2008 to apply a general freeze on such operations.

In 2008, ARCEP is accounted for in Action 8, (*Régulation des communications électroniques et des postes*, regulation of electronic communications and postal affairs), of programme 199 which covers regulation and measures to ensure the secure trade of goods and services and is included in the "Economic development and regulation" mandate of the Ministry of the Economy, Industry and Employment. The 2009 Finance Law places ARCEP in the Ministry's economic mandate under the new programme 134, "Business development and job creation".

For 2009, the total budget remains set at €22.36 million in authorised commitments and €22.16 million in payment credits, of which €8.2 million of the authorised commitments and €8 million of the payment credits are earmarked for operating expenses. The maximum authorised headcount remains unchanged at 174 full-time-equivalent personnel.

For 2008, the Authority's cost accounting reveals that total authorised costs¹⁶ – in other words actual expenditures during the fiscal year – amount to €21.8 million of which €6.9 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 2008 was €7.7 million.

¹⁶ - These are ARCEP's costs only, and do not take into account the costs incurred by other administrative bodies, such as the Ministry responsible for electronic communications and posts or the National Frequency Agency (ANFr), which share responsibility for certain issues with ARCEP.

Taxes and fees

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

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

In 2008, ARCEP billed €305 million in licensing fees, the bulk being frequency licensing fees (licence awards, GSM frequency licence renewals) and €25 million in numbering and administrative taxes. The totality of this sum is deposited into the State's general budget.

In 2008, ARCEP was involved in a quality control process for its taxes and fees billing activities, which resulted in it being certified ISO 9001 standards compliant by Afnor.

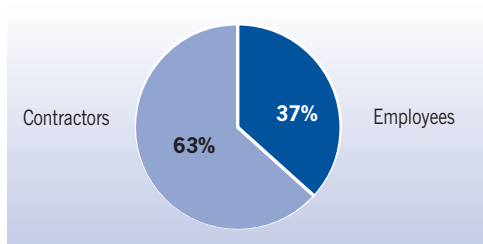
2. Human resources

In 2008, ARCEP hired 15 new staff members.

ARCEP's staff has grown from 165 on 31 December 2007 to 169 as of 31 December 2008 (79 women, 90 men).

As of 31 December 2008, ARCEP staff comprised 62 employees and 107 contractors, compared to 64 employees and 101 contractors one year earlier. The number of category A and A+ employees has increased slightly since the previous year: up to 126, accounting for 74% of the personnel at the end of 2008.

Breakdown of personnel as of 31 December 2008



The average age of ARCEP personnel as of 31 December 2008 is 41.1 (49 for employees and just over 36 for contractors).

The cost of professional training for Authority personnel totalled €172 000 in 2008.

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

- ◆ in June 2008, on flex-time arrangements and measures concerning training
- ◆ in December 2008 on the system for offering time off in lieu of pay.

The third meeting of the joint consultative committee, which was formed in 2005 to examine individual contractor cases, was held in December 2008.

3. 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 that are not intended to be made public. However, certain reports and consumption or quality of service surveys are intended as a means of informing the sector, and consumers in particular, and are thus available to all on the Authority's website.

In 2008, the report budget amounted to roughly €1.5 million. Twenty four reports were commissioned at an average cost of €61 021 and an average duration of six months.

The how and why of reports

Goal

Calling on outside technical, economic, statistical or legal experts provides the Authority with assistance that is essential to the performance of its duties.

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

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

Code of ethics

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

Advertising

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

Chief external reports in 2008

Electronic communications sector regulation

Cost model for an efficient operator in the French overseas *départements*

Towers and pylons

Harmonisation of operational processes for mutualisation of the last drop of optical fibre networks

Impact of public initiative networks *

Postal sector regulation: operational support

Mailing houses and la Poste

Comparative analysis of systems for remunerating depositaries

Market observation and surveys

Monitoring of residential retail calling tariffs

Dissemination of information and communication technologies in French society, with CGTI * ♦

Survey of households concerning distributed items and the consumption of postal services

Monitoring of the value-added service (VAS) market

Analysis and forecasting

Impact of the use of high-speed mobile access services on productivity in French businesses

Cultural issues tied to consumer access to high-speed mobile services

Contribution to social inclusion made by high speed mobile access

Evolution of network migration strategies towards NGN architectures

High volume offerse

Quality of service and audits

Quality of mobile operators' (2G-3G) voice services *

Quality of mobile operators' (2G-3G) data services *

Quality of service measurement of Colissimo counter service and of La Poste customer complaints services

Audit of electronic communication services revenue in 2007

Quality of the directory services accessible via 118 XYZ numbers, including their directory database *

Audit of quality of service indicators for France Telecom's universal service

* Reports available on the ARCEP website: www.arcep.fr.

♦ Survey commissioned jointly by the *Conseil Général des Technologies de l'Information (CGTI)* and ARCEP.

4. Information system

In 2008, the Authority equipped itself with an information system based on virtual server technology. This innovative approach enables more flexible use of resources while guaranteeing data security. In addition to providing staff with secured access to their e-mail from outside the office, the Authority's IT department is making progress in the implementation of mobility-enabling technologies (remote access to files and servers).

5. Documentation

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

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

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

In addition to creating a system of legal, economic and technical monitoring to be able to disseminate the most up-to-date information on the sector, the documentation centre also purchased a number of market reports from outside consultants in 2008.

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

C. ARCEP oversight bodies, relationships with public authorities and other independent administrative authorities

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

As with any State institution, ARCEP is subject to Parliamentary oversight (its chairman thus addressed Parliament and parliamentary committees on several occasions in 2008) and to judiciary power (eight of its decisions were appealed to the courts in 2008).

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

1.1 Parliamentary oversight

1.1.1 Parliamentary oversight of ARCEP activities

Members of Parliament have the power of oversight over ARCEP activities – a necessary power to ensure the regulator's independence.

This oversight imposes on the Authority¹⁷:

17 - CPCE Article L.135

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

In 2008, former ARCEP Chairman, Paul Champsaur, was called upon to address parliamentary committees on several occasions

- ◆ in January, by the Parliamentary Commission on the digital dividend, at the Senate;
- ◆ in September, by Michel Herbillon, member of parliament (*député*), vice-chairman of the European affairs committee, on the review of the European regulatory framework for telecommunications, at the National Assembly;
- ◆ in November, by Francis Grignon, Senator and rapporteur for the draft bill concerning the Office of rail regulation (*Autorité de régulation ferroviaire*), at the Senate;
- ◆ in November, by Bruno Retailleau, Senator, on the draft bill on public audiovisual services, at the Senate.

Jean-Claude Mallet, the Authority's Chairman from January to May 2009, addressed the hearings on his appointment in the National Assembly¹⁸ and the Senate¹⁹ in December 2008.

18 - http://www.assemblee-nationale.fr/13/cr-cpro/08-09/c0809024.asp#P10_433.

Following his appointment on 4 January 2009, Jean-Claude Mallet appeared before parliamentary committees on several occasions in the first quarter of 2009, notably on:

19 - <http://www.senat.fr/bulletin/20081215/eco.html#toc7>.

- ◆ 21 January, before the National Assembly Committee on Legal Affairs (*Commission des lois de l'Assemblée nationale*) on the "Creation and Internet" draft bill;
- ◆ 28 January, by the Postal and electronic communications public service commission, CSSPPCE (*Commission supérieure du service public des postes et des communications électroniques*) on the 4th mobile telephony licence;
- ◆ 4 February, before the National Assembly Committee on Economic Affairs (*Commission des affaires économiques de l'Assemblée nationale*) on the fourth mobile telephony licence;
- ◆ 1 April, by the Parliamentary office for the assessment of scientific and technological choices (*Office parlementaire pour l'évaluation des choix scientifiques et technologiques*) on the possible health-related effects of mobile telephony.

During that same quarter members of the ARCEP Executive Board were also heard by parliamentary committees, notably:

- ◆ on 16 February, Edouard Bridoux addressed the National Assembly Committee on Cultural Affairs (*Commission des affaires culturelles de l'Assemblée nationale*) on the "Creation and Internet" draft bill;

- ◆ on 17 February, Edouard Bridoux took part in the roundtable on the national digital footprint, organised by the National Assembly Delegation for sustainable regional development (*Délégation à l'aménagement et au développement durable of territoire de l'assemblée nationale*);
- ◆ on 25 February, Nicolas Curien took part in hearings on the "Creation and Internet" draft bill held by the National Assembly Commission on Economic Affairs (*Commission des affaires économique de l'Assemblée nationale*).
- ◆ Jean-Ludovic Silicani, the Authority's new Chairman, addressed the hearings on his appointment in the National Assembly²⁰ and the Senate²¹ in May 2009.

20 - http://www.assemblee-nationale.fr/13/cr-cpro/08-09/c0809052.asp#P3_85.

21 - <http://www.senat.fr/bulletin/20090504/eco.html#toc8>.

22 - Act no. 90-568, dated 2 July 1990, concerning the organisation of the public postal and telecommunications service.

1.1.2 Relationship with the CSSPPCE (*Commission supérieure du service public des postes et des communications électroniques*)

The Postal and electronic communications public service commission, CSSPPCE (La Commission supérieure du service public des postes et communications électroniques) was created by the Act of 2 July 1990²², with the goal of establishing a new method of parliamentary oversight in the postal and telecommunications sector.

It is composed of seven deputies, seven senators and three experts. Its chairman is Pierre Hérisson, Member of Parliament for la Haute-Savoie.

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

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

1.2 Judicial powers

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

1.2.1 Appeals brought before administrative courts

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

- ◆ pursuant to Article R311-1 of the Code of Administrative Justice, ARCEP decisions (i.e. those of the Board which represents the Authority) fall under the authority of the *Conseil d'Etat*. Such is the case, for instance, of market analysis decisions, those assigning or refusing frequencies, and the numbering plan. In the same manner, penalty decisions made by ARCEP may be appealed either in the courts or through a request for suspension to the *Conseil d'Etat*²³. Decisions to reject a request for penalties that were initiated by a third-party²⁴ can also be appealed before the *Conseil d'Etat*;

- ◆ decisions by the ARCEP Chairman, which are made in accordance with his powers, such as those made in his capacity of authorising officer for ARCEP expenditure and income²⁵ and decisions from the Director General of ARCEP, fall under the authority of the administrative court.

23 - CE, 17 March 2006, *Le Renseignement français (plaignant)* no. 289403.

24 - CE, July 2000, *Copper Communication (plaignant)* no. 199773.

25 - CPCE Articles L.133 and D.291.

Eight decisions were appealed to the *Conseil d'Etat* and twenty to the Administrative Tribunal in 2008.

1.2.2 Appeals brought before the Paris Court of Appeal

Dispute resolution decisions made by the Authority have the particularity of being subject to the authority of the Paris Court of Appeal²⁶.

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

The terms defined for this procedure require that ARCEP, and the parties, submit a brief in writing and attend the hearing during which they will be given the opportunity to present their case. This is due to the fact that, when acting in cases of dispute resolution, ARCEP is not a jurisdictional authority²⁷ – defending its ruling before the appellate court judge – but rather an administrative authority, defending the legality of its decision.

A petition to appeal the Appeals Court ruling can be filed, should circumstances warrant²⁸.

In 2008, two appeals were filed with the Paris Court of Appeal against dispute settlement decisions.

1.3 Relationship with the French government

1.3.1 Shared powers with the Minister responsible for electronic communications

The Authority shares a certain number of powers with the Minister responsible for electronic communications.

The Authority may be asked to submit its opinion on draft legislation or telecommunications sector regulation. One such case in 2008 concerned a draft bill on audiovisual media³⁰.

Moreover, the Authority's regulatory powers are defined to some extent by the minister³¹.

The Authority also assists in drafting the French position on international negotiations, and helps represent France at international and European organisations.

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

1.3.2 Regular contact with ministries

ARCEP maintains regular contact with the Minister of Economy, Industry and Employment and with Ministry departments, including the general directorate for competitiveness, industry and services, DGIS (*Direction générale de la compétitivité, de l'industrie et des services*), the legal affairs department, DAJ (*Direction des affaires juridiques*) and 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*).

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

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

28 - Which naturally does not mean that, as with a great many administrative authorities ruling on issues that fall under the scope of Article 6-1 of the European Human Rights Convention, it is not viewed as a "tribunal" as defined in this article.

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

30 - ARCEP Opinion no. 08-1108 of 14 October 2008 on the draft bill on modernising the public sector of audiovisual communication and concerning new audiovisual media services.

31 - CPCE Article L.36.6.

It also maintains ties with other ministries and state secretaries, including:

- ◆ the Ministry of the Interior, particularly on the matter of taking account of regional interests in having access to digital equipment and services – two examples being the issue of mobile coverage and ensuring broadband access for all;
- ◆ overseas affairs, notably for the development of new services in the overseas *départements*, such as 3G;
- ◆ the Ministry of Ecology on the topic of information and environment (Green IT);
- ◆ the inter-ministerial delegation to the disabled to facilitate access to new technologies for the disabled;
- ◆ the high commissions for active solidarity against poverty and for youth, on the matter of universal service, as part of the production of the Commission report, “Families, vulnerability, poverty”.

1.4 Relationship with other independent administrative authorities, and other institutions

1.4.1 Relationship with the Autorité de la concurrence

From the *Conseil* to the *Autorité de la concurrence*

The Law on modernising the economy, no. 2008-776 dated 4 August 2008, changed the French competition authority from the *Conseil de la concurrence* to the *Autorité de la concurrence*.

This change, the purpose of which is to bring the French regulatory system more in line with European competition regulation standards, combines responsibilities and resources within a single independent body, which was created in early 2009.

<http://www.autoritedelaconcurrence.fr>

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

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

The Chairman of ARCEP must also apprise the *Autorité de la concurrence* of any cases of abuse or anti-trust behaviour occurring in these two sectors, of which it is aware.

The Authority issued opinions on several Competition Authority decisions in 2008:

- ◆ France Telecom, Orange France and Apple Europe business practices in the mobile telephony retail sector³² (exclusivity over iPhone sales);
- ◆ impediments to the development of mobile virtual network operators (MVNO) in the retail mobile telephony market³³;
- ◆ on the request for an opinion from 118 number consumer association (*Association des renseignements pour tous*)³⁴ – pertaining to the VAS market;
- ◆ request for conservatory measures from the French association of telecommunications network and service operators (*Association française des opérateurs de réseaux et de services de télécommunications*) concerning certain France Telecom and France Télévisions³⁵ practices (exclusivity agreements).

32 - ARCEP Opinion no. 08-1175 of 4 november 2008.

33 - ARCEP Opinion no. 08-0702 of 24 June 2008.

34 - ARCEP Opinion no. 08-0161 of 7 February 2008.

35 - ARCEP Opinion no. 08-0017 of 8 January 2008.

1.4.2 Relationship with the *Conseil supérieur de l'audiovisuel* (CSA)

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

The regulatory framework nevertheless provides for collaboration between the Authority and CSA. When settling disputes, both bodies can solicit the opinion of the other³⁶, and ARCEP must obtain the CSA opinion when making decisions that will have a significant impact on the broadcast of radio and television services³⁷.

36 - CPCE Article L.36.8.

37 - CPCE Article L.36.6.

On 15 January 2008, in response to a request from the CSA, the Authority issued an opinion³⁸ on the settlement of a dispute between Neuf Cegetel and Eurosport concerning freedom of communication.

38 - ARCEP Opinion no. 08-0001 of 15 January 2008.

1.4.3 Relationship with other institutions

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

The institutions with which ARCEP collaborated in 2008 included:

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

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.

1.1 ARCEP websites

1.1.1 www.arcep.fr, ARCEP online



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

The dedicated “Accès ciblés” (targeted access) section provides target audiences with all of the crucial 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 update mailing list. There are two mailing lists: electronic communications and the postal sector, and both are available in French and English.

What happened in 2008?

Launch of a dedicated site for the visually impaired

Because innovation must benefit everyone, taking account of the needs of the disabled is a subject of particular importance for ARCEP.

On 15 December 2008, the Authority made strides towards ensuring greater accessibility by introducing dedicated access for the visually impaired on its website.

Thanks to a robot that automatically transcribes text to speech, ARCEP press releases are now available in MP3 format, and can be listened to by the visually impaired.



To access these files, users click on the red “ARCEP en audio” icon on the homepage:

• Website operation

Following through on the online chats on postal market competition and La Poste’s obligations, broadband and ADSL, the universal directory and new mobile portability which were held in 2007, the 8th online chat with consumers was held on 6 November 2008, on a topic that is very much in the news: installing fibre in buildings.

This chat session attracted a record number of participants: 588 people connected to the live discussion and 301 people simultaneously (peak connection). In all, 440 questions were asked, including 215 during the hour of live chat – a good indication of users' interest in this subject.

A transcript of the questions and answers from the chat is available on the ARCEP website, in French, in the “Actualités” section.

In 2008, the Authority began systematically taping and uploading videos of the events it hosts: 12th ultra-fast broadband conference (12^{es} *Entretiens sur le très haut débit*) on 13 October 2008, Plenary meeting of the Public initiative networks committee (*Réunion plénière du Comité des réseaux d'initiative publique*) on 17 September 2008 and the Authority's New Year's greeting on 8 January 2008 and 22 January 2009.

Short explanatory video sequences have also been incorporated into the Authority's communication efforts: "Cost calculation" (*Le calcul des coûts*) by Board Member, Nicolas Curien, "Accessing mailboxes in buildings equipped with access control" (*L'accès aux boîtes aux lettres dans les immeubles équipés de contrôle d'accès*), by Board Member, Denis Rapone and "Risk, investment and innovation in economic analysis" (*Le risque, l'investissement et l'innovation dans l'analyse économique*) by Harvard professor, Philippe Aghion.

A few figures on www.arcep.fr :

The ARCEP website recorded 2 410 870 hits in 2008, or a daily average of 6 587 visitors. The site has logged a total of more than 12 million visitors over its 10 years of existence.

Over 25 million page views in 2008, or a daily average of close to 70 000 pages.

After the home page, the most widely viewed pages in 2008 were: the ultra high-speed FTTH network rollout guidelines (70 942 hits) published by the Authority in May 2008, followed by legal guide for local operators and local authorities, published in 2007 (51 530 views), a report from the firm Avisem on the terms of optical fibre local loop rollouts (47 806). Next was the Lettre de l'Autorité that ARCEP published in 2008 on Telecoms in the future (39 074).

As of mid-March 2009, the site's telecom mailing list had 9 238 French language subscribers (611 for the English language version), and its mailing list devoted to the postal sector had 1 297 subscribers (56 for the English language version).

*Pagerank*³⁹ : 7 out of 10 (source: Google, 18 March 2009).

39 - Ranging from 0 to 10, *page rank indicates the popularity of a website or a particular page. The principle is based on the notion of back links: the more good quality back links a site has (i.e. highly ranked sites that link to it), the higher its page rank will be, and the better its Google ranking will be.*

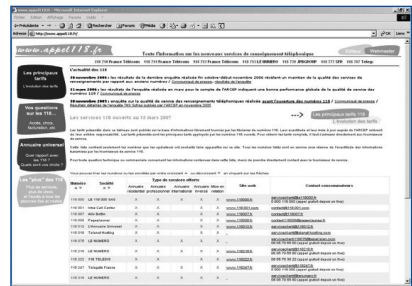
40 - www.appel118.fr.

1.1.2 www.appel118.fr, the directory services site

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

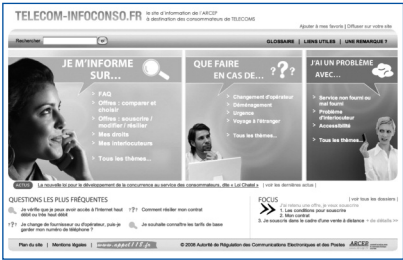
To inform users, ARCEP created a website⁴⁰ that provides a list of open 118 services, their main tariffs and, since 30 November 2006, a history of the changes to these tariffs.

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.).



Updated on a regular basis, the *appel118.fr* site logged more than 100 000 visits over the course of 2008. The most widely sought information concerns 118 service prices and changes to them (20 734 hits).

1.1.3 www.telecom-infoconso.fr, dedicated site for consumers



On 22 January 2009, ARCEP launched a website aimed specifically at telecommunications services users: www.telecom-infoconso.fr.

Informative, practical and educational, the purpose of the site is to provide consumers with access to all of the information they need to better understand how the sector operates and the issues at hand. Intended to be enhanced over time, its content and format will evolve according to users' needs and suggestions.

As of 10 March 2009, the site had recorded 23 575 unique visitors to the site.

Recent changes and additions

The creation of an ARCEP website aimed specifically at consumers – www.telecom-infoconso.fr – led to some minor changes on the institutional site: the FAQ on www.arcep.fr has been moved to the [telecom-infoconso.fr](http://www.telecom-infoconso.fr) site.

1.2 *La Lettre de l'Autorité*

La Lettre de l'Autorité is the ARCEP newsletter, which is published every two months and has a circulation of 6 800⁴¹.

Each edition is devoted to a specific subject that falls under ARCEP's jurisdiction, providing a view of key issues: cost calculation, the review of



41 - A PDF version is also available on ARCEP's website.

the European regulatory framework for telecommunications and telecoms in the French overseas territories were the main topics addressed in 2008.

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

Lastly, to broaden readers' perspective on current debates, *La Lettre de l'Autorité* regularly gives voice to industry players in the form of interviews or by publishing their views.

1.3 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 overseas experts – and for exploring the possible shape of things to come.

The latest edition of this exercise, the 12th *Entretiens de l'Autorité*⁴², were held in Paris on 13 October 2008. Some 20 industry experts, representing economic actors, the academic world, consumers and other NRAs, gathered to discuss the topic of "Investment, Innovation and Competition: the road to ultra high-speed access".

Previous *Entretiens de l'Autorité*⁴³ had addressed the topics of mobile economics (2007)⁴⁴, the challenges of postal regulation (2005) and the issues and challenges of local authorities' involvement in the telecom market (2004).

1.4 Dialogue with local authorities: CRIP

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

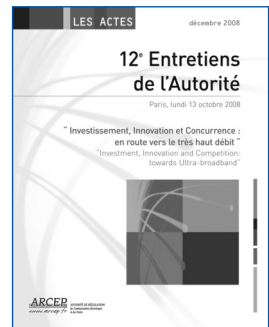
With the adoption of the Law on confidence in the digital economy on 21 June 2004⁴⁵, local authorities can now invest in telecommunications by either creating or subsidising the establishment of broadband networks in their region.

In light of this new situation, and given the significance of the issue in terms of regional equipment and development, and of 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.

CRIP met on four occasions in 2008: in plenary session on 17 September and in limited sessions on 6 February, 28 May and 3 December. Two major issues were addressed over the course of the past year: broadband coverage in areas where service is lacking, and more specifically France Telecom's offer for installing subscriber connection points in these areas, NRA-ZO (*Noeud de raccordement d'abonnés zone d'ombre*), along with issues surrounding ultra-fast broadband and the role that local authorities will have in the development of new optical fibre access networks. These meetings also provide players with an opportunity to become familiar with the key regulatory texts, such as the decrees⁴⁶ issued in application of the Law on modernising the economy of August 2008⁴⁷.

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

http://www.arcep.fr/uploads/tx_gspublication/12ent-131008-actes-dec2008.pdf.



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

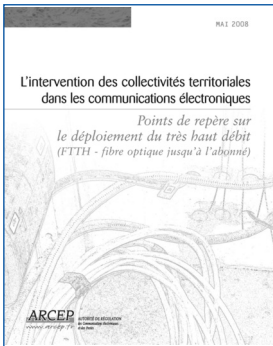
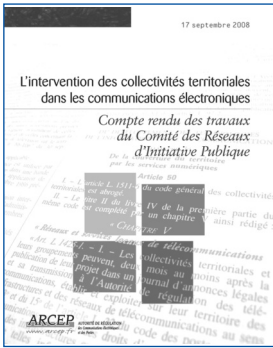
44 - The entire conference can be viewed on ARCEP's website:

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

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

46 - Decrees no. 2009-166 of 12 February 2009 and no. 2009-167 of 12 February 2009.

47 - Law no. n°2008-776 (Law on modernising the economy) of 4 August 2008, JO of 5 August 2008.



The work performed by the committee was also the subject of two publications in 2008⁴⁸ :

- ◆ guidelines for ultra high-speed network rollouts, in May 2008;
- ◆ an account of the work performed by CRIP, in September 2008.

At the end of December 2008, ARCEP counted 119 public initiative network projects. There are currently 85 projects involving more than 60,000 inhabitants underway, all at various stages of progress⁴⁹.

1.5 Consumer committee

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

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

The Consumer committee meets once a year in plenary session to review the work of the past 12 months and to set the agenda for the coming year. Last year, the plenary session was held on 9 June 2008.

Specific work is also performed by groups and sub-groups that meet on a regular basis throughout the year. Five technical meetings were held in 2008:

- ◆ in February 2008, on the topic of ultra-fast broadband (optical fibre sharing, future legislation);
- ◆ in March 2008, on issues pertaining to the postal sector (quality of service, access to letter boxes in buildings equipped with a Vigik system, sending small items at the letter tariff);
- ◆ in May 2008, on telecommunications issues such as the quality of access services and fixed and mobile call termination;
- ◆ in September 2008, on La Poste's general terms of sale and on the universal postal service;
- ◆ and in October 2008, on questions pertaining to optical fibre rollouts (sample agreement for property co-owners in buildings) and the quality of service of access offers.

The committee met on two occasions in the first quarter of 2009:

- ◆ on 25 March 2009, on issues tied to fixed and mobile number portability;
- ◆ on 3 April 2009, on postal sector issues such as sending small items at the letter tariff, the universal postal service and La Poste's general terms of sale.

⁴⁸ - All of the documents published as part of the committee's work are available on the ARCEP website, in the section devoted to local authorities: <http://www.arcep.fr/index.php?id=2097>.

⁴⁹ - A complete report on public-initiative networks is available, in French, on the ARCEP website: http://www.arcep.fr/fileadmin/uploads/tx_gspublication/rapport-bilan-rip-221208.pdf.

2. Consultation with market players

2.1 Public consultations

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

In 2008, ARCEP consulted the sector on 14 occasions⁵⁰.

⁵⁰ - Cf. ARCEP website:
www.arcep.fr.

22 February 2008: public consultation on fixed telephony market analysis.

11 April 2008: public consultation on technical developments in carrier selection services.

20 May 2008: public consultation on the costing model used and other elements relevant to the implementation of price control obligations on call termination and call origination services on fixed networks.

22 May 2008: public consultation on the deployment and sharing of the last drop of optical fibre networks.

13 June 2008: public consultation on the award of 3G licences in the 2.1 GHz frequency band in Metropolitan France.

18 June 2008: public consultation on the analysis of the broadband and ultra-fast broadband wholesale markets.

8 July 2008: public consultation on the renewal of three operators' GSM licences in the overseas départements and territories: Digicel, Société réunionnaise de radiotéléphone and Orange Caraïbe.

4 September 2008: public consultation on the costing model used by mobile operators in 2008 (relevant references and concepts for setting ceiling tariffs for mobile voice call termination services).

10 September 2008: public consultation on mobile communications services onboard aircraft.

20 October 2008: public consultation on updating broadband regulatory cost models.

23 October 2008: public consultation on the definition of ceiling tariffs for Orange France, SFR and Bouygues Telecom mobile voice call termination services for the period running from 1 July 2009 to 31 December 2010.

10 November 2008: public consultation on future mobile numbering requirements and opening up the 07 block of numbers for mobile services.

18 November 2008: public consultation on analysis of the wholesale audiovisual broadcasting services market – current status and future outlook.

9 December 2008: public consultation on 3G network sharing in Metropolitan France.

2.2 Meetings and committees

2.2.1 Working groups

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

To give an example: the expert committee for the introduction of new technologies into the local loop (*Comité d'experts pour l'introduction de nouvelles techniques dans la boucle locale*), which was created in 2002, brings together local copper loop unbundling operators, the top equipment suppliers and the incumbent carrier, France Telecom. Chaired by Catherine Mancini (Alcatel-Lucent), its task is to issue opinions on technical questions relating to the introduction of new technologies into the local loop. In 2008, it issued two opinions⁵¹.

51 - Opinion of 14 May 2008 concerning authorisation of E(xtended)-SDSL limited to 3.1 Mbit/s at the switch in France Telecom local loop access solutions, and the Opinion of 15 December 2008 concerning the specification of the type of electronic security system inserted on the copper pairs on the France Telecom local loop.

In late 2008, ARCEP created an ultra-fast broadband (optical fibre) steering committee within which operators take part in trials and assessment under the aegis of the Authority. Three technical sub-groups meet on a regular basis to:

- ◆ describe the different architectures being tested and their operating methods;
- ◆ assess installation and operating costs;
- ◆ establish technical specifications to ensure network interoperability.

An interim report was produced on 7 April 2009 under the aegis of the Secretary of State to the Prime Minister for forward planning and development of the digital economy. Based on the outcome of these efforts, ARCEP will progressively introduce network sharing regulation that applies to operators deploying optical fibre to the home (FTTH).

In the postal sector, the Authority continued its efforts within a working group of stakeholders (operators, property manager representatives) devoted to the technical and operational aspects capable of facilitating implementation of the principle of providing access to residential mailboxes in buildings. After having obtained access to mailboxes for Adrexo in June 2008, technical solutions are being sought for other operators.

2.2.2 Specialised advisory committees

The advisory committees for electronic communications networks and services, CCRSCE (*Commission consultative des réseaux et des services de communications électroniques*) 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 1996⁵², are forums for institutional dialogue on telecommunications issues.

A decree determines the composition, remit and operating conditions of both advisory committees⁵³ 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.

52 - CPCE Article L. 33-4.

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

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

CCR met on three occasions in 2008, under chairman Marc Houéry, honorary telecommunications engineer. It devoted its efforts primarily to a review of the electronic communications framework in the European Union, and addressed the following issues:

- ◆ award of 3G licences in the 2.1 GHz frequency band in Metropolitan France;
- ◆ use of frequency bands for ultra high-speed mobile (digital dividend, 2.6 GHz);
- ◆ changes to number categories in the national numbering plan;
- ◆ number portability;
- ◆ implementation of articles from the Law on modernising the economy of 4 August 2008;
- ◆ mobile telephone access for the disabled;
- ◆ satellite and PMR licensing fees;
- ◆ implementation of a European system for allowing the use of mobile phones onboard aircraft.

Under the chairmanship of Charles Rozmaryn, former CEO of France Telecom and Cegetel, the CCRSCE held two meetings in 2008: to discuss, on the one hand, the ARCEP draft decision specifying the accounting, collection and cost setting methods tied to mobile number portability requests in Metropolitan France and, on the other, a draft decision defining the use of the number categories in the national numbering plan. ARCEP also produced a draft decision concerning the publication by operators of quality of service benchmarks. The draft decision specifies the terms of application for mobile number portability in the Reunion and the territorial collectivity of Mayotte, and the creation of a working group on allowing more flexibility in the elementary national numbering plan areas applied to geographic numbers.

There are no equivalent bodies in the postal sector.

2.2.3 Interconnection and access committee

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

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

The committee meets four times a year. Among its efforts in 2008 were:

- ◆ work on the new fixed telephony market analysis decision, notably lifting retail market regulation and fixed call termination regulation (implementation of a multi-year tariff control mechanism for France Telecom and alternative operators;
- ◆ work on improving and increasing the reliability of fixed number portability systems (which led to the draft of the recent public consultation on the subject) and on the price charged for mobile number portability;
- ◆ working on mobile voice call termination regulation in Metropolitan France, and for the period running from 1 July 2009 to 31 December 2010 (new CT tariff control mechanism for the three operators in Metropolitan France);
- ◆ work on the value-added services market.