ARCEP's Annual Report
2009

ARCEP
www.arcep.fr

Autorité de régulation
des communications
électroniques et des postes

Contents

Introduction

A year after taking up my position as the Chairman of the Electronic Communications and Postal Regulatory Authority (ARCEP), this annual report affords me an opportunity to offer a round-up of 2009 and to talk a little about our current main areas of focus, on behalf of all of the members of the ARCEP Board. By encouraging investment and innovation, our current efforts are contributing, first, to the development of robust markets in the electronic communications and postal sectors and, second, to improving the services being provided to consumers across the country. These regulatory goals took on a very particular dimension during these times of economic crisis.

The electronic communications sector performed relatively well in 2009, despite the bleak climate. In fact, compared to 2008, the revenue generated by all electronic communications markets combined (€40.7 billion) managed to stay the course. This resilience was enabled by a steady increase in revenue for broadband and ultra-fast broadband services (+13.7%), which helped to offset the combined decrease posted by narrowband and capacity services on fixed networks. Income from mobile services (€20.4 billion) was also up slightly (+1.5%) and, for the first time ever, exceeded fixed services sales (€20.3 billion). There has nevertheless been a slight decline in both mobile and fixed line voice traffic.

Freeing up investments

The Authority acts as a catalyst to freeing up investments in the marketplace – in particular thanks to reasonable infrastructure-based competition and by encouraging co-investment and sharing, whether by making new frequencies available to the players for deploying mobile networks, or by creating a regulatory framework that is adapted to the rollout of optical fibre networks.

The road to ultra-fast broadband

The adoption, in late 2009, of the regulatory framework for deploying optical fibre in very densely populated areas helped to kick-start investments by providing the players with the clarity they were waiting for. This is a good illustration of how the Authority's regulation evolves as electronic communication markets become more competitive. ARCEP seeks to achieve a balance between the asymmetrical regulatory measures based on market analyses that are imposed on the incumbent carrier, France Telecom – which is still the only operator to own substantial civil engineering infrastructure on a national scale – and symmetrical regulation which applies to all operators.

It was with this goal in mind that the Authority set the rules for sharing the last mile of optical fibre networks to the home (FTTH) in very densely populated areas in late 2009. In accordance with this framework, in February 2010 operators deploying FTTH network published offers which set the terms for accessing their networks in densely populated areas and, in April, issued the first calls for co-investment in the first set of municipalities listed in these areas.

Following through on the investment scheme announced by the President of the Republic in December 2009, as part of the national loan, and the national ultra-fast broadband programme that was announced by the Prime Minister in January 2010, this year ARCEP will be defining the regulatory framework that will govern optical fibre rollouts in a considerable portion of the country.

It will be based on a significant degree of network sharing and will encourage co-investment, to help spur the swift onset of optical fibre deployments nationwide. The Authority will also continue to devote efforts to cost issues, and notably those that concern the price of accessing ducts – which are a cornerstone of FTTx rollouts.

The road to ultra high-speed mobile

2009 was marked by an important event for the mobile market, namely the award of the fourth 3G mobile telephony licence to Free Mobile, which allows the market in Metropolitan France to evolve to a four-operator structure, as is already the case in most of Europe's largest countries.

This new market structure will mean more dynamic competition that will allow consumers to benefit from clear and innovative offers at competitive prices, notably thanks to improved access conditions for mobile virtual network operators (MVNOs).

After having allocated the latest blocks of 3G spectrum in the 2.1 GHz band to SFR and Orange France on 18 May 2010, ARCEP is now preparing for the allocation of frequencies planned for fourth generation (4G) mobile telephony. This process should give a tremendous boost to the mobile Internet by enabling access rates of several dozen Mb per second, thanks in particular to LTE technology.

In the second half of 2010, ARCEP will therefore launch allocation procedures for spectrum in the 2.6 GHz band and for digital dividend frequencies in the 800 MHz band – with regional development imperatives as its chief priorities, as decided by Parliament in the Law on bridging the digital divide, to be able to bring ultra high-speed mobile services to sparsely populated areas first.

Facilitating regional digital development

Of course the efforts being devoted to ultra-fast broadband must not overshadow the Authority's other areas of focus in 2009, and particularly those concerned with expanding broadband coverage, both fixed and mobile.

In autumn 2009, ARCEP conducted an important public consultation on the issue of increasing the access rates supplied by fixed networks. There are indeed opportunities to better exploit the potential of the existing copper loop, but they could undermine the state of competition. In February 2010, ARCEP therefore published recommendations that took these elements into account, to guarantee the best possible interrelation with upcoming fibre rollouts.

On the matter of mobile coverage, ARCEP carried out a major information campaign with the publication of status reports on 2G and 3G coverage in August and December 2009, respectively. The reports had revealed that Orange France and SFR 3G coverage was below the levels they had committed to, as a result of which, in accordance with the Law, these two operators were served an official notice to comply with their obligations within a proportionate but ambitious timeframe. ARCEP will be very careful to ensure that their deadlines are met.

In addition, the operators currently deploying a 3G network reached an agreement in early 2010, under the aegis of ARCEP, for sharing their installations in areas listed in the 2G "dead zones" programme, which is to be completed by the end of 2013.

And, finally, in January 2010, at the request of Parliament, ARCEP published a status report on the different electronic communications markets in the overseas départements. The report contains several suggested courses of actions, keeping in mind that ensuring digital progress in these territories is crucial to their future economic and social development.

Preparing for the liberalisation of postal activities

This is a pivotal time for the postal sector, with a radical change its legal framework and a decline in its core business areas. 2009 was marked, first, by the completion of legislative work that alters the status of La Poste and which opens the postal market up fully to competition, starting on 1 January 2011.

The Authority has been working since 2005 to provide La Poste will real clarity in pricing through a multi-year price cap, the goal being to encourage greater transparency on its offers and its quality of service performance and, finally, to lift the barriers to entry for new entrants. On this last point, we can nevertheless express some disappointment over the lack of any real competition in the postal delivery market as yet.

In 2010, ARCEP will be focused on preparing for the market's true liberalisation. Here, the Law of 9 February 2010 strengthens ARCEP's role in the areas of consumer protection and ensuring the smooth running of the universal service, for instance. Moreover, and independently of its regulatory functions, Parliament has also given ARCEP the responsibility of performing an annual assessment of the net cost to La Poste of meeting its regional development obligation.

But 2009 was also marked by a clear decrease in traditional postal activities, with traffic having dropped by an annual rate of around 5%. This situation is not due merely to the recession: postal operators in all major countries are predicting a lasting decline in their business, and are working on new business models. It is the regulator's responsibility to take full account of this trend and to examine how the postal model is likely to evolve over the medium term, to help pave the way for future changes in the sector.

Improving the services provided to customers

The Authority's actions in this area are twofold: first, it is working to ensuring that all operators are capable of developing affordably-priced innovative offers thanks to a state of fair competition between them and, second, in tandem with the administrations that are responsible for protecting consumers, ARCEP is devoted to ensuring that consumers, both residential and businesses, have access to offers under satisfactory conditions.

On the matter of this second dimension, it is important to ensure that consumers are able to make an informed choice when subscribing to an offer, both on the nature and quality of the services being marketed by each operator, and on the prices. Particular attention is therefore being paid to the content of offers labelled "unlimited," the terms applied to Internet access, continuity of service and number retention and, more generally, operator switching costs. By the same token, ARCEP recently ordered La Poste to roll out its affordably-priced offer for sending small items, which is part of the universal service.

This is why the Authority has progressively equipped itself with the means to address these issues and has set up mechanisms for encouraging dialogue, notably through its consumer committee and the dissemination of information on its dedicated website, telecom-infoconso.fr.

As I said during my New Year's greetings from ARCEP back in January, actions taken on behalf of consumers will be an even greater and more visible priority in 2010, as it is evident that the situation is still lacking in many respects. ARCEP will continue and step up its efforts in all of these areas, and provide a clear and frank account of the situation in the report that it is due to submit to Parliament in the near future – as part of the process of monitoring the implementation of the Law of 3 January 2008 for the development of competition for the benefit of consumers.

Moreover, the new European directives include strengthened provisions in the areas of number portability, maximum contract lengths, the transparency of offers with respect to consumers and the

terms applying to contract cancellation processes. Naturally, ARCEP intends to contribute to implementing these provisions effectively in the French market.

From a more general perspective, the Authority will be publishing recommendations in autumn 2010 which are aimed at improving relations between operators and consumers.

A modern, independent administrative authority

ARCEP was very involved in designing the new regulatory framework for Europe that was adopted by the EU Parliament and Council in December 2009. This framework reinforces the principles of regulation and strengthens the role of the NRAs responsible for enacting this regulation. The Authority is now actively involved in transposing this new framework into national law.

At the same time, ARCEP will continue its internal examinations, notably those undertaken by the Forward-planning committee that was created in November 2009. This committee is a good illustration of the Authority's commitment to in-depth discussions on fundamental, long-term issues.

It was with this commitment in mind that the issue of network neutrality, which is particularly crucial to the future of the digital economy and society, was chosen as the central topic for a large international conference hosted by ARCEP on 13 April 2010 – following a period of work done internally and interviews with market players which had been ongoing since autumn 2009. In May 2010, the Authority submitted its guidelines on network neutrality to public consultation.

In addition to the major dossiers that the Authority dealt with in 2009 as part of its market regulation mandate, it has also been engaged in a major overhaul of the way that ARCEP is managed and operates. This involved in-depth discussions with the ARCEP staff and their representatives, and the results have made an active contribution to building a new regulatory State.

These modernisation efforts led ARCEP to reorganize and tailor its structure to the way in which the regulated sectors are evolving, based on a dual objective:

• to better indentify ARCEP's "core business areas" and to ensure that this is where human resources will be concentrated, as they are the Authority's greatest asset, especially at a time when the State is being so careful to control its spending;

• and to strengthen our relations with the sector's players (operators, equipment manufacturers, consumers and local authorities).

Backed by this new organisation, ARCEP can therefore continue – in an independent fashion but as an integral part of the State – to lead in-depth discussions with all of the stakeholders, to develop efficient and transparent modes of decision-making, which is critical to modern and efficient regulation that serves the public interest. To fulfil its mandates, ARCEP relies on a form of governance based on collegiality, which allows it to benefit from the expertise and skills of each and every member of the ARCEP staff. ■

Jean-Ludovic Silicani
Chairman of ARCEP

PART ONE
ARCEP

Autorité de régulation des communications électroniques et des postes

Autorité de régulation des communications électroniques et des postes

ARCEP responsibilities and activities

1. ARCEP's missions: guiding principles of regulation

ARCEP is an independent administrative authority that was created on 5 January 1997, under the name of ART[1] for *Autorité de régulation des telecommunications*, 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.

The Law of 9 July 2004[2] 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.

In 2005, the Law on postal regulation[3] 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.

ARCEP's chief role in the electronic communications sector is to ensure fair and effective competition in the electronic communications market, which benefits consumers.

The Authority's primary tool is market analysis which consists of defining relevant markets, of designating those operators that enjoy significant market power (SMP) and of 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 referred to as "asymmetrical" regulation as it does not apply equally to all of the market's operators.

ARCEP also has the power to set the general obligations that apply to all operators, within the scope set by law and subject to the prior approval of the Minister responsible for electronic communications. This is what is known as "symmetrical" regulation as it applies equally to all market operators – one example being mobile number portability, i.e. user's ability to keep their telephone number when switching providers.

1 - *Law No. 96-659 on telecommunications regulation of 26 July 1996, Journal Officiel (Official Gazette) of 27 July 1996.*
2 - *Law No. 2004-669 of 9 July 2004 on electronic communications and audiovisual communication services, JO of 10 July 2004.*
3 - *Law No. 2005-516 of 20 May 2005 on postal activity regulation, JO of 21 May 2005.*

In addition, the Authority has the power to impose penalties on any operator that does not meet its obligations, and to settle disputes between operators on the technical and pricing terms governing network access.

The allocation of spectrum and numbering resources is another responsibility entrusted to ARCEP. Operators need these resources – which are qualified as scarce as they are in short supply – to conduct their business, and it is ARCEP which has been charged with their management.

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.

The legislative provisions that define ARCEP's role and status are contained in the French Postal and electronic communications code, or CPCE *(Code des postes et des communications électroniques)*.

2. ARCEP activities

2.1. Performance indicators

In a bid for clarity, when enacting the Finance Act of 2006, referred to as the LOLF (Loi organique relative aux lois de finances), a common performance objective was set for all three of the independent administrative authorities responsible for economic regulation (ARCEP, the Energy Regulation Commission, or CRE, and the Competition Authority), namely to "make quality decisions within the set timeframe". The advantage of such an objective was that it could be translated into similar indicators for all three bodies, all tied to respecting timeframes (for responding to requests for opinions issued by ARCEP, for treating disputes and complaints, which are defined in the legislation). These performance indicators, which are carried over year to year in the documents attached to the draft finance acts, are a measure of ARCEP's credibility and reliability with respect to the regulated sectors, but only partially reflect the Authority's performance, in other words the quality of its work and its decisions. In 2009, ARCEP therefore conducted an in-house examination, in tandem with the person in charge of the programme, which resulted in a set of indicators that would provide a more market-specific measure of the Authority's performance.

Performance indicators			
	2007	2008	2009
Regulator's administrative efficiency			
- Number of opinions or decisions issued	1.114	1.457	1.133
- Number of cancelled decisions	0	0	2
Electronic communications			
Regulated market development: equipment			
- Number of broadband and ultra-fast broadband subscribers (million)	15.8	17.8	19.7
- Number of mobile subscribers (million)	55.3	58.0	61.5
- Number of Internet subscribers (% of households)	49.3%	57.8%	62.6%
- Number of ultra-fast broadband subscribers (million)		0.165	0.290
Regulated market development: geographical coverage (% of the population)			
- Mobile	99.1%	99.5%	99.8%
- Broadband (access at 512 Kbit/s or more)		98.3%	98.7%
- Fibre (base: eligible homes)		1.3%	2.4%

Source : ARCEP.

	2007	2008	2009
Postal sector			
Quality of service			
- % of single-piece priority letters delivered in D+1	82.5%	83.9%	84.7%
- % of "Colissimo guichet" parcels delivered in D+2	85.8%	85.0%	87.7%
Number of operators	**10**	**23**	**22**

Source : ARCEP.

International benchmarks **Electronic communications sector employment and budget compared to market revenue**					
Ratios for euro 1 billion in revenue	FRA	GER	ITA	RUS	SP
Jobs	3.5	5.5	5.7	8.0	3.0
Budget in million euros	0.46	0.38	1.20	1.33	0.71

Note : This table indicates ARCEP staff and budget figures in relation to the size of the electronic communications market, and provides a comparison with the authorities' counterparts around Europe.

These figures were obtained through comparative analyses performed by the firms Capgemini Consulting and Ylios of the scope, objectives, means and work of the Energy Regulation Commission, CRE *(Commission de Régulation de l'Energie)*, the Electronic Communications and Postal Regulatory Authority (ARCEP) and the Competition Authority, compared to that of their European counterparts.

As concerns ARCEP, its counterpart regulatory authorities are the *Bundesnetzagentur* (BNetzA) in Germany, the *Autorita per le Garanzie nelle Communicazioni* (AGCOM) in Italy, the Office of Communications (Ofcom) in the UK and the *Comisión del Mercado de las Telecomunicaciones* (CMT) in Spain.

All of the data used for the purposes of this report are in the public domain or were obtained directly from foreign regulatory authorities. When necessary, the data were re-processed to enable direct comparisons. The revenue figures used are for the electronic communications retail and wholesale markets in 2008.

2. 2. Decisions and opinions

In 2009, the Board issued 1,133 opinions and decisions.

a) The decisions

ARCEP adopted 1,095 decisions:

- 225 decisions on numbering resources, of which two were of general application;
- 810 decisions on the allocation of frequency resources;
- 26 decisions that concerned the regulation of electronic communications sector markets (including seven decisions on ultra-fast broadband);
- 7 decisions concerning the universal electronic communications service;
- 6 decisions relating to mobile coverage;
- 4 decisions relating to postal authorisations;
- 3 decisions concerning official notices to comply;
- 2 decisions concerning number portability;
- 1 dispute settlement decision;
- 11 miscellaneous decisions.

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 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 2009, two Authority decisions were appealed before the court of the *Conseil d'État* and one was brought before the Tribunal Administratif.

Decisions appealed to the Conseil d'Etat on which a ruling was issued in 2009				
Applicant	Appeal filing date	Subject of the appeal	Subject of the dispute	Decision on appeal
Axione	03/11/2008	ARCEP Decision No. 2008-0761 of 01/072008	Application for annulment of the ARCEP Decision of 1 July 2008 through which the Authority approved HDRR France's plan to sell its WLL licences to Boloré Telecom and annulment of all of the decisions concerning its basis in law.	Order of 25 March 2009: withdrawal
Bouygues Télécom	31/01/2008	ARCEP Decision No. 2007-1114 of 04/12/2007	Application for annulment of the ARCEP Decision of 4/12/2007 setting the terms of renewal for a spectrum licence in the 900 and 1800 MHz frequency bands.	Order of 27 April 2009: rejected
Orange France	03/01/2009	ARCEP Decision No. 2008-1176 of 02/12/2008	Application for annulment of the ARCEP Decision of 2 December 2008 concerning the definition of the ceiling tariff for mobile voice call termination for operators Orange France, SFR and Bouygues Telecom for the period running from 1 July 2009 to 31 December 2010	Decision of 24 July 2009: partial annulment
SFR	02/02/2009	ARCEP Decision No. 2008-1176 of 02/12/2008	Application for annulment of the ARCEP Decision of 2 December 2008 concerning the definition of the ceiling tariff for mobile voice call termination for operators Orange France, SFR and Bouygues Telecom for the period running from 1 July 2009 to 31 December 2010	Decision of 24 July 2009: partial annulment

Source : ARCEP.

b) Opinions

ARCEP issued 38 opinions:
- 22 opinions on draft legislation, decrees and orders;
- 4 opinions submitted in response to a request from the Competition Authority;
- 7 opinions on La Poste tariff decisions[4] ;
- 5 opinions on France Telecom tariff decisions.

Of the four opinions submitted to the Competition Authority, one was in response to a request made in 2008. Among the four requests for an opinion received in 2009, one resulted in an opinion issued in 2010.

2.3. Consultations, surveys and reports

Sixteen public consultations were launched in 2009, either as part of market analyses procedures, on matters that are within the Authority's regulatory purview, or as part of the process of implementing operators' asymmetrical obligations and market-wide schemes (universal service, number retention, numbering).

---

4 - *An opinion is issued on La Poste tariff decisions concerning the universal service when they concern a competitive sector, and an approval decision is issued when they concern the reserved s*

ARCEP published nine surveys or reports during the year. These were reports to Parliament and the government (on the electronic communications sector in overseas markets, on 2G and 3G coverage and on audiovisual broadcasting services), surveys carried out in-house, including one on contactless mobile services, and summary reports on fact-finding missions overseas (China, South Korea).

2. 4. Operator licences and declarations

a) In the electronic communications sector

The Act of 9 July 2004[5] altered the regulatory framework that applies to electronic communications in France and expanded the scope of players subject to declaration. The existing system has simplified the procedures for engaging in electronic communications activities, with operators required only to declare themselves to the Authority, whereas they had previously been required to apply for an authorisation.

In 2009, 181 new operators declared themselves, of which a substantial portion were independent entrepreneurs. As of 31 December, ARCEP recorded 954 declared operators: 892 fixed operators and 62 mobile operators, of which 15 provide both fixed and mobile solutions.

b) In the postal sector

In 2009, ARCEP issued four new authorisations to distribute postal items in France. The number of global domestic operators nevertheless decreased from 13 to 12 as Alternative Post put an end to its activities and those of its four franchises. No new enterprise came to join the 10 existing international mail market operators.

2. 5. Dispute settlement

A single decision was issued in 2009 in response to a request for dispute settlement.

Date of the request	Requesting party	Defendant	Subject of the dispute	Date of the decision rendered
31/03/2009	118 218 Le Numéro	SFR	Terms governing access to the SFR network	Decision n°2009-0528 of 16/06/09 withdrawal

Source : ARCEP.

Two requests for dispute settlement were submitted in 2009.

2. 6. Penalties and official notices

In 2009, the Authority opened 32 penalty procedures against operators to require them to meet their obligations. Nine decisions of official notice to comply were addressed. The companies SFR and Orange were thus issued an official notice to comply with their 3G network rollout obligations, in accordance with the terms set by the licensing decree of 21 August 2001. The firms Bouygues Telecom, Darty Telecom, France Telecom, Free SAS, Neuf Cegetel, Numéricable and SFR were also issued an official notice to comply with the obligations that resulted from the legal and regulatory stipulations concerning fixed number retention.

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

3. The legal framework and its evolution

3.1. Changes to the French legal framework

Several laws that were debated in 2009 altered the legal framework governing electronic and postal communications in France: primarily the Law of 17 December 2009 concerning efforts to bridge the digital divide[6] and the Law of 9 February 2010 concerning the public enterprise La Poste and postal activities[7].

a) Law of 17 December 2009 on efforts to bridge the digital divide[8]

The goal of the Law on efforts to bridge the digital divide, which was introduced to the Senate by Senator Xavier Pintat, was to help achieve broadband and ultra-fast broadband access for all – in particular by streamlining the deployment of optical fibre through regional guidelines for broadband and ultra-fast broadband electronic communications.

The main changes brought in the area of electronic communications concern sharing schemes for fibre-to-the-home (FTTH) networks[10], the award of digital dividend spectrum[10], regional digital development[11], work sharing and coordination[12] as well as mobile roaming and e-mail address retention[13].

In accordance with the terms set by Article L. 1425 of Local and regional collectivity code, CGCT (Code général des collectivités territoriales), local authorities and their representatives are allowed to control a minority share in a private enterprise whose purpose is to establish and operate passive electronic communications infrastructure for the supply of FTTH access.

The Law also authorises local authorities to implement guidelines for regional digital development and to create a regional digital development fund to finance some of the work planned for by these schemes. The financial aid is subject to several conditions: it is allocated to the companies performing work that private initiative alone could not accomplish (in sparsely populated areas, referred to as "Zone 3" areas), according to criteria defined by decree. Moreover, it must enable the entire population in the area in question to access services at a reasonable price, and be used for deploying open and accessible infrastructure and networks.

The aim of Articles 27 and 28 of the Law is to encourage stakeholders to share the work of installing network infrastructure, for instance by requiring the main contractor to satisfy obligations to inform local authorities of the work being performed, under certain conditions, and to share its labour and infrastructure. The Law also stipulates that, if they have helped to finance the host infrastructure, local authorities can either become the owners of that infrastructure or enjoy rights of use. If the local authority takes ownership of the infrastructure, it is the operator that will be granted rights of use.

And, finally, the Law stipulates that the government will submit several reports to Parliament, notably on Net neutrality, along with a report by ARCEP on increasing access rates and demultiplexing telephone lines.

---

6 - *Law No. 2009-1572 of 17 December 2009 on efforts to bridge the digital divide, referred to as the "Pintat Act", published in the OJ of 18 December 200*

7 - *In accordance with CPCE Article L. 36-5, the Authority issued five opinions on draft orders and five opinions on draft decrees, published in the OJ in 2009.*

8 - *Law No. 2009-1572 of 17 December 2009 on efforts to bridge the digital divide, referred to as the "Pintat Act", published in the OJ of 18 December 200*

9 - *Articles 18, 19 and 20 of the Law, amending Articles L. 34-8 and L. 34-8-3 of the code governing postal affairs and electronic communications in France, CPCE (Code des postes et des communications électroniques).*

10 - *Article 22 of the Law amending CPCE Article L.*

11 - *Articles 23 and 24.*

12 - *Articles 27 and 28*

13 - *Articles 26 and 30.*

ARCEP

b) Law of 9 February 2010 on the public enterprise La Poste and postal activities[14]

The Law of 9 February 2010 had two aims: changing the status of La Poste to that of a public limited company and transposing the European Directive of 20 February 2008[15]. As regards regulation of the postal sector, its main consequences are the abolition of the reserved area for the operator responsible for the universal service, La Poste, with effect from 1 January 2011, flanked by provisions supplementing the system applicable to the universal postal service and to authorised operators, and the assignment of a new mission to ARCEP, namely calculating the cost of La Poste's regional planning and development mission. The system of prior approval by ARCEP of monopoly service tariffs has been done away with.

Abolition of the reserved area

In order to transpose Directive 2008/6/EC of 20 February 2008 into law, the postal sector will be fully opened up to competition on 1 January 2011. This liberalisation concerns items of correspondence up to and including 50 grams and priced at less than two and a half times the basic tariff (currently € 0.56) which made up the reserved area.

Changes concerning the universal postal service

The operator responsible for the universal service will be designated for a 15-year period on which the authorisations issued by ARCEP to postal operators will be aligned. During this period, the Government will report to Parliament every three years on how La Poste implements its universal postal service mission and on the resources deployed to improve it. This report will be based on opinions delivered by ARCEP and by the Higher Public Service Commission on the Post and Electronic Communications.

As of 1 January 2011, La Poste will have an obligation to gear its universal service tariffs to costs, while taking account of the market to which they apply and of geographical equalisation for single-piece postal items. ARCEP will issue a public opinion on every change in universal service tariffs. In the event of any obvious breach of universal service tariff principles, it may object to and change tariffs, in parallel with its powers in connection with the multi-year framework for universal service tariffs.

Authorised operators' obligations

The obligations of authorised operators have also been supplemented. In particular, operators must guarantee the secrecy of correspondence and access for the disabled to their services and facilities. Similarly, operators will have to put in place free complaint-handling procedures for postal service users. The Law provides that ARCEP will deal with complaints which could not be settled within the framework of operator procedures.

Calculation of the cost of La Poste's regional planning and development mission

La Poste's four public service missions of general interest were confirmed by the Law of 9 February 2010: they are the universal postal service, La Poste's contribution to regional planning and development, the conveyance and delivery of press items and accessible banking services. In order to calculate the cost of La Poste's regional planning and development mission, ARCEP was charged with reporting annually to the Government and Parliament on its yearly evaluation of the net cost of the additional outlets put in place by La Poste to enable it to carry out this mission. At ARCEP's request, La Poste will provide it with the accounting information and documents necessary for conducting this evaluation.

A Council of State decree has to be adopted in order to specify the requisite evaluation method.

---

14 - *Law No. 2010-123 of 9 February 2010 on the public company La Poste and postal activities published in the JO of 10 February 2010.*
15 - *European Directive 2008/6/EC of 20 February 2008.*

3.2. Changes to the European regulatory framework

The regulation and the two directives amending the regulatory framework governing electronic communications in Europe, referred to as the Telecom Package, were adopted by the European Parliament and Council and published in the Official Journal of the European Union of 18 December 2009, following a review process that had been ongoing since the Commission's first consultation on the subject in November 2006.

The review of the directives did not introduce any significant change to the regulatory model. It has merely been adapted to changes in the marketplace and so to the regulators' activity. Of particular note is the fact that the regulatory goals and the tools available to national regulatory authorities (NRA) and the Commission have been enhanced; asymmetrical regulation will be gradually lightened or become more targeted, while symmetrical regulation could be reinforced.

a) Regulation from the European Parliament and Council creating BEREC[16]

The purpose of this regulation was to create the Body of European Regulators for Electronic Communications, or BEREC, and to specify its tasks and the general outlines of its organisation and operation.

Working to consolidate the internal electronic communications market

BEREC constitutes a cooperation forum between NRAs and the Commission. It contributes to the sector's operation in a variety of ways, including guidelines and best practices, formal opinions, assistance for NRAs and reports and opinions submitted to European bodies (Commission, Parliament, Council).

The Body's officially listed tasks are centred chiefly around national regulatory authorities' core responsibility, in other words regulating market competition. BEREC will play an especially key role in the Commission's monitoring of market analysis by issuing official opinions of which the Commission must take utmost account, as much during the market definition stage as in the designation of SMP operators and establishment of remedies, and in the imposition of functional separation.

A council of regulators with a permanent office

BEREC is made up of a dual structure:

The advisory group, which is called the Board of Regulators and which has no legal personality, composed of the heads of the 27 national regulatory authorities – plus the NRAs of EU candidate countries and EEE Member States, and a representative the Commission, which participate as observers. As a general rule, decisions are adopted with a two-thirds majority amongst members, as observers do not have the right to vote.

The Board of Regulators is assisted in its tasks by an Office. The Office is a Community body and is therefore subject to all of the corresponding rules and procedures (audit, transparency, confidentiality, etc.) reiterated in the regulation. It is run by an administrative manager and a Management Committee composed of Council members and one voting member from the Commission. The legislator set the size of the Office at a maximum 28 people.

The budgetary procedure has also been strictly defined. The body is financed by a mixed model:
- the majority share of revenue and resources comes from a subsidy from the Community, which is voted on annually in the European Union budget, based on a proposal submitted by the Management Committee;
- voluntary financial contributions from NRAs or Member States, which are used to finance specific items of operational expenditures.

---

16 - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0001:0010:FR:PDF.

b) The "Better Regulation" Directive[1è] amending the Framework, Access and Authorisations Directives

Strengthening national regulatory authorities

The Framework Directive strengthens the independence of national regulatory authorities (NRAs), notably by asking Member States to ensure that they have the necessary financial and human resources.

For NRAs to accomplish their tasks efficiently, provisions aimed at preventing the sector's players from engaging in time-consuming procedures (supervision of suspension proceedings) have been introduced and authorities' ability to collect information has been made easier.

More coordinated regulation to meet partially redefined general objectives

The general objectives of the framework that guides NRAs in the performance of their tasks have been amended to take account of the content (see below), the investment risks taken by operators (providing incentives to invest in new generation access networks), the different states of competition that exist in the different geographical areas and the lifting of obligations once the markets become competitive.

Market analyses

The market analysis procedure has been reviewed and made more complete. The opinion of BEREC is needed for the Commission veto on a market definition and the designation of SMP operators. The Commission has a power of individual recommendation on planned remedies, after having received the BEREC opinion. The goal is to achieve greater consistency between NRAs which will need to justify their actions in cases when they do not comply with the recommendations, while BEREC could provide assistance to help complete market analyses. In addition, the Commission, which can already issue general recommendations on remedies, can now transform them into a more binding decision.

Better and more coordinated management of scarce resources in Europe

The principle of general authorisations for spectrum has been strengthened. The Directive reaffirms the principles of technology (WiMAX, IMT2000, CDMA…) and service neutrality, while providing for exceptions to prevent harmful interference, guarantee public safety or to uphold the public interest. Enabling access to spectrum through the development of a frequency trading market is encouraged. New provisions have also been introduced to enable more coordinated spectrum management (including at the international level), along with Europe-wide multi-annual strategy plans. NRAs must also work to ensure that spectrum is used effectively and efficiently, to avoid hoarding or other forms of anti-competitive behaviour.

Lastly, managing telephone numbers remains largely a national affair, although Member States are requested to support number harmonisation across the Community.

More complete regulatory tools

Provisions have been introduced to make it easier to access passive infrastructure, to facilitate the deployment of new generation access networks, or NGA: this includes providing access to "associated facilities", in other words the passive elements of the network such as towers, conduits, access to buildings, etc., along with resource sharing (infrastructure sharing made easier).

Existing remedies – transparency, non-discrimination, accounting separation, access, tariff supervision – have been maintained and in some cases made more specific, notably for NGA, as has the use of certain concepts such as joint market dominance and SMP leveraging. A new functional separation tool was created, but subject to close supervision by the Commission.

---

17 - *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0037:0069:EN:PDF*

Also noteworthy is that the new definition of access, which includes the notion of access to content, combined with the new Article 20 of the Framework Directive concerning dispute settlement, allows NRAs to settle disputes between network operators and content providers.

Network security

Provisions pertaining to network security are now contained in an entirely new chapter. Member States must ensure the security and integrity of networks to guarantee the continuity of the services provided on these networks. To do so, operators must report any breach of security on the networks to the competent NRAs which can in turn issue operators with binding instructions to remedy any security problems. The NRA must work closely with the Commission and the ENISA[18]. The Commission may, if necessary, take the required measures to harmonise the actions taken by competent NRAs, after having obtained the opinion of the ENISA.

c) The "Citizens' Directive[19] amending the Universal Service Directive and the Privacy Directive

The aim of the principal changes that have been adopted is to strengthen the rights of electronic communications service users, and to enable the development and adoption of new services and innovative applications.

High level of minimum set of available services

The list of the minimum services that all operators must provide has been expanded to include caller location information for emergency services, cross-border access to numbering resources, to the European numbers 112 and 116 and to directory services via SMS, among others.

The universal service components are to be reviewed at a later date, although the possible expansion of its scope to include broadband access has already been introduced, without prejudice to how it is financed.

Allowing consumers to make more informed decisions

Improving consumers' decision-making capacity was one of the main areas of change brought to the framework, thanks in particular to an obligation of transparency imposed on operators with respect to their customers.

- *Transparency on prices:* operators must provide comparable information on prices, and NRAs must be able to make price guides available.

- *Transparency on services:* complete information must be made available to end users (including enterprise users) on the services provided, notably their quality and the terms for accessing the different applications.

- *Contractual terms and conditions in support of mobility:* the terms applying to contract cancellations have been lightened, a limit has been put on minimum contract lengths and operators are ordered to shorten the number portability processes – with the goal of single-day portage having been set.

Right to privacy and data protection

The provisions contained in the Privacy Directive also strengthen the protection given to citizens, particularly with respect to the personal information circulating on networks. Operators are required to provide guarantees concerning access and the protection of personal data (data retention, intrusion,

---

18 - European Network Information and Security Agency http://www.enisa.europa.eu/
19 - http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:EN:PDF.

spam), including a privacy violation procedure to be supervised by NRAs and the Commission. Spam prevention measures have also been introduced.

Users must also be informed of data retention and cookies, and especially be asked for their prior consent to accept cookies in a "user-friendly" fashion.

Measures in favour of people with disabilities

Users with disabilities must be given equivalent access to electronic communications services and an equivalent choice of offers, notably through the availability of end-user equipment that enables a functional equivalent – i.e. equal ease of use through different means.

More detailed framework with respect to Net neutrality

Operators' "traffic shaping" practices are authorised, under NRA supervision, but only in a limited number of instances (chiefly network overload), and provided they do so in a transparent and non-discriminatory fashion, and in accordance with competition laws.

National regulatory authorities must set minimum quality of service obligations – that are subject to examination by the Commission which has the power to coordinate their actions – and which serve to complement the "Better Regulation" Directive's general access to content objective.

And, finally, the transparency obligations with respect to consumers, which are mentioned above, apply in particular to matters of neutrality to the extent that operators must inform their customers in their service contract – or over time as their practices change – of any restrictions imposed on network access. ■

ARCEP

Autorité de régulation des communications électroniques et des postes

ARCEP's organisation and operation

ARCEP

1. The Executive Board

Frontrow, from left to right:
Joëlle Toledano, Jean-Ludovic Silicani (chairman), Edouard Bridoux.
Backrow, from left to right:
Denis Rapone, Nicolas Curien, Daniel-Georges Courtois, Patrick Raude.

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, respectively, by the President of the National Assembly and the President of the Senate. The Chairman of ARCEP is appointed by the President of the Republic, based on proposals from the Prime Minister. Since the adoption of the Law of 5 March 2007[1], 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.

Three members of the Board were appointed by decree of the President of the Republic: Chairman, Jean-Ludovic Silicani and Board members, Edouard Bridoux and Patrick Raude. Members Nicolas Curien and Denis Rapone were appointed by the President of the Senate, and members Daniel-Georges Courtois and Joëlle Toledano were appointed by the President of the National Assembly.

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

2.Organisation and department budgets

2.1. ARCEP's organisation

Organisation chart as of 1 june 2010

Institutional Relations
Patricia LEWIN
Synthesis
Guillaume MEHEUT

Interconnection and Access Committee

Consumer Affairs Committee

GRACO (Working group between ARCEP, local authorities and operators)

Forward-planning Committee

Human ressources, administration and finances
Manages ARCEP's means and resources as well as its publications, documentation and intranet.
Claire BERNARD
Deputy: Elisabeth CHEHU-BEIS

Legal Affairs
Responsible for all legal aspects of ARCEP's activity, ensures the legal certainty of decisions
Stéphane HOYNCK
Deputy: Loïc TAILLANTER

European and International Affairs
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
Nicolas DEFFIEUX

Human Resources
Catherine AUTIER

General administration
Pierre-Jean DARMANIN

Finances
Bernard THOUVIGNON

Documentation
Elisabeth CHEHU-BEIS

Information Systems
Jean-Paul DAUFES

Procedures, Frequencies, Audiovisual Broadcasting, Interconnection and Consumers
Loïc TAILLANTER

New Regulation, New Networks, Local Authorities and Europe
Laurent PERRIN

European Affairs
Françoise LAFORGE

International Affairs
Joël VOISIN-RATELLE

ITU Coordination and Standardisation
Marie-Thérèse ALAJOUANINE

Statistical Observatories and Market Monitoring
Sophie PALUS

Network Economics, Forward-planning and Universal Service
Gaëlle NGUYEN

Costs and Tariffs
Matthieu AGOGUE

ARCEP

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 General
François LIONS

Chargé de mission
Igor PRIMAULT

Directions

Spectrum and Equipment Manufacturer Relations

Licence issuing and monitoring. Setting up and issuing calls for candidates
Spectrum management

Jérôme ROUSSEAU
Deputy: Sandrine CARDINAL

Mobile Operators
Rémi STEFANINI

Spectrum Regulation and Management
Sandrine CARDINAL

Technological Monitoring and Manufacturer Relations
Edouard DOLLEY

Broadband/Ultra-fast Broadband Markets and Local Authority Relations

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

Joël MAU
Deputy: Renaud CHAPELLE

Broadband and Ultra-fast Broadband Infrastructure
Bertrand VANDEPUTTE

Fibre Sharing and Broadband and Ultra-fast Broadband Downstream Markets
Akilles LOUDIERE

Relations with Local Authorities
Renaud CHAPELLE

Fixed and Mobile Markets and Consumer Relations

Point of contact for operators
Regulation of fixed and mobile services markets
Tariff regulation
Numbering management

Deputy: Christophe COUSIN

General Authorisation, Network Security and Numbering
Catherine GALLET-RYBAK

Mobile Networks
Clémentine PESRET

Capacity Services and Fixed Telephony Markets
Guillaume MELLIER

Consumer Relations
Stéphane KUNA

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 Service
Lionel JANIN

Tariff and Accounting Controls
Emmanuel ROUX

2.2. Budgetary resources

For 2009, Parliament allocated ARCEP a budget of €8.2 million in authorised commitments (€8 million in payment credits) for operating expenses, and €14.6 million for personnel expenses.

The Authority is responsible for issuing payment orders for taxes and fees, which are deposited into the State's general budget. In 2009, ARCEP billed €255.9 million in licensing fees, of which €32.5 million were for 3G licences. This last amount was allocated to a pension reserve fund. A further €18.9 million was collected in numbering and administrative taxes.

ARCEP was also involved in a quality control process for its taxes and fees billing activities in 2009, which resulted in it being certified ISO 9001 standards compliant by AFNOR.

2.3. Human resources

As of 31 December 2009, ARCEP had a staff of 169 people (76 women and 93 men), of which 74 employees and 95 contractors. The average age of ARCEP personnel as of 31 December 2009 is 41.1 (47 for employees and 36 for contractors). The Authority hired 21 new staff members in 2009.

2.4. Outside expertise

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

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

In 2009, the report budget amounted to €1,286,000. Twenty six reports were commissioned at an average cost of €49,464 and an average duration of six months[2].

2.5. Documentary resources

ARCEP's documentation centre is the only centre specialised in electronic communications and postal issues that is open to the public. A system of legal, economic and technical monitoring was created for staff, which allows ARCEP to then make non-confidential information which is drawn from these observatories available to the public. Outside users – of which a third are members of the electronic communications and postal sectors, the other two-thirds being members of the legal profession, administrations, academics, consultants, banks, journalists and individuals – can access up-to-date information on the sector, browse trade journals from both France and abroad, along with reference publications on both telecommunications and postal affairs.

3. Forward-planning committee

When taking up his position, ARCEP Chairman Jean Ludovic Silicani wanted ARCEP to rely on a modern form of governance, based on collective decision-making and on prior in-depth discussions with all economic stakeholders and public institutions, to help increase the efficiency of the State and the quality of public decisions.

Among other things, he announced the creation of a Forward Planning Committee made up of ARCEP Board members and other scientific, technological, legal, city planning, regional development and

---

2 - *List of the chief external reports published in 2009.*

human sciences experts. The inaugural meeting of the ARCEP Forward Planning Committee was held on 12 November 2009.

The Committee's members include:

- Jacques Cremer, researcher at the Institute of Industrial Economics of Toulouse, IDEI *(Institut d'économie industrielle de Toulouse)*, Director of research at CNRS;

- Michèle Debonneuil, Inspector-General of Finance, member of the Economic Analysis Council, CAE *(Conseil d'analyse économique)*, author of reports on social services and the development of the "quaternary" economy;

- Mathias Fink, member of the Academy of Sciences and holder of the Chair in Technological Innovation at the Collège de France, Director of the Ondes et Acoustique (Waves and Acoustics) laboratory at the University Denis Diderot (Paris 7);

- François Heran, former Director of the National Institute of Demographic Studies, INED *(Institut national des études démographiques)*, Chairman of the Scientific Council of the Institute for research and documentation in health economics, IRDES *(Institut de recherche et de documentation en économie de la santé)*;

- Paul Kleindorfer, professor at INSEAD, holder of the Advisory Panel on Energy chair and a specialist in postal network regulation;

- Martine Lombard, professor at Paris Panthéon Assas University, specialist in regulatory law;

- Henri Verdier, President of the Cap Digital technology hub (innovations in content and digital services), Director of the Institut Telecom think tank.

The purpose of calling on outside experts with wide-ranging views is to help inform ARCEP decisions and enable the Authority to improve the way it carries out its functions of market monitoring and informing stakeholders.

The goal is to better identify and understand medium and long-term developments in the areas that fall under ARCEP's purview, namely electronic and postal communications.

The work carried out in 2010 will be devoted to the ways in which supply (technologies, products, services, etc.) and demand (individual and collective consumption) are evolving in the electronic communications sector. This work cycle will conclude with a symposium in spring 2011.

4. The other ARCEP advisory committees

4.1. The Consumer committee

In 2007, a Consumer committee was formed to act as a forum for discussions between consumer associations and ARCEP. Its purpose is to improve the flow of information in both directions between ARCEP and the associations.

The Consumer committee is not meant to replace either the national consumer agency, CNC *(Conseil national de la consommation)*, or the committee devoted to abusive contractual clauses or the courts, when it comes to resolving disputes. It also operates separately from the dedicated "telecoms" roundtables organised by the Secretary of State for consumer affairs *(Secrétariat d'Etat à la Consommation)*. Although the electronic communications mediator 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)* are part of the committee, it is not a place for settling disputes.

In 2009, the committee addressed a number of issues, including the quality of the fixed telephony and broadband services, and of optical fibre. In the area of postal affairs, the Consumer committee focused on La Poste general terms and conditions of sale, quality of service issues with forwarded mail and the loss of parcels, and on monitoring the quality of the universal service.

4.2. Electronic communications advisory committee

The Electronic communications advisory committee, CCCE *(La commission consultative des communications électroniques)* was created on 23 June 2009. It replaces the two previous advisory committees: the Advisory committee for radiocommunications, CCR *(Commission consultative des radiocommunications)* and the Advisory committee for electronic communications networks and services, CCRSCE *(Commission consultative des réseaux et des services de communications électroniques)*.

The Committee is consulted on all draft measures aimed at setting or altering the terms governing declaration and the establishment and operation of electronic communications networks and services, particularly in the areas of interconnection, network access and the use of radio spectrum.

Composed of 24 members, the Committee provides equal representation to network operators and service providers, consumers and experts. The Committee chairman is Engineering Corps member, Charles Rozmaryn.

In the second half of 2009, the Committee was consulted on three occasions, and asked to give its views on two major matters in particular:
- the call for applications for the award of the fourth 3G licence in the form of a 5 MHz block of spectrum in the 2.1 GHz band;
- the terms for accessing optical fibre ultra-fast broadband lines.

4.3. 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.

This committee, which meets three times a year, is a forum for discussion and exchange between the sector's players on current issues relating to fixed and mobile services.

The committee's efforts in 2009 were devoted in particular to:
- ultra-fast broadband (notably issues surrounding fibre sharing and the offer for accessing ducts);
- broadband (particularly quality of service and increasing access speeds in the different regions);
- the market analysis decision concerning capacity services;
- mobile voice call termination regulation for 2010 for operators in overseas markets;
- improving and increasing the reliability of fixed number portability procedures (which led to the ARCEP decision that was approved by the Minister responsible for electronic communications in November 2009);
- the value-added services market.

4.4. Forum for discussions between ARCEP, local authorities and operators (GRACO)

In 2009, ARCEP devoted particular efforts to strengthening the dialogue between local authorities and operators. The Public-Initiative Networks Committee, CRIP *(Comité des réseaux d'initiative publique)*,

ARCEP

which was created in 2004, had focused its activities around the initiatives taken in application of Article L. 1425-1 of the local and regional collectivity code, CGCT *(Code Général des Collectivités Territoriales)*, CGCT[3]. It therefore became necessary to expand the scope of its focus to the concerns all of local authorities and elected officials, particularly in the areas of regional fixed and mobile network coverage.

To keep up with the changing environment, CRIP became the Forum for discussions between ARCEP, local authorities and operators, or GRACO *(groupe d'échange entre ARCEP, les collectivités territoriales et les opérateurs)* on 29 September 2009, during its plenary meeting.

Over the course of the year, the work performed by GRACO continued through several working groups, and particularly the "dead zones and increased access rates" and the "ultra-fast broadband" groups.

Other working groups also met to discuss topics that are of key importance to local authorities:
- the "network knowledge" group, which is producing a practical guide for the implementation of the Decree of 12 February 2009[4] which provides local authorities with information on network rollouts in their region;
- the group devoted to buried networks, which is continuing to work on encouraging the integration of the legislative changes brought by the Law on bridging the digital divide[5];
- the "service coverage" group that was created in early 2010 and whose aim is to enable the application of the Decree of 12 February 2009[6] which plans for the publication of coverage maps by operators.

5. ARCEP's modernisation efforts

Several projects devoted to modernising the way ARCEP is managed and operates were launched internally in 2009. The compensation scheme for all of the Authority's staff (both employees and contractors) was overhauled, simplified and customised, in particular taking better account of the functions performed and the results obtained.

At the same time, a reorganisation of the Authority's departments was undertaken to adapt its structure to changes in the regulated sectors, with a dual objective in mind: first, to better identify ARCEP's core areas of focus and to ensure that human resources are concentrated in those areas, as they are the Authority's most precious resource, especially at a time when efforts are being made to reduce government spending and, second, to strengthen relations between ARCEP and all of the sector's players (telcos, equipment manufacturers, consumers and local authorities). ■

---

3 - Article L. 1425-1 of the Local and regional collectivity code (Code Général des Collectivité Territoriales).

4 - Decree No. 2009-167 of 12 February 2009.

5 - Law No. 2009-1572 of 17 December 2009 on bridging the digital divide, referred to as the "Pintat Act", published in the JO of 18 December 2009

6 - Decree No. 2009-166 of 12 February 2009.

ARCEP

Communication and Information

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 modern 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. Graphic charter overhaul

When taking up his position as the Chairman of ARCEP on 10 May 2009, Jean-Ludovic Silicani instigated discussions on reviewing the signage and the graphic look used by the Authority to make it clearer and more attractive.

This review resulted in an updated logo, a new graphic charter, a new visual identity and a new "collection" of publications (actions, reports, *Cahiers de l'ARCEP* quarterly review), which were adopted on 1 January 2010.

2. Broad palette of communication tools

The Authority employs a wide array of communication tools which guarantees that the entire sector will have access to the most exhaustive information possible on both the work being performed by ARCEP and on the sector itself.

2.1. ARCEP websites

ARCEP manages four websites, which are being continually refreshed: its core institutional site, which marked its 12th anniversary in March 2010; a site devoted to consumers which was created in late 2008; a site devoted exclusively to 118 numbers (telephone directory services) and the Fratel website (a network of telecom regulators from French-speaking countries).

www.arcep.fr: the Authority's institutional site

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 information, both past and present, which has been made publicly-available since the Authority was created in 1997.

Updated on a daily basis, it satisfies the essential requirement of providing instantaneous information on a sector in a state of constant evolution.

Easy to read and easy to use

- important information is displayed in chronological order on the homepage, in addition to being posted to the different dedicated sections;
- there are four dedicated areas – postal sector, local authorities, consumers and electronic communications operators – which provide information that is of particular interest to these four groups;
- two searchable databases on the spectrum that ARCEP is responsible for allocating, and on the telephone numbers that the Authority assigns to telecom carriers (searched by entering the first digits of a number).

A democratic tool

The information is made available to everyone at the same time: press releases, for instance, are sent to the press at the same time as they are put online.

Accessible to the visually impaired

Since mid-December 2008, a portion of the ARCEP website has been providing dedicated access for the visually impaired: press releases are systematically "translated" into an audio version thanks to the use of a robot that automatically transcribes text to speech in the form of MP3 files that can then be listened to.

The main speeches by the Chairman of ARCEP along with the discussions from conferences organised by the Authority are also made available in MP3 format.

ARCEP

A powerful tool

- The main information is also distributed via e-mail to users who sign up for the ARCEP mailing lists, of which there are two: telecommunications and the postal sector, both available in French and English. More than 10,000 people subscribe to these lists;
- Some of the documents produced by ARCEP that are available for download in PDF format have been very popular. For instance, the day it was uploaded to the site, *"La fibre optique arrive chez vous"* (Fibre optic coming to your home) guide proved so popular that the site went down for 24 hours… As of the end of March 2010, this guide had been downloaded close to 26,000 times.

Outward looking

- Although a particular effort is made to provide English translations (press releases are systematically translated and posted online, at the most 24 hours after the publication of the French-language version), information is provided in other languages as well: abstracts are available in six other languages, namely Spanish, German, Italian, Portuguese, Korean and Chinese.
- In most cases, the summary reports of Board members' fact-finding missions abroad are produced in both French and English and available for download in a dedicated section. These documents are generally downloaded several thousand times.

Efforts being devoted to better use of video

- The conference on Network neutrality that ARCEP hosted on 13 April 2010 provided an opportunity to make extensive use of video on the website: 21 videotaped interviews with a variety of players from along the Internet value chain (telcos, service providers, Internet companies, TV operators, copyright management bodies, manufacturers, elected officials, other regulators) were carried out and put online. These interviews were watched a total of more than 35,000 times in three weeks.

A few figures on *www.arcep.fr*

The site logged more than two million unique visitors in 2009 – 2,239,000, to be exact – and 690,000 unique visitors in the first quarter of 2010.

- In the past 12 years, the site has had more than 14 million unique visitors.
- 29.5 million page views in 2009.
- As of March 2010, the site's telecom mailing list had **9,250** French language subscribers (**570** for the English language version), and its mailing list devoted to the postal sector had **150** subscribers (around **60** for the English language version).

---

www.appel118.fr, the directory services site   *www.appel118.fr*

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

To inform users, ARCEP created a website that provides a list of open 118 services, their main tariffs and 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.), which are updated on a regular basis.

The appel118.fr site logged 85,000 visits in 2009, and a total of 363,000 hits between its launch and 31 March 2010.

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

In 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.

There were 193,998 unique visitors to the site in 2009 (and 52,000 in the first three months of 2010)[1], logging close to 750,000 page views.

2.2. *Cahiers de l'ARCEP*

As part of the changes brought to ARCEP's editorial policy, it was decided that the *La Lettre de l'Autorité* newsletter would become a quarterly publication of around 50 pages that examined a variety of themes from different angles, including a forward-looking perspective.

The first issue of the *Cahiers de l'ARCEP* – which was devoted to regional digital development – was published in January 2010. A total 6,800 print copies were distributed for free, and the PDF version of this first issue was downloaded 9,600 times from the ARCEP website, of which 3,900 times for the high definition version.

To help broaden readers' perspective, the *Cahiers de l'ARCEP* devotes a great deal of space to market players' viewpoints in the form of **interviews**. This first issue therefore included 45 interviews and articles of or by personalities from a wide range of backgrounds, from both France and abroad: national and local elected officials, a European commissioner, a British minister, several heads of telecom companies… plus a doctor, a geographer, senior civil servants, consultants, representatives of consumer protection associations, etc.

Three other topics were addressed in 2009:
- the support mechanisms that help promote social cohesion and balanced regional development;
- the new challenges posed by the Internet;
- the enterprise market.

Since October 2009, the ARCEP publication has been available in a PDF version for the blind and visually impaired who can listen to the newsletter using their dedicated voice synthesis mechanism and their Braille tactile display.

---

1 - *Unique visitor: we log each different IP address connected to the site, regardless of the number of visits from this same address, contrary to the notion of multiple visits where several connections can correspond to the same visitor, in which case the visitor is counted several times.*

ARCEP

3. ARCEP conference on network neutrality, 13 April 2010

Since its creation in 1997, the Authority has been holding regular talks on topics that relate either directly or indirectly to its areas of responsibility. These events provide an opportunity to have open discussions on often complex issues, to exchange

Neutralité des réseaux
Network Neutrality
Paris, mardi 13 avril 2010
9H - 18H

differing viewpoints, particularly by hearing from speakers from foreign markets, and to engage in forward-looking analyses.

On 13 April 2010, ARCEP hosted a large international conference in Paris. Ms. Neelie Kroes Vice-president of the European Commission, in charge of the Digital Agenda, Ms. Nathalie Kosciusko-Morizet, Secretary of State for the Digital Economy and some twenty experts from France and around the world, representing economic stakeholders, academia, consumers, elected officials and administrations were on hand to discuss the topic of **"Network neutrality"**.

Previous conferences hosted by ARCEP had been devoted to topics such as ultra-fast broadband (2008), mobile economics (2007), the challenges of postal regulation (2005) and the issues surrounding local authority involvement in telecoms (2004).

To prepare for discussions on this complex subject of neutrality, for which there is not even consensus on the meaning of the term itself, the Authority sought out a maximum number of players from along the Internet value chain, to get their definition of Net neutrality. Twenty one videotaped interviews were thus carried out and posted online, on the ARCEP website and on Daily Motion and YouTube. They could also be (and were widely) played on an iPhone. The information was also widely circulated on social networking sites such as Facebook, LinkedIn and Viadeo.

The conference discussions were sent out live on the Net in two languages, and were watched live by a total of 7,300 Internet users: 6,373 for the stream in French and 929 for the English-language stream, which is considered an excellent score by webcasting specialists. The discussions were also available in video on-demand on the ARCEP website once the conference was over.

The proceedings are currently in the production stage.

4. Projects

Discussions are underway with the Spanish regulatory authority's communications department over the possibility of holding a working meeting with the national regulatory authorities of the 27 European Union Members States, as part of BEREC, which would be devoted specifically to information campaigns – the goal being to share experiences and best practices and to engage in reciprocal information sharing. ■

Autorité de régulation des communications électroniques et des postes

Relationship with other public authorities and institutions

1. Relationship with Parliament

Over the course of 2009, the Authority gave a regular account to Parliament of its activities in the form of reports.

It also addressed permanent National Assembly and Senate committees and delegations on several occasions, as part of hearings on decisions that would affect the market in a fundamental way and during the examination stage of proposals and draft legislation.

1.1. Hearings

Meetings on structuring issues

On 17 February 2009, ARCEP Board member, Edouard Bridoux took part in a roundtable on digital coverage that was organised by the National Assembly Delegation for sustainable regional development *(Délégation à l'Aménagement et au Développement durable du territoire de l'Assemblée nationale)* and chaired by Christian Jacob. Particular areas of focus included mobile coverage, broadband coverage and the framework for optical fibre rollouts for the residential market.

The Chairman of ARCEP addressed the topic of the terms for awarding the fourth 3G mobile telephony licence with the Senate Committee on the economy, sustainable and regional development *(Commission de l'économie, de développement durable et de l'aménagement du territoire du Sénat)*, on 28 January, and with the National Assembly Economic Affairs Committee on 4 February 2009.

Talks on proposed and draft legislation

On 16 February 2009, The Chairman of ARCEP addressed Franck Riester, rapporteur for the National Assembly Commission on constitutional laws, legislation and the general administration of the Republic *(Commission des lois constitutionnelles, de la législation et de l'administration générale de la République de l'Assemblée nationale)* on draft legislation in support of the dissemination and protection of creative works on the Internet (referred to as the Hadopi Act). Edouard Bridoux was also called upon to speak on this text, alongside players from the sector, to Muriel Marland-Militello, rapporteur for the National Assembly Committee on Cultural and Educational Affairs *(Commission des affaires culturelles et de l'éducation)* on 25 February 2009.

During the examination of the proposed legislation on bridging the digital divide, which was proposed by Xavier Pintat, the Chairman of ARCEP was called upon to address Bruno Retailleau, rapporteur for the Senate Committee on the economy, sustainable and regional development *(Commission de*

l'économie, de développement durable et de l'aménagement du territoire du Sénat) on 7 July 2009, and by Laure de la Raudière, rapporteur for the National Assembly Committee on Economic Affairs *(Commission des affaires économiques de l'Assemblée nationale)* on 15 September 2009. On 3 November, the Chairman also addressed the National Assembly Committee on Economic Affairs which had requested further details on the scope of the provisions on optical fibre network sharing schemes contained in the draft legislation.

On 30 October 2009, the Chairman of ARCEP addressed Jérôme Chartier, rapporteur for the Committee on finance, the general economy and budgetary oversight *(Commission des finances, de l'économie générale et du contrôle budgétaire)* on the draft Finance Act for 2010.

On 21 October 2009, ARCEP Board member, Joëlle Toledano, was called upon to address Alfred Trassy-Paillogues, rapporteur for the National Assembly Economic Affairs Committee *(Commission des affaires économiques de l'Assemblée nationale)* as part of the process of preparing the Committee's budgetary opinion on electronic communications and the postal service, prior to the examination of the draft Finance Act for 2010.

And, finally, on 28 October 2009 the Chairman of ARCEP spoke with the Chairman of the Senate Committee on the economy, sustainable and regional development, Paul Emorine, and its rapporteur, Pierre Hérisson, then on 16 November with Jean Proriol, rapporteur for the National Assembly Economic Affairs Committee, on the draft bill on the public enterprise La Poste and postal activities.

1.2. Report submissions

ARCEP submits a regular account of its activities to Parliament. It submitted its annual report to the President of the National Assembly on 30 September 2009, and to the President of the Senate 7 January 2010.

Since the start of 2009, ARCEP has submitted four reports to Parliament, at the latter's request. They concerned audiovisual broadcasting services (cf. page 128), 2G national coverage levels (cf. page 64), 3G national coverage levels (cf. page 68) and the electronic communications sector in overseas markets (cf. page 72).
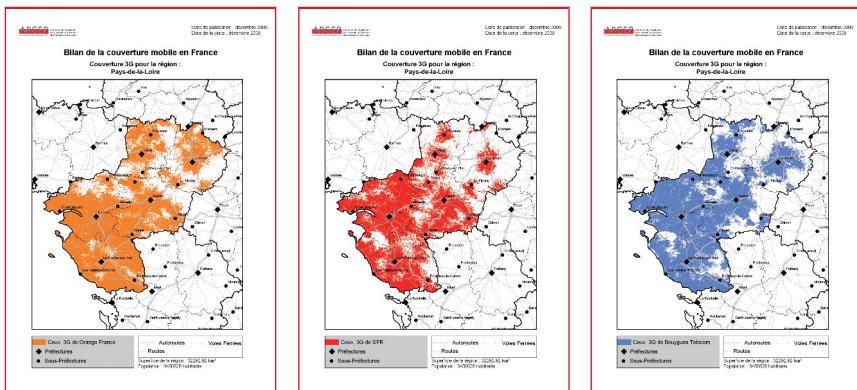
Report to Parliament on 3G coverage in France

Three more reports are scheduled for publication between now and the summer:
- on increasing Internet access rates nationwide and on ultra-fast broadband rollouts in rural areas, in application of the "Pintat Act" of 17 December 2009 on bridging the digital divide[1] and the Law of 4 August 2008 on modernising the economy[2];

---

1 - Law No. 2009-1572 of 17 December 2009 on bridging the digital divide, referred to as the "Pintat Act", published in the JO of 18 December 2008.
2 - Law No. 2008-776 of 4 August 2008 on modernising the economy published in the JO of 5 August 2008.
3 - Law No. 2008-3 of 3 January 2008 for the development of competition for the benefit of consumers, referred to as the "Chatel Act", published in the JO of 4 January 2008.

- on XXX, pursuant to the "Chatel Act" for the development of competition for the benefit of consumers[3];
- on the assessment of the net cost of the regional development mission tasked to La Poste, in addition to its universal postal service obligations, in accordance with the Law on La Poste and postal activities[4].

2. Relationship with the French government

ARCEP works in tandem with the government on the various topics that fall under its purview.

The Authority maintains close ties with the Minister responsible for electronic communications, with which it shares a certain number of powers in the area of regulation. The actions that ARCEP undertakes in accordance with its regulatory powers are in part subject to the minister's approval, one case in point being the regulatory framework governing optical fibre rollouts in very densely populated areas[5]. The Authority therefore maintains regular contact with the Minister of Economy and Finance and with Ministry departments, particularly the general directorate for competition, industry and services, DGCIS (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)*.

ARCEP also maintains relations with other ministries, notably the Minister of the Interior, the Minister for Overseas France and local authorities (general directorate for local authorities/direction générale des collectivités locales), the Ministry of Culture and Communications (general directorate for media and cultural industries/direction générale des médias et des industries culturelles), the Ministry of Rural affairs and regional development *(Ministère de l'espace rural et de l'aménagement du territoire)*, the Ministry for Overseas France *(Ministère chargé de l'outre-mer)* and the Secretary of State for forward planning and development of the digital economy (Secrétariat d'Etat chargé de la prospective et du développement de l'économie numérique). ARCEP also works with the inter-ministerial land planning and regional action delegation, DATAR (Délégation interministérielle à l'aménagement du territoire et à l'attractivité régionale), in addition to maintaining ties with local government departments, most notably the 27 ICT policy officers with the General Secretariats for Regional Affairs *(Secrétariat Général pour les Affaires Régionales)*.

3. Relationship with local authorities

Since 2004, local authorities have been authorised to establish and operate electronic communications networks when private sector initiative is lacking, and to provide services to end users[6]. The Authority monitors local authorities' projects and sustains discussions between local authorities and telcos within GRACO (see above).

2009 proved a pivotal year for public-initiative networks, or RIP. A number of rollout projects came to fruition, most of which were achieved while increasing the density of collection networks and providing coverage in broadband dead zones. A new form of contractual agreement also developed during the year, as we saw an increase in partnership agreements – in the Auvergne, Gironde, Hautes-Pyrénées, Languedoc-Roussillon and Finistère regions, among others – chiefly for white area coverage projects. The parties appear to have preferred to forge partnerships primarily in those instances where the projects made it impossible to contract a public service delegation.

The public-initiative model seems destined to have to contend with two new, increasingly pressing issues for local authorities: increasing access rates and preparing for FTTH. Balancing the interplay

---

4 - *Law No. 2010-123 of 9 February 2010 on the public enterprise La Poste and postal activities, JO of 10 February 2010.*
5 - *Regulatory framework adopted by ARCEP on 22 December 2009 and approved on 15 January.*
6 - *Article L. 1425-1 of the local and regional collectivity code, CGCT (code général des collectivités territoriales).*

of fibre-to-the-home network rollouts, increasing access rates on the copper network and through other wireless technologies, and between network rollouts by private sector and public sector players, is in fact a central part of the work that ARCEP does.

4. Relationship with jurisdictions, other independent administrative authorities and other public organisations

4.1. Relationship with jurisdictions

In its capacity of independent administrative authority, ARCEP makes decisions which can be appealed to administrative courts: either to the Conseil d'État for Executive Board decisions or the *Tribunal Administratif* for decisions made by the Chairman or the Director General.

Decisions concerning dispute settlements fall under the jurisdiction of the *Cour d'Appel de Paris* (Paris Court of Appeal).

The Chairman of ARCEP also informs the public prosecutor of any facts that are likely to receive a penal qualification as the Postal and Electronic Communications Code provides for penalties for infractions of the postal and electronic communications market regulation[7].

4.2. Relationships with other independent authorities and other public organisations

a) Relationship with the Competition Authority

ARCEP has close institutional ties with the Competition Authority *(Autorité de la Concurrence)*, and can solicit the opinion of the *Autorité de la Concurrence* when it believes that an SMP operator is abusing its dominant position and in the event of practices that are preventing competition from being exercised freely in the electronic communications sector or in the area of postal activities[8]. In return, the Competition Authority informs ARCEP of any incoming matters concerning the electronic communications and postal sectors that it is called up on to regulate.

Moreover, when it performs an analysis of electronic communications markets to determine whether or not any operator enjoys significant power in a relevant market, ARCEP must hold public consultations on its draft decisions and solicit the opinion of the Competition Authority and, if applicable, that of the Broadcasting Authority, CSA *(Conseil supérieur de l'audiovisuel)* on the market definition and the SMP operator analysis.

b) Relationship with ANFR

ARCEP works with the National Frequency Agency, ANFR *(Agence nationale des fréquences)* in its capacity of member of the Agency's Board of Directors, in addition to playing an active role on its different committees. These committees are devoted to forward-planning for spectrum in tandem with the technical and regulatory work being carried out at the European level, and on managing national spectrum use through logs of radio transmission sites and logging frequency assignments in the databases managed by the Agency. ANFR, meanwhile, provides ARCEP with services that are listed in an agreement which is reviewed every year.

c) Relationship with CSA

The legislator wanted to strengthen the cooperation between the French Broadcasting Authority, CSA *(Conseil supérieur de l'audiovisuel)* and ARCEP by putting consultation for opinion procedures in

---

7 - CPCE Articles L. 17 and ff. and L. 39 and ff.
8 - CPCE Articles L. 5-8 and L. 36-10.

place. As a result, ARCEP solicited the opinion of CSA on its Decision of 16 June 2009 which imposes asymmetrical obligations on TDR. In addition, the two authorities will be producing a booklet together for local authorities that explains the competition regulation that ARCEP imposed on TDF, and its relationship to the process of switching off analogue television broadcasting being implemented by CSA. Moreover, on 9 July 2009, ARCEP gave CSA its consent to authorise certain companies to use spectrum resources to operate a digital electronic communications service over a terrestrial network.

In general, ARCEP must obtain the Broadcasting Authority's opinion when making decisions that will have a significant impact on the broadcast of radio and television services. In exchange, CSA must obtain ARCEP's opinion on any decision it makes that concern electronic communications.

d) Relationship with CNIL

When performing its market analyses, ARCEP is careful to solicit the opinion of the French national commission on computing and freedom, CNIL *(Commission nationale de l'informatique et des libertés)* on matters that concern the treatment of personal data. The two authorities have therefore discussed the issues that the application of the Law on Computing and Freedoms of 1978 raises for telecom carriers. One particular instance occurred in 2006 when defining the content of the subscriber listings needed to produce universal service directories. There were no dossiers in 2009 that required the two authorities to engage in any such comparable talks.

5. Relationship with European and international bodies

5.1. In Europe

a) Relationship with European Union entities

In accordance with Article 7-3 of the Framework Directive, the Commission is directly involved in the market analysis process:
- it establishes the list of markets likely to subject to ex ante regulation;
- it must be notified of the market analyses performed by NRAs.

A more detailed description and account of regulation at the European level can be found on (page 132).

2009 was a time of intense legislative activity in Europe. In addition to the new Telecom Package, other major texts were drafted and adopted during the year. ARCEP was actively involved in the process, along with all French authorities.

Texts adopted in a joint decision from the European Union Parliament and Council, following a proposal from the Commission

The new regulation on international roaming was adopted on 18 June 2009[9]: it decreases the wholesale and retail price of voice services that were set by existing regulation, and adds equivalent supervision for SMS tariffs. Moreover, it introduces wholesale tariff regulation for data services and plans for a system for allowing users to track their data services consumption.

The GSM Directive (87/372/EEC) was amended by Directive 2009/114/EC[10] of 16 September 2009 to enable third and four generation systems to use the 900 MHz frequency bands.

---

9 - *Official Journal of the European Union of 29/06/2009.*
10 - *Official Journal of the European Union of 20/10/2009.*

Texts adopted by the Commission following a comitology procedure, via the Communications Committee (COCOM)[11] and the Radio Spectrum Committee, RSCOM[12]

On 7 May 2009, the Commission adopted a recommendation[13] meant to serve as a guide for national regulatory authorities when performing their market analyses, when setting call termination tariffs for calls over fixed and mobile networks using the long-run average incremental cost method (LRAIC).

The Commission is currently in the process of drafting a recommendation that will provide NRAs with guidelines for regulating new generation access (NGA) network rollouts, which is due to be adopted in the first half of 2010.

Following the decision from the European Parliament and Council of 2008 on the definition of the terms for issuing licences to mobile satellite services (2G MSS) and the Europe-wide call for applications that was launched in August 2008, the Commission selected two of the candidates, Solaris and Inmarsat, through a Decision dated 13 May 2009[14].

The Commission is also poised to adopt a decision and a recommendation for defining the frequencies and the terms for awarding national licences in the Member States to GSM/3G mobile communication systems onboard vessels (MCV).

b) Relationship with national regulatory authorities in the European Union

ARCEP continued to collaborate closely with its European counterparts through the work being done by the European Regulators Group[15] (ERG), which was replaced by BEREC when the new Telecom Package was implemented. The documents of note that were drafted and adopted by this group in 2009 include:

- a common position whereby NRAs committed to comply with the regulatory treatment of Voice over IP (VoIP);
- reports and benchmarks describing the state of markets in Europe, along with two recurring reports on mobile call termination tariffs, and two reports on international roaming tariffs;
- several reports responding to issues that all NRAs are having to address: the ability to replicate bundled offers, future NGN pricing mechanisms, NGA economic and regulatory analysis principles, transition from sector-specific regulation to ex-post competition law, application of the price squeeze test to bundled offers, spectrum issues arising from the switch to the new regulatory regime and competition issues tied to spectrum management;
- a joint statement on the digital dividend that commits all Member States to liberating a harmonised band of 72 MHz for telecommunications services;
- and, lastly, the ERG responded to a Commission consultation on its draft recommendation on the deployment of new access networks.

---

11 - *COCOM allows Member States to give the European Commission their official opinion, either in areas that are within the scope of their powers of consultation, or within the purview of their regulatory powers. ARCEP works on the Committee alongside the Ministry for the Economy, Industry and Employment, or MINEIE, Directorate General for Competitiveness, Industry and Services, or DGCIS (Direction générale de la compétitivité, de l'industrie et des services du Ministère de l'Economie, de l'Industrie et de l'Emploi).*

12 - *The European Commission submits appropriate technical measures of application to the Radiospectrum Committee (RSCOM) in view of harmonising spectrum management and ensuring spectrum availability. RSCOM is also consulted on the definition, draft and application of Community radio spectrum policies. ARCEP contributes to the Committee alongside the national frequency agency, ANFR and the Ministry for the Economy, Industry and Employment (MINEIE) Directorate General for Competitiveness, Industry and Services (DGCIS).*

13 - *Official Journal of the European Union of 20/05/2009.*

14 - *European Union Official Journal of 12/06/2009.*

15 - *All of the documents published by the ERG can be viewed online at: http://www.erg.eu.int/documents/docs/index_en.htm.*

ARCEP also maintains bilateral relations with its European counterparts, either through high-level contacts (chairman, executive board) or through working meetings on specific technical matters with the different departments.

c) Relationship with other regulators within groups devoted to radio spectrum

This relationship involves primarily the RSPG[16] and the ECC[17]. Discussions within the RSPG focused primarily on the digital dividend, mobile broadband, coordinating Member State interests in preparation for the World Radiocommunications Conference in 2011 and on more flexible spectrum management.

The digital dividend was also a major focal point for the ECC in 2009, along with the adoption of a harmonisation decision for the 800 MHz band[18]. Other technical harmonisation decisions were made on a variety of issues, including ITS[19] and mobile satellite services, and reports were submitted in response to orders of reference from the European Commission. Efforts were also devoted to the topic of numbering which resulted in decisions, including one on 116 numbers, and reports (112…).

5.2. Around the world

In addition to its work at the European level, ARCEP also maintains relations with international bodies.

a) International Telecommunications Union (ITU)

ARCEP helps prepare the French government's position on telecommunications in the decision bodies of the ITU, in particular on monitoring the study committee responsible for defining services, numbering, routing and network management, and the committee devoted to telecommunications development strategies and policies.

In 2009, ARCEP also took part in the World Telecommunications Policy Forum which was held in Lisbon from 21 to 24 April, in the annual Global Symposium for Regulators in November in Beirut, Lebanon to discuss the topic of *"Hands-on or hands-off?*: *Stimulating growth through effective ICT regulation,"* and in the ITU Forum that took place in Geneva from 5 to 9 October.

And, finally, the Authority is a member of the French delegation at different preparatory meetings being held as part of the CEPT (European Conference of Postal and Telecommunications Administrations), to prepare the common positions that will be supported at the World Telecommunication Development Conference and the ITU plenipotentiary conference that will be taking place in 2010.

b) Organisation for Economic Cooperation and Development (OECD)

In 2009, ARCEP continued to contribute to the work being done by the OECD Committee on Information, Computer and Communications Policy (ICCP), and the Working Party on Communications and Infrastructure and Service Policies (WP CISP). Efforts in 2009 were devoted in particular, first, to upgrading the statistical methodologies used for broadband coverage, tariff baskets and a new wireless broadband indicator and, second, to comparative studies of international roaming policies, the development of cable markets and geographically segmented regulation.

The Authority also took part in the Forum on innovation in information and communication technologies in African countries, hosted by the OECD Centre for Development, to mark the publication of the annual report on the African economic outlook.

---

16 - Radio Spectrum Policy Group: assists and advises the Commission on spectrum policy.

17 - Electronic Communications Committee: European Conference of Postal and Telecommunications Administrations Committee (CEPT) that addresses spectrum and telecommunications matter

18 - ECC/DEC/(09)03 of 30 October 2009.

19 - Intelligent Transport Systems.

c) Cooperation with Francophone countries: FRATEL

ARCEP is responsible for the Executive Secretariat of FRATEL, the network of regulators from French-speaking countries. The action plan for 2009 included the following:

- the 7th annual meeting in Brussels on 19 and 20 November 2009, which was attended by over 90 participants, including 25 regulators, along with representatives of the International Telecommunication Union, consulting firms, lawyers, operators an academics, who discussed the topic of "infrastructure sharing and public policy coordination";
- the technical seminar on 16 and 17 June in Dakar, which brought together some 100 representatives, including 17 regulatory authorities from network member countries and players from the telecommunications sector who shared their views on "mobile service deployment, a key development factor";
- support for the training provided to executive members of French-speaking African regulatory authorities and operators by the grandes écoles (i.e. the most prestigious higher education establishments), known as BADGE training, which enjoys the support, through an agreement, of ENST Paris, the *Agence de régulation des télécommunications* (ART) of Cameroun, the University of Buéa (Cameroun), the French National Frequency Agency (ANFR) and ARCEP. Since its creation, the BADGE programme has provided training to more than 100 people from 15 different countries.

d) Euro-Mediterranean network of Regulators: EMERG

ARCEP was involved in the creation of the Euro-Mediterranean network of Regulators, or EMERG, an initiative financed by the European Commission. In 2009, the Authority monitored the work done by the expert workshops on number retention and market analysis, and took part on the meeting of network representatives, which was held in Brussels in April. The Authority was represented at the plenary session, which took place in January 2010 in Rabat, during which the network's definitive work programme for the year was defined.

e) Bilateral relations

In response to their requests, ARCEP hosted talks with 20 foreign entities involved in the telecommunications and postal services markets (ITU, UPU, foreign regulatory authorities, research institutes, etc.) over the course of 2009.

It also undertook three fact-finding missions overseas, focusing chiefly on developments in fixed and mobile broadband and ultra-fast broadband regulation in two countries: South Korea and China. A summary of these missions was published in French and English on the ARCEP website. ◼

Relationship with economic stakeholders

1.Operators

1.1. Electronic communications operators

Operators of fixed and mobile electronic communications networks that are open to the public, or which provide the public with electronic communications services are the market players that are the most immediately concerned with the work performed by ARCEP. They are subject to a system of prior declaration to the Authority.

As of 31 December 2009, the Authority had recorded 954 declared operators: 892 fixed operators and 62 mobile operators, of which 15 provide both fixed and mobile services. However, because operators are required to declared themselves before they can engage in business, there are several declared operators that have not yet begun marketing their services.

At the end of 2009, 29 of the declared mobile operators were in the overseas markets and 21 were mobile virtual network operators (MVNO).

Operators can declare several activities. Fixed operators had declared the following areas of business:

Network operation and/or establishment	637 operators
Telephone service	421 operators
Service other than telephony	595 operators
including Internet access	*373 operators*
including data transmission	*346 operators*
Including leased line rental	*173 operators*

Source : ARCEP.

The number of operators has increased steadily since the declaration regime was implemented, as illustrated in the following graph:

In 2009, 181 new operators declared themselves, of which a substantial portion were independent entrepreneurs. Worth noting is that, among the declarations made in 2009, there were 17 new mobile service providers, 60 WLAN-Wi-Fi operators, 27 cable operators, of which 10 with a service area limited to three départements or less, and 36 optical fibre operators. In addition, 29 operators, including 12 telephone service providers, put an end to their activities during the year.

Growth in the number of operators
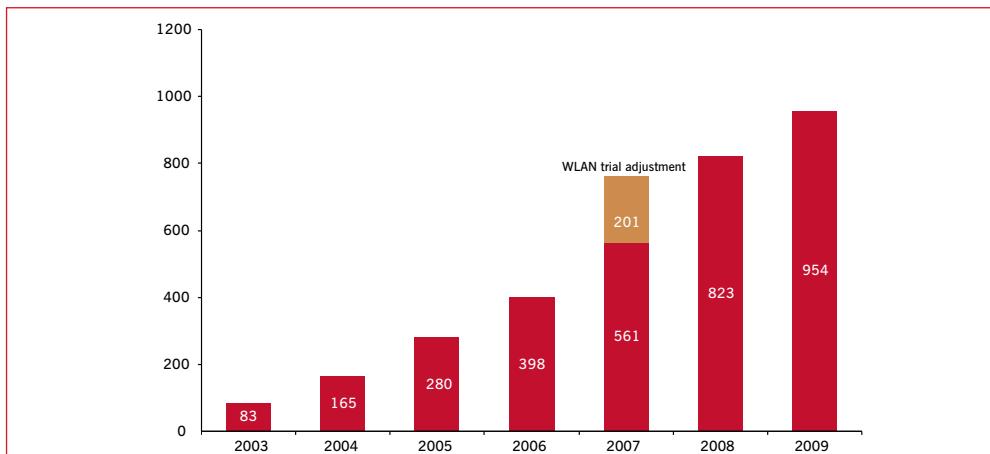
Source : ARCEP.

ARCEP engages in intense and daily interaction with the market's main operators or their representatives in the performance of its duties as regulator. This interaction can take several forms:

- through formal bodies, such as the Electronic communications advisory committee *(Commission consultative des communications électroniques)*, which is consulted by both ARCEP and the Minister responsible for electronic communications, or the Interconnection and access committee *(Comité de l'interconnexion et de l'accès)* which holds a meeting every two months that is chaired by the ARCEP Chairman, and attended by all fixed and mobile operators. It therefore constitutes a forum for direct discussion and exchange with the telecommunications sector, which is of strategic importance for a regulator's work[1];
- meetings with the Executive Board when preparing decisions, dispute settlements or penalty procedures or, more generally, on any topic that is of interest to the Authority;
- specialised, technical meetings which are either bilateral (an average 450 to 500 such meetings take place every year in the Authority's offices), multilateral or of monitoring committees.

Operators are also consulted frequently through public consultations, based on open questions, draft texts or ad hoc questionnaires.

As a result, operators are closely involved in the Authority's decision-making process on all matters of major importance. One case in point is the adoption of a regulatory framework to govern optical fibre rollouts in very densely populated areas, which was published in the *Journal Officiel* (Official Gazette) of 17 January 2010, which led to field trials and several public consultations – first on the guidelines and then on a draft decision – as well as meetings with the leading operators and consultation with competent committees.

The Authority's decision concerning the terms for implementing fixed number portability, which was published in the *Journal Officiel* of 22 November 2009, is just the latest stage in work with operators that has been ongoing since 2007, first within the French association of telecommunications network operators and service providers, Aforst, and later the French Telecoms Federation, FFT *(Fédération française des télécoms)*. In its capacity of observer, ARCEP is currently responsible for ensuring the smooth operation of the group of operator representatives in charge of mobile number retention within the economic interest group, GIE EGP *(Groupement d'intérêt économique Entité de gestion de la portabilité)*, and of fixed number retention within the Fixed number portability association, APNF *(Association de la portabilité des numéros fixes)* which was created in January 2009 in response to the new regulatory framework.

1 - *cf. above (Section 4.2. page 30).*

ARCEP

Working in partnership with general directorate for fair trade, consumer affairs and fraud control, DGCCRF *(Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes)*, the Authority also provides support for the work being done by the French Telecoms Federation, FFT, on providing operators with technical recommendations for implementing the obligation to give out free tariff information at the start of all calls to value-added services, in accordance with the consumer code Order of 10 June 2009. This collaboration with operator (FFT) and service provider (ACSEL) associations is part of a long-term process devoted to concrete measures for restoring consumers' trust in value-added service numbers.

Overall, these different groups representing the sector's stakeholders allowed the Authority to interact and dialogue with market players in an optimal fashion, and facilitated the implementation of its decisions, and of self-regulation or co-regulation mechanisms.

What are operators' obligations?

The Act of 9 July 2004[2] 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. 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, which simplifies the process of engaging in the business of electronic communications operator, while in no way lessening the mandatory compliance with several obligations, of which the main ones are listed below.

In addition to obligations imposed on any operator that enjoys significant market power (SMP), all declared operators are subject to what are called symmetrical obligations. These obligations, which are listed in the Postal and electronic communications code, or CPCE[3], may be either financial or technical in kind.

There are three categories of financial obligation:
- payment of an administrative tax (beyond a certain threshold[4]);
- contribution to the universal service fund (beyond a certain threshold[5]);
- payment of taxes and licensing fees in exchange for the use of scarce resources.

Operators' technical obligations concern:
- the permanence, quality and availability of the networks and services;
- the security of communications;
- network and services standards and specifications;
- prescriptions for reasons of public order, national defence and public safety (notably the implementation of legal interceptions);
- emergency call routing and localisation;
- supervision by ARCEP;
- consumer protection and information;
- preservation and transmission of traffic data, as measures for pursuing penal infractions and the fight against terrorism;
- number portability.

These provisions are applied in accordance with a principle of relevance.

ARCEP recently undertook a series of efforts aimed at reminding operators of their obligations in the area of legal interceptions and providing free routing for emergency calls. It will continue with these efforts, notably in the area of enforcing network security obligations.

---

2 - *Act 2004-669, dated 9 July 2004, concerning electronic communications and audiovisual communication services, JO of 10 July 2004.*
3 - *CPCE Articles L. 33-1, L.34-1, L.34-1-1, L.44 , R.10-12 and D.98 to D.98-12.*
4 - *An operator must have an annual turnover of less than €1 million to be exempt from the administrative*
5 - *An operator must have an annual turnover of less than €5 million to be exempt from the contributing to the universal service fund.*

1.2. Postal operators

Postal operators are subject to an ARCEP-controlled authorisation system. Since June 2006, ARCEP has issued 26 authorisations, 20 of which were still in effect at 1 January 2010. There are two types of authorisation:

- domestic delivery of items of correspondence (12 operators);
- outbound cross-border mail (10 operators).

Two operators hold both types of authorisation.

In 2009, four new authorisations for delivery in France were issued. However, overall, the number of authorised domestic operators fell from 13 to 12 because Alternative Post ceased trading. No new providers emerged in the international mail sector, leaving the 10 existing authorised operators.

Alongside La Poste, the main domestic operator is Adrexo which has its roots in the unaddressed advertising delivery sector and covers virtually all of Metropolitan France. The other operators are SMEs established in a town or region that offer various postal services, including the delivery of items of correspondence.

In the outbound cross-border mail market, the main operators besides La Poste are subsidiaries of foreign postal companies (Belgium, Germany, Great Britain, Netherlands and Switzerland). Mention should also be made of IMX, a French private operator.

ARCEP maintains regular contacts with all postal service providers. Investigation of authorisation requests involves on-the-spot inspections, and operators' progress is also monitored, in particular through the annual Statistical Observatory on Postal Activities published by ARCEP.

The demise of Alternative Post

The cessation of Alternative Post operations was the salient event of the closing months of 2009. In the general context of the economic crisis, the company's shareholders no longer wished to continue investment and, because no new investor was found to take over from them, the company was declared insolvent on 12 November 2009. The Commercial Court in Lyons then pronounced its compulsory liquidation on 25 November 2009.

Alternative Post was set up in 2007 and given its first authorisation on 19 April 2007. Sales boomed, rocketing from €78,000 in 2007 to €1.02 million in 2008. The company developed by opening its own facilities and by working with four franchised operations. The overall network employed some 400 staff.

Alternative Post had developed an original delivery method where letter delivery was based on envelopes with codes printed on them, instead of addresses. Besides identifying the customers and their items, these codes included the recipient's address converted into GPS coordinates. The delivery rounds were prepared according to an optimised route using computers, and list-based delivery was performed using a PDA or a print-out that guided the agent and also made it possible to track delivery.

---

2. Consumers

The Authority holds talks with consumer associations on a regular basis, most notably within the ARCEP Consumer committee (cf. page 29) and works continuously to better inform users, both residential and business customers, of the issues affecting the electronic communications sector.

ARCEP

The Authority's policy with respect to consumption is the expression of a dual purpose:
- to maintain a relationship of proximity with electronic communications service users;
- to identify and analyse the problems expressed by consumers and their associations.

2.1. Maintaining a relationship of proximity with consumers

ARCEP has a team of six people entirely devoted to consumer relations whose goal is to provide a direct response when consumers request clarification on electronic communications services and to provide them with support in their requests for dispute settlement with their operator. The Authority has no specific power to manage disputes between consumers and service providers, which are monitored by the general directorate for fair trade, consumer affairs and fraud control, DGCCRF *(Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes)* or the electronic communications mediator, before being ruled on by courts of First Instance (Court of First Instance and Commercial Court).

The electronic communications mediator

The mediator handles only disputes involving members of the Association of electronic communications mediation, AMET *(Association médiation des communications électroniques)*, which includes five fixed telephony operators (France Telecom, SFR, Bouygues Telecom, Iliad and Numéricâble), three mobile telephony operators (France Telecom, SFR and Bouygues Telecom) and four MVNOs (Carrefour Mobile, Tele2 Mobile, Simplicime and Universal Mobile) which have created a common mediation system.

The mediator makes it possible to reach a friendly agreement on disputes without necessarily having to appeal to the courts. Mediation applies to all types of commercial disputes between a service provider and one of its customers. The mediator is appointed for a three-year term, which can be renewed once, following the opinion of the DGCCRF and approval by consumer associations. Raymond Viricelle has been the mediator since December 2005. He is a fully independent agent and is bound by an agreement to render his verdict within a maximum three months.

A dedicated website for informing consumers, www.telecom-infoconso.fr, was launched in early 2009. It was designed by ARCEP to provide consumers with a wide range of information on the electronic communications services available to them.

2.2. Helping to improve the quality of essential consumer information

In 2009, the Consumer relations division at ARCEP received 6,300 requests, which was 20% fewer than in 2008:
- 3,000 by phone;
- 2,200 by the post;
- 1,100 via e-mail.

This decrease in requests does not necessarily reflect an overall decline in the problems encountered by consumers, but at least a better handling of these problems by operators' customer service departments.

By maintaining a relationship of proximity, the ARCEP team devoted to consumer relations provides an effective interface between users and ARCEP departments by identifying consumer-related issues that fall under the Authority's purview.

The majority of requests from consumers concern their understanding of their contracts, and particularly so-called "unlimited" offers which have caused confusion over what exactly is covered by that term. On the whole, the flow of requests keeps apace with changes in the marketplace and the introduction of new offers.

In 2010, ARCEP will work to ensure that consumers have complete and transparent information on the terms of use and the tariffs charged for the offers to which they subscribe. This involves ensuring that consumers can make an informed choice about both the nature and quality of the services marketed by each operator and the price charged for these services.

Excerpt from the New Year's speech given by the Chairman, Jean Ludovic Silicani, in January 2010

Let us look now at the actions taken on behalf of consumers. This will be an even greater priority for ARCEP in 2010 as it is clear that the situation is still lacking in many respects. ARCEP's actions in this area will be twofold:

- first, it will ensure that operators are capable of developing innovative offers at an affordable price, thanks to a state of fair competition;
- second, along with administrations whose specific mandate is consumer protection, such as the DGCCRF (general directorate for fair trade, consumer affairs and fraud control), ARCEP will work to ensure that consumers, both individuals and businesses, have access to service offerings under satisfactory conditions.

On this second point, it is important to guarantee that consumers have the ability to make an informed choice when subscribing to a service, as much in terms of the nature and quality of the services marketed by each operator, as the price being charged for them.

Allow me to give a few specific examples of the issues that we will be focusing on this year.

Far too often, even though they are innovative, new offers are hard for consumers to understand. For instance, the specific meaning of the term "unlimited", whether applied to telephony or Internet access, is fuzzy and even ambiguous, not to mention misleading and even false in some instances. Some consumers, not many but still far too many, do not understand exactly what their "unlimited" offer means, until they get their astronomical bill.

In the same vein, Internet access solutions over mobile networks are still not advertising their access speeds, which differ from the maximum speeds that current technologies allow. Limiting bandwidth is a legitimate measure for reducing production costs, and therefore prices, but not being transparent about it is not.

On the matter of number portability, while the situation is satisfactory in the mobile market, we still have a long way to go in the fixed telephony market to achieve an automated process between telcos. Too many customers are still struggling to exercise this essential right to keep their number when switching carriers. Moreover, the advent of the quadruple play bundle, which is excellent in and of itself, combining telephony and Internet access on both fixed and mobile networks, can make switching operators an even more complex affair.

By the same token, the cost of switching operators must not be excessive and must not, in itself, prevent customers from taking advantage of a competitive market. Added to which, continuity of service must be ensured, for instance by keeping unwarranted service interruptions to a minimum, which are gently referred to as "slamming", as well as those that occur when switching carriers.

Another example, the Law of 17 December 2009 on battling against the digital divide introduces the right to keep an e-mail address for six months after having cancelled a contract with one's ISP. The new European directives of 25 November 2009 include increased provisions in the areas of number portability, maximum contract lengths, the transparency of offers with respect to consumers and governing the contract cancellation process. ARCEP intends to do its utmost to ensure that these new provisions are quickly and effectively put into application in the French market.

This is why the Authority, notably through its consumer affairs committee, will pursue and step up its efforts on all of these issues, and will provide an account of the situation in a precise and clear manner in the report that it must submit to Parliament in 2010, pursuant to the Law of 3 January 2008 for the development of competition for the benefit of consumers."

3. Equipment manufacturers

ARCEP firmly believes in maintaining strong and constant relations with equipment manufacturers, whether they be from France, Europe or around the world, and with the trade associations that represent them.

These ongoing discussions are an important contributor to the task of regulating electronic communications, particularly for the light they shed on the issues surrounding innovation, investment and economic development.

As a result, ARCEP is committed to having manufacturers fully involved in both its operational and forward-looking efforts. To help deepen this relationship, a task force in charge of coordinating the Authority's relations with equipment manufacturers was created on 1 January 2010, as part of the Spectrum and Manufacturer Relations Department.

Equipment manufacturers are involved in the Authority's work in various ways:
  • regular bilateral talks for exchanging and sharing analyses;
  • manufacturers' contributions to public consultations and ARCEP working groups;
  • monitoring trials and demonstrations;
  • manufacturers' representation on the Electronic Communications Advisory Committee *(Commission consultative des communications électroniques)*, alongside ARCEP and the Minister responsible for electronic communications.

On the matter of mobile networks, for instance, ARCEP consults with equipment manufacturers on a very regular basis when preparing license awards procedures for ultra high-speed mobile networks, notably to establish a forward-looking view of new technologies and applications, and to keep abreast of hardware development and production roadmaps. For fixed networks, ARCEP has created expert committees whose members include equipment manufacturers – their purpose being to establish the technical terms and conditions for increasing access speeds on existing and future networks. ■

The authority's main areas of focus

Autorité de régulation des communications électroniques et des postes

PART TWO

The authority's main areas of focus

Completing the construction of the 3G mobile telephony market

2009 was marked by an important event for the mobile market, namely the award of the fourth 3G mobile telephony licence to Free Mobile, which allows the market in Metropolitan France to evolve to a four-operator structure, as is already the case in most of Europe's largest countries.

1. Background

Up until 2009, France had a particular feature that distinguished it from most other European countries: a quarter of the 2.1 GHz-band spectrum available for use in the deployment of third generation mobile networks, and reserved up until then for a new entrant operator, had yet to be allocated.

And this despite the fact that several calls for applications had been issued:

- the first on 18 August 2000 for the award of four licences: Orange and SFR submitted an application, and both were awarded a 3G licence;
- after the government revised the financial terms for being awarded a 3G licence (applied retroactively to Orange and SFR), a second call for candidates was launched on 29 December 2001 to award the two remaining licences: Bouygues Telecom was the only candidate to respond. It was awarded one licence, which meant that the fourth licence remained available;
- a third call for applications was issued on 8 March 2007: the sole applicant, Free Mobile, did not satisfy the selection criteria, and its submission was rejected by the Authority on 9 October 2007.

This situation led public authorities to engage in discussions over the scheme to be used for awarding the spectrum that was still available at the outcome of these calls for applications. Like what had been allocated to the three licensed mobile operators, this spectrum corresponded to a duplex of 14.8 MHz for an FDD[1] channel arrangement and 5 MHz for a TDD[2] arrangement.

- First, the Law on the development of competition for the benefit of consumers (also known as the "Chatel Act"[3]) stipulates that the article concerning the terms of payment for the 3G licensing fee that are contained in the Finance Act for 2001, which impose the payment of a fee of €619 million the year the licence is issued, will be abrogated once the amount and terms of payment of the new licensing fee are established by regulation, following a parliamentary debate[4].

---

1 - *FDD for frequency-division duplexing.*
2 - *TDD for time-division duplexing.*
3 - *Law No. 2008-3 of 3 January 2008 concerning the development of competition for the benefit of consumers, published in the JO of 4 January 2008, known as the "Chatel Act".*
4 - *Article 22 of Law No. 2008-3 of 3 January 2008 (see above).*

- Second, on 30 April 2008, the government noted the fruitlessness of the call for submissions in 2007 and, on 19 May 2008, requested that ARCEP launch a public consultation on the allocation of the remaining frequencies in the 2.1 GHz band.

Launched by ARCEP on 13 June 2008[5], this public consultation received a number of responses, with several contributors expressing an interest in gaining access to the spectrum that was still available in the FDD band. It also proved instructive on the issues at hand and the possible allocation procedures to be used, and notably on the relevance of continuing to set aside spectrum for a potential new entrant.

Based on these elements, the Authority reported that it could rapidly launch a new call for applications for licences to the 2.1 GHz band, as soon as the government had established the financial terms and conditions, following a parliamentary debate as provided for by the law.

2. Allocation of spectrum to a fourth operator

On 12 January 2009, the Prime Minster announced a global strategy for allocating spectrum to mobile networks: first the launch of a new call for applications for 2.1 GHz-band spectrum, setting aside 5 MHz in an FDD arrangement for a new entrant, followed by the launch of an allocation procedure for the remaining spectrum in the 2.1 GHz band and, finally, a call for applications for the 800 MHz and 2.6 GHz frequency bands, with a view to rolling out ultra high-speed 4G mobile networks.

Following the parliamentary debate that took place in the National Assembly on 5 February 2009 and discussions in the Senate on 11 February 2009, the government announced the new financial terms for spectrum in the 2.1 GHz band that was set aside for a new entrant.

The financial terms were set by a Decree[6] dated 1 August 2009, which includes a set fee of €240 million for a 20-year licence.

At the same time, the Authority adopted a Decision[7] in which it proposed to the Minister responsible for electronic communications that a new call for applications be launched for the allocation of the remaining 2.1 GHz frequencies in Metropolitan France to a new entrant.

The terms applied to this new call for applications were similar to the ones used in the three previous calls, which were issued in 2000, 2001 and 2007. The minimum obligations imposed on the selected candidate were identical to those imposed in previous calls, and the same selection criteria were employed for assessing the candidates, albeit slightly streamlined and updated.

The call for applications was launched on 1 August 2009. Interested parties had until 29 October 2009 to submit their application to the Authority.

A single submission was received: from the company Free Mobile, which is a wholly-owned subsidiary of the Iliad group. In accordance with the planned procedure, ARCEP examined Free Mobile's application in three stages:
- an eligibility stage, which involves verifying that the applicant has satisfied the formal requirements;
- a qualification stage, during which the Authority verifies that the candidate is eligible to be awarded a licence, notably its technical and financial eligibility;
- and, finally, a selection stage, during which the content of the applicant's submission is examined to determine whether it sufficiently satisfies the criteria listed in the call for applications.

---

5 - *The executive summary is available, in French, on the ARCEP website: http://www.arcep.fr/uploads/tx_gspublication/synt-consult-3g-2ghz-220908.pdf*
6 - *Decree No. 2009-0948 of 29 July 2009 amending Decree No. 2007-1532 of 24 October 2007, published in the JO of 1 August 2009.*
7 - *Decision No. 2009-0610 of 16 July 2009.*

On 18 December 2009[8], the Authority accepted the application submitted by Free Mobile.

As a result, on 12 January 2010[9], ARCEP awarded Free Mobile a licence to use frequencies to establish and operate a 3G mobile network in Metropolitan France. This licence lists the commitments made by Free Mobile in its application dossier, which include commitments to mobile virtual network operators such as hosting full MVNOs on its network. Other commitments include the commercial launch of its network a maximum two years after having been awarded the licence, and coverage of at least 90% of the population within eight years.

3. Allocation of the remaining spectrum in the 2.1 GHz band

Once this allocation procedure was complete, there remained a 9.8 MHz duplex of FDD frequencies still available in the 2.1 GHz band in Metropolitan France.

The call for applications for these frequencies was issued on 25 February 2010, with a deadline for submissions of 12 p.m. on 11 May 2010. Three applications were submitted before the deadline: by the companies Free Mobile, Orange France and SFR. Following an examination of these applications, ARCEP selected the application submitted by SFR for the 5 MHz block and the one submitted by Orange France for the 4.8 MHz block. These two blocks were awarded for the combined sum of €582,098,871. ■

2

The authority's main areas of focus

Ensuring good coverage nationwide

1. Providing coverage in broadband dead zones

Around 98.5% of the French population is now eligible to receive a broadband access offer, with a potential downstream speed of 512 kbps[1].

The majority of the broadband services marketed by operators are supplied over the France Telecom local loop which was initially designed to provide the telephone service. DSL technologies currently account for close to 95% of the fixed broadband connections being supplied.

Broadband dead zones are often synonymous with those areas not covered by DSL services, which can be explained by the fact that consumers' expectations naturally crystallise around the technology that is the most widely used in France to access a broadband solution.

According to this approach to qualifying broadband dead zones, of the 29.5 million main residential lines that are in service, around 450,000 of them are ineligible to supply DSL services.

This ineligibility is due chiefly to the length of the lines. Beyond a distance of around 4.5 km, the signal carried over the copper line is weakened to such an extent that it makes it impossible to provide broadband access over ADSL. According to France Telecom, some 310,000 lines are ineligible because they are too long.

Multiplexing equipment is another cause of ineligibility on copper lines. This is equipment that makes it possible to use the same copper line to provide services to several subscriber lines. Around a third of the lines in dead zones cannot deliver broadband access because of their multiplexing. This national average must nevertheless be taken with some caution, as local situations can vary.

Here, the Law of 17 December 2009[2] on bridging the digital divide requires ARCEP to submit a report to Parliament in summer 2010 which includes "*details on the technical, economic and regulatory terms for eliminating multiplexed lines*".

A number of technical solutions make it possible to deliver high-speed services to these areas. As of summer 2009, there were an estimated 50,000 households accessing a high-speed service using an alternative wireless terrestrial solution. This figure is rising steadily as rollouts are ongoing, most of which are being performed on the initiative of local authorities. New satellite-based projects are also expected

---

1 - *With no caps on the amount of data that can be exchanged.*
2 - *Article 32 of Law No. 2009-1572 of 17 December 2009, referred to as the "Pintat Act", on bridging the digital divide, published in the JO of 18 December 2009.*

to supply complementary solutions, notably as part of the "*France Numérique 2012*" (Digital France 2012) plan.

Last is the dead zone subscriber connection point plan, referred to as NRA-ZO (*Noeud de raccordement d'abonnés Zone d'Ombre*), which involves a reconfiguration of the copper local loop and which can be offered by France Telecom and all market operators. It is being employed in several projects, and particularly in partnership rollout schemes that are departmental or regional in scale.

2. Completing 2G and 3G mobile coverage

Mobile coverage was a major area of focus in 2009. ARCEP devoted considerable efforts to information by publishing, at the request of Parliament, status reports on 2G and 3G coverage in August and December, respectively. It also performed an audit of Orange and SFR rollout obligations and found that both of these operators' coverage was below the levels stipulated in their commitments: in accordance with the Law, both of these operators were therefore issued an official notice to comply with their obligations within a proportionate but ambitious timeframe. Finally, the Authority set the framework with a view to having operators share their 3G network installations.

2.1. 2G coverage

In application of Article 109-V of the Law on modernising the economy (LME)[3], on 7 August 2009 ARCEP published a status report[4] on second generation (GSM) mobile coverage in mainland France and the overseas départements.

The status report reveals that, at the start of 2009, each of the three mobile operators covered around 99% of the population with GSM services. It underscores the fact that the operators were still investing in covering the entire country with GSM, especially as part of the "dead zone" programme which is to be completed by 2011, and in accordance with their obligations to cover the main transportation arteries – by the end of 2009 for Orange and SFR and by the end of 2010 for Bouygues Telecom. The report also provides details on the status of grey areas[5] and the outlook for their eradication.

In addition, ARCEP verifies the accuracy of the coverage maps that operators publish on their websites.

a) 2G coverage status

Providing the population with mobile communication services is a major regional development issue, and needs to be viewed with respect to each successive generation of technology.

Two coverage indicators are calculated for the purposes of this status report:
- surface area coverage measures the proportion of the surface area in the zones identified as being covered on each operator's coverage map;
- the rate of coverage for the population is measured based on the country's estimated population density. Although relatively accurate, this method is still approximate as it depends on the granularity of the population data used.

As of 1 January 2009, 97.8% of the population of mainland France was covered by all three mobile operators at once, which represents 86% of the country's surface area (black areas). Areas covered by at least two operators correspond to 99.3% of the population, and 94% of the country's surface area and, finally, 99.82% of the population in Metropolitan France is covered by at least one mobile operator, which corresponds to 97.7% of the country's surface area.

---

3 - Law No. 2008-776 of 4 August 2008 on modernising the economy, published in the JO of 5 August 2008.
4 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/rapport-complet-bilan-couv2G-aout09.pdf.
5 - Areas not covered by all operators.

2G coverage in France (as of 1 January 2009)
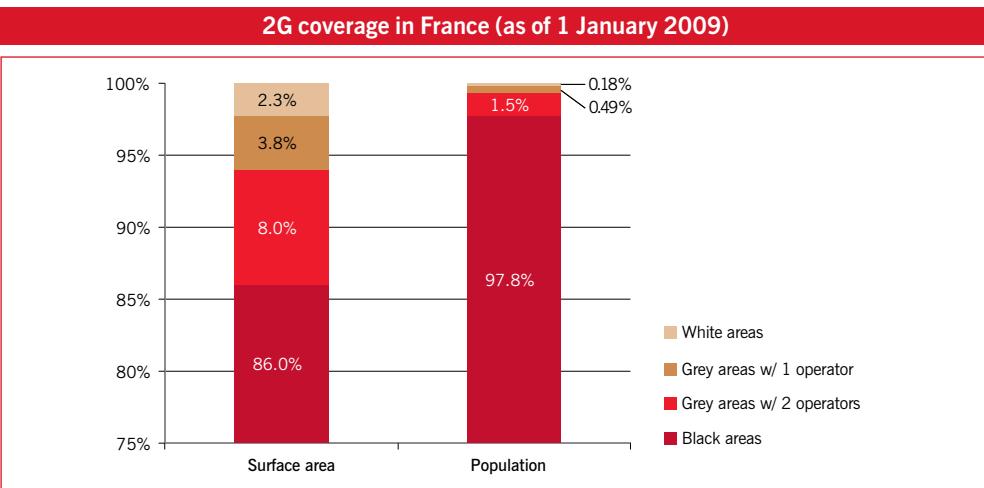
Source : ARCEP.

Orange has achieved the broadest coverage (99.6% of the population and 95.9% of the country's surface area), while SFR and Bouygues Telecom have similar rates of coverage in terms of the population, of around 98.7%. In terms of surface area, SFR covers 91.3% of the country and Bouygues Telecom, 90.6%.

Zones that are without broadband coverage, i.e. dead zones, are estimated to represent 0.18% of the population, or around 100,000 inhabitants, which corresponds to 2.3% of the country's surface area.

There are also areas that are covered by only some of the operators. These are referred to as "grey areas." They are covered by one or two operators, but not all three, which can be attributed to one of several reasons:

- it may be the result of different investment strategies on the part of the operators. Mobile coverage has indeed required each operator to make substantial investments in their network over the past fifteen years or so. Expanding coverage has been central to the competition between the players, which has naturally led to a situation where not all operators have covered exactly the same areas;

- or it may tied to technical reasons: the different locations of the cell towers, or the use of hardware that is configured differently can create slight differences in operators' coverage zones. This results in more or less large grey areas, which may nevertheless amount to a considerable size when taken as a whole.

As of 1 January 2009, around 2% of the population were living in grey areas, which are located across the country[6] and can represent a substantial portion of certain départements[7].

A distinction nevertheless needs to be made between areas where two operators are present and those where only one operator is. It is true that, in the vast majority of cases, customers in grey areas have a choice between two operators, as opposed to being covered by only one: three quarters of the country's grey areas are in fact served by two operators.

Since Orange has the broadest coverage, most grey areas are due to the absence of either SFR or Bouygues Telecom. The grey areas where these two operators do not provide coverage are comparable in size,

2

The authority's main areas of focus

6 - 25% of municipalities have more than 10% of their population in a grey area.
7 - Grey areas represent 12% of the surface of mainland France.

accounting for 1.13% and 1.15% of the population, respectively, and for 6.5% and 7.1% of the country's surface area. The grey areas where Orange does not provide coverage represent 0.25% of the population and 1.87% of the country's surface area.

Distribution of grey areas between operators

% of population covered
% of surface area covered
(Taux calculés pour l'ensemble de la métropole)

Orange
0.35%
(2.6%)

Black Areas
(3 operators)

0.72%
(3.8%)

0.72%
(3.5%)

Grey Areas
(2 operators)

97.8%
(86%)

Grey Areas
(1 operators)

0.08%
(0.76%)

0.06%
(0.45%)

SFR

0.11%
(0.66%)

Bouygues Télécom
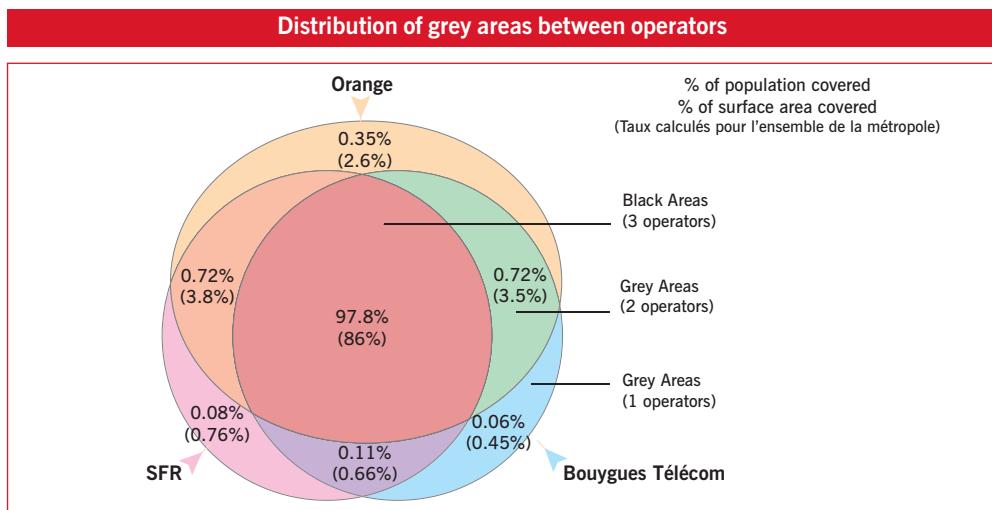
Source : ARCEP.

The operators continue to invest in their 2G networks. They are still deploying cell towers to match the competition's footprint in grey areas, as coverage continues to be a key sales argument for operators.

- Orange states that it plans on covering 170 grey areas and, for half of them, will be asking either SFR or Bouygues Telecom for access to one of their sites;

- SFR has announced its plans to invest a possible €150 million in 2G in 2009, without saying how much of that will be for expanding coverage in grey areas;

- and, finally, Bouygues Telecom states that it has no dedicated grey area plan, and is not planning any 2G rollouts under the current programme, but does believe that the deployment of a shared 3G network could help reduce the number of grey areas.

b) National "dead zone" programme

The status report on 2G coverage that ARCEP produced at the request of Parliament also addresses the progress being made by the national programme for covering those areas still not covered for 2G, which are referred to as "dead zones" or white areas (*zones blanches*).

The dead zone programme (*programme zones blanches*) was launched by the government, ARCEP, local authorities and mobile operators to bring mobile telephony coverage to the 3,000 towns of France where none of the three operators were present when the national agreement was signed in 2003. This programme allows each operator to cover 99% of the population (a figure that has since been included as an obligation in the terms of operators' licences). Also worth noting is that, once the programme is complete, 99.3% of the population will be covered by all three operators.

The agreement provides for two phases: Phase I, which has been funded in part by public monies, and Phase II which is funded entirely by the operators, in accordance with the terms of the licences. These two phases took place simultaneously.

After an inventory conducted locally in early 2008, under the supervision of the Prefects, it emerged that 364 town centres that were not yet covered had in fact been omitted from the initial inventory performed back in 2003. A decision was therefore made to extend the initial dead zone programme to include these towns.

As a signatory of the national agreement in 2003, the Authority is an active member of the programme's technical steering committee, which monitors the progress being made, the deployment of high-speed mobile at the sites and any problems that operators may have encountered.

As of 30 November 2009, 2,883 town centres had been covered thanks to the plan, with 427 still to go before the programme's completion at the end of 2011.

It should be mentioned that the coverage of a municipality's town centre does not necessarily mean that the mobile service covers the entire town and its surrounding area. This explains why, even once the programme is complete, there will still be some areas that continue to be without coverage, either because they are hard to access or because they have very few or even no inhabitants.

c) Major transportation arteries

The status report on 2G mobile coverage that ARCEP produced also provides details on the coverage of major transportation arteries.

Under the terms of their licences, mobile operators are obligated to cover the country's major transportation arteries. These arteries were defined in a national agreement, under the auspices of the Minister responsible for regional development in February 2007: these are roads and motorways where traffic exceeds an average 5,000 vehicles a day, and the roadways in each *département* that connect the prefecture (i.e. the *département's* administrative capital) to the sub-prefectures (secondary administrative centres). Orange and SFR were to have completed coverage of these arteries by the end of 2009, and Bouygues Telecom is to have done so by the end of 2010. This programme will also contribute to the eradication of white areas. In early 2010, ARCEP found that there were still around 5% of these roadways that had yet to be covered by Orange and SFR, and requested additional reports from the two operators to be able to assess the situation and the measures that needed to be taken.

Lastly, ARCEP is closely monitoring the work being performed by the different players to improve mobile coverage on rail transport lines. Here, ARCEP is encouraging the three mobile operators to take full advantage of the opportunities to share their infrastructure which could be opened up by the deployment of GSM-R, particularly in tunnels. It is also securing commitments from mobile operators and railway companies to perform more advanced trials on repeaters onboard trains.

d) Accuracy survey of coverage maps

To encourage greater transparency for mobile coverage nationwide, in March 2006 ARCEP introduced new terms in operators' GSM licences when they came up for renewal. Operators are thus required to publish their coverage maps and to verify their accuracy with field surveys that are performed in accordance with a protocol defined by ARCEP[8]. The field survey protocol[9] is available to the public, and can thus be implemented by any party or local authority.

The operators are responsible for the accuracy of these maps which indicate outdoor coverage. They are calculated with a resolution of around 250 metres in rural zones and around 50 metres in urban areas, as a result of which dead zones below this resolution may exist in areas that are indicated on these maps as having coverage.

2

The authority's main areas of focus

---

8 - *The coverage maps published by operators are available online at the following urls:*
   http://couverture-reseau.orange.fr - http://www.sfr.fr/assistance/reseau-sfr-france - http://www.couverture.bouyguestelecom.fr
9 - *ARCEP Decision No. 2007-0178, dated 20 February 2007.*

In 2008, Orange, SFR and Bouygues Telecom performed surveys in 250 districts/municipalities in Metropolitan France to measure the accuracy of their maps compared to the reality in the field, the results of which were submitted to ARCEP in January 2009. These surveys revealed that the maps are over 96.5% accurate when compared to measurements taken in the field[10]. Despite being good on the whole, the accuracy of these maps still needs to be improved in certain districts, for which ARCEP reminded operators of the need to correct the published map, and demanded that new surveys be performed in these areas in 2009[11].

It should be noted that the efforts that operators have been making since 2007 to improve the accuracy of their coverage maps are starting to bear fruit, but they need to continue to make progress to further increase their reliability.

On 10 March 2009[12], ARCEP included a new list of 251 districts to be audited by the operators in 2009

2.2. 3G coverage

a) Status report produced at the request of Parliament

On 22 December 2009, ARCEP published a scorecard on 3G mobile coverage which had been requested by Parliament[13]. This document provides an account of the status of 3G coverage in Metropolitan France, and furnishes an overview of the outlook for expanded coverage in the coming years.

This progress report also details the audit of 3G coverage obligations that Orange France and SFR were to have met by 21 August 2009, and the procedure for verifying the two operators' compliance with their rollout obligations by that deadline, in accordance with the terms attached to their 3G licences.

ARCEP sought to depict the state of availability of 3G services across the country as accurately as possible in its report. It therefore employed an approach that combined the notions of coverage and quality of service:
- the notion of coverage is meant to qualify those areas where users can make a voice call on a 3G network, outdoors, in a static situation, for one minute. This notion of 3G coverage is analogous to the one used for 2G;
- the quality of service metric is intended to assess the 3G services, and notably the speeds, which are actually available in the covered areas, for which ARCEP relied on the quality of service surveys that it performs every year.

Indeed, once an area is covered, it is the quality of the service that counts, which depends in particular on the provision of access rates that are sufficient and suited to the supply of different types of services.

b) Orange and SFR issued an official notice to comply with their rollout obligations

ARCEP also performed an audit of Orange and SFR 3G coverage obligations on the deadline set by their licences, 21 August 2009. It revealed that, as of this date, Orange and SFR covered 84% and 74% of the population, respectively, whereas they were to have achieved 98% and 99.3% coverage by that time.

As part of a procedure that was opened by the Director of the Authority's Legal Affairs Department in September 2009, based on Article L. 36-11 of the code governing French postal and electronic communications markets, CPCE (*Code des postes et des communications électroniques*), on 30

---

10 - Because of uncontrollable variations in radio propagation in particular, it is very difficult to achieve 100% accuracy.
11 - As provided for in Decision No. 2007-0178.
12 - Decision No. 2009-0200 of 10 March 2009.
13 - Available online (in French) at: http://www.arcep.fr/uploads/tx_gspublication/synthese-rapport-atlas-couv3g-dec09.pdf.

November 2009 the Director General of ARCEP issued Orange and SFR with an official notice to comply with their 3G coverage obligations.

Orange was thus ordered to achieve a coverage level of 91% of the population by the end of 2010 and of 98% by the end of 2011.

For its part, SFR was ordered to achieve a coverage level of 84% of the population by 30 June 2010, 88% by the end of 2010, 98% before the end of 2011 and 99.3% by the end of 2013.

The decisions[14] that made public the Decisions of 30 November 2009 that were issued by the Director General of ARCEP, serving SFR and Orange with an official notice to comply with the terms listed in their licences, were published on the ARCEP website, along with the 3G status report.

It should also be mentioned that, as of 1 December 2009, Bouygues Telecom reports covering 80% of the population, which is above the rollout obligation of achieving 75% coverage by December 2010 listed in the terms of its licence.

And, finally, in accordance with its first rollout deadline, Free Mobile – the last operator to be awarded a 3G licence, eight to nine years after its three competitors – must cover 27% of the population in 3G by 13 January 2013.

c) 3G coverage of over 87% of the population

- As of 1 December 2009, Orange reports that it was covering roughly 47% of the country's surface and around 87% of the population in 3G. This coverage had been achieved thanks to the installation of more than 11,000 3G sites.

The quality of service surveys conducted by ARCEP also revealed that Orange had achieved a median downstream access rate in 2008 of around 1.7 Mbps, and access speeds of 3.4 Mbps in 10% of the tests. For data transmission, Orange was providing median upload speeds of around 450 kbps in 2008, and a speed of 690 kbps in 10% of the tests. Initial results from the 2009 survey tend to show that, on average, downstream and upstream speeds have increased by more than 50% and by 100%, respectively, since 2008.

- For its part, SFR announced that, as of 1 December 2009, it was covering roughly 81% of the population. The SFR coverage map for that date corresponds to coverage of around 33% of the surface area of France. This coverage had been achieved thanks to the installation of close to 8,200 3G sites.

The quality of service surveys conducted by ARCEP revealed that SFR had achieved a median downstream access rate in 2008 of around 1.7 Mbps, and access speeds of 2.4 Mbps in 10% of the tests. For data transmission, SFR was providing median upload speeds of around 480 kbps in 2008, and rates of 650 kbps in 10% of the tests. Initial results from the 2009 survey tend to show that, on average, downstream and upstream speeds have increased by more than 50% and by 100%, respectively, since 2008.

- Finally, Bouygues Telecom reports that, as of 1 December 2009, it was covering roughly 40% of the surface area of France and roughly 80% of the population. This coverage had been achieved thanks to the installation of around 7,000 3G sites.

The quality of service surveys conducted by ARCEP revealed that Bouygues Telecom was achieving a median downstream access rate in 2008 of around 900 kbps, and speeds of 1.2 Mbps in 10% of the tests. For data transmission, Bouygues Telecom was providing median upload speeds of around 315 kbps in 2008, and speeds of 464 kbps in 10% of the tests. The disparities in these performance levels compared to those achieved by Orange and SFR are due in part to the gaps in 3G rollout levels

2

The authority's main areas of focus

---

14 - *Decisions No. 2009-1064 and No. 2009-1065 of 22 December 2009.*

when the surveys were performed. Initial results from the 2009 survey tend to show that, on average, Bouygues downstream and upstream speeds have increased by more than 50% and by 100%, respectively, since 2008.

We can also mention that Bouygues Telecom has deployed its 3G coverage with a different pattern than Orange and SFR. By comparison, the operator provides relatively extensive coverage of the outskirts of cities, and less coverage in city centres. The result is that Bouygues Telecom now covers areas that are, on average, less densely populated than those covered by its two competitors, and especially that Bouygues Telecom covers a smaller percentage of the population with 3G, even though it covers more surface area. The operator reports that it has had to contend with certain set-backs in its recent attempts to close the gaps on its 3G coverage, due in particular to the increasing difficulty in deploying cell towers in city centres.

The surveys also revealed that overall national coverage is greater than the level achieved by the operator with the largest footprint, the result being that over 87% of the population of mainland France is covered by a 3G service.

d) Methods for extending 3G coverage

3G network rollouts are ongoing – the goal being to expand coverage across the country and increase the network's density to be able to satisfy the rise in traffic and improve quality of service.

Reuse of existing 2G sites for 3G

On the whole, operators will continue to reuse existing 2G sites to deploy 3G. Tens of thousands of sites have already been installed, and currently allow 2G networks to cover virtually the entire population of Metropolitan France. This represents a major asset, in terms of both cost and time savings for 3G rollouts.

Operators will continue to deploy 3G in the 2.1 GHz band on existing second generation sites, particularly in areas where the population density is enough to justify the use of high frequencies. They therefore plan on equipping a considerable number of sites in this band, including in those areas that are already covered, to continue to improve the quality of service. In addition to increasing the number of sites, operators will also be deploying the latest UMTS technology upgrades which, in the short term, will enable peak bitrates of 14.4 Mbps and even 28.8 Mbps further down the road, and will continue to work on increasing the capacity of their collection networks.

Reuse of 900 MHz-band spectrum for 3G

Operators have begun to reuse the 900 MHz frequency band which was initially assigned to GSM for providing UMTS services. In rural areas, the use of this band will make it possible to deploy 3G with fewer sites than what would be required by the 2.1 GHz band, for equal coverage. In densely populated areas, use of this band will also help improve the quality of 3G services indoors and in general in all locations where propagation conditions are not optimal. The use of low frequencies enables broader coverage than high frequencies due to their superior propagation properties. This is particularly useful in more sparsely populated areas where GSM sites were meshed to be able to make use of these frequencies, and which can therefore be reused directly for deploying 3G in the 900 MHz band.

Site sharing

Lastly, operators are allowed to share their 3G installations in those areas where it is relevant. Having operators share their cell sites is likely to help ease mobile network deployments across the country.

e) Outlook for expanding coverage

By achieving 99.3% coverage of the population with its 3G network, by 2013 SFR will have reached a level comparable to current 2G coverage in Metropolitan France.

Meanwhile, Orange and Bouygues Telecom have stated, in a letter, their desire to pursue their 3G mobile network deployments beyond their rollout obligations, and so to also achieve 3G coverage equal to current 2G levels.

As a result, according to their forecasts, operators' 3G coverage will make it possible to serve 98% of the population by the end of 2011. By 2013, 3G coverage will have reached the same level as 2G, in other words 99% of the population.

Of particular note is the fact that the three operators have committed to have upgraded all 2G sites listed in the national mobile "dead zone" coverage programmes to 3G by 2013, as part of a shared network.

As to Free Mobile, under the terms of its second and final rollout deadlines, set for January 2015 and January 2018, it is to have achieved coverage of 75% and then 90% of the population. By taking advantage of its roaming rights on one of the other operator's 2G networks during its first six years of operation, Free Mobile could, however, complete its 3G coverage with 2G coverage in certain parts of the country.

f) Mobile network sharing will ease the process of increasing 3G coverage

Pursuant to the Law on modernising the economy, on 9 April 2009 ARCEP issued a decision that sets down the principle of sharing third generation mobile network installations in mainland France[15], and implemented a time-limited discussion process whose purpose was to produce a framework agreement for sharing between operators.

The discussions between Orange, SFR and Bouygues Telecom resulted in an agreement between the three operators in February 2010.

3G "RAN sharing" scheme between the three operators
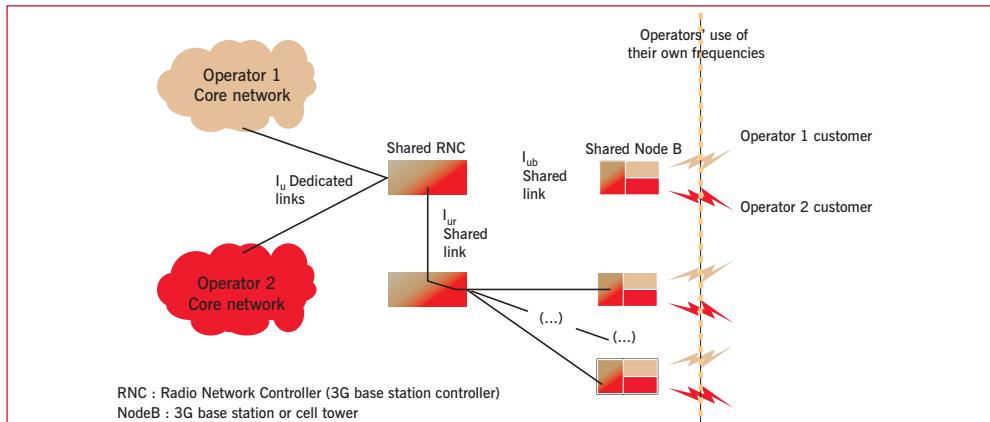
Source : ARCEP.

This radio access network sharing (or RAN sharing) configuration will be implemented in the areas listed in the national 2G "dead zone" coverage programme, and in certain sites outside these areas.

The deployment of RAN sharing in the 2G "dead zone" coverage areas will make it possible to upgrade

---

15 - *Decision No. 2009-0328 of 9 April 2009 concerning the sharing of third generation mobile network installations in mainland France.*

these sites to 3G by the end of 2013, in other words in less time than it would take each operator to perform its own deployments.

In addition, if the deployment of a shared network will help ease the process of increasing 3G coverage, and make it possible to achieve a level comparable to current 2G coverage more quickly, it could also make it possible to go beyond that, providing 3G coverage in 2G grey areas, i.e. those areas not yet covered in 2G by all three operators.

The licence issued to the fourth mobile operator required changes to be made to the framework agreement signed by the first three operators, to include Free Mobile in the system under fair conditions. All four operators are therefore involved in discussions moderated by ARCEP, to reach an agreement by mid-2010 that satisfies the objectives stipulated in the Law on modernising the economy, and the principles set out in the ARCEP Decision of 9 April 2009.

It should be mentioned that, in its licence application, Free Mobile committed to contributing €38 million for helping to finance shared 3G network rollouts in the areas listed in the 2G "dead zone" programme, which involves the installation of 825 cell sites. The central issue of the negotiations between the operators is assessing to what extent, and in what way, Free Mobile can be included in the sharing scheme, without undermining the scope of deployments or the timetable on which existing operators have agreed, while taking Free Mobile's commitment into account.

g) ARCEP audit of 3G coverage obligations

In due course, ARCEP will perform a close verification of all of the operators' compliance with their coverage obligations, and particularly those imposed on Orange and SFR as a result of their notices to comply. The deadlines to which they are subject are as follows:
30 June 2010: SFR must be covering 84% of the population;
31 December 2010: SFR and Orange must be covering 88% and 91% of the population, respectively;
31 December 2011: SFR and Orange must be covering 98% of the population;
31 December 2013: SFR must be covering 99.3% of the population.
ARCEP will naturally verify the results of the final Bouygues Telecom deadline and the first Free Mobile deadline as well.

Furthermore, ARCEP is awaiting the signature of the framework agreement for sharing third generation mobile networks between the country's four licensed operators, by 31 May 2010. The Authority will ensure that the terms of this framework agreement comply with Decision No. 2009-0328, notably with respect to the terms and conditions offered to newcomer, Free Mobile.

3. Improving services in overseas markets

Over the course of 2009, a number of players – public sector players, operators and users alike – raised questions over the terms governing access to electronic communications services in the French overseas markets.

This was one of central topics of discussion during the run-up to the parliamentary vote on 27 May 2009 on the Law concerning the economic development of overseas markets, commonly referred to as LODEOM (*Loi pour le développement économique de l'outre-mer*)[16], which confers on ARCEP the task of providing details on the state of these markets in a report to Parliament.

Article 28 of this Law stipulates that "The electronic communications and postal regulatory authority will submit to Parliament, no later than nine months following the adoption of the present act, a report on the overseas départements and collectivities where it has jurisdiction which concerns, first, the

---

16 - *Law No. 2009-594 of 27 May 2009 concerning the economic development of overseas markets (LODEOM) published in the JO of 28 May 2009.*

terms of price formation for electronic communications services, the gaps between real network capacities and the capacities being used and price levels and, second, the terms governing the formation of fixed and mobile telephony service prices. The Authority will focus in particular on excessive billing of roaming calls made to or from the overseas collectivities and between these collectivities".

Moreover, in a letter dated 22 April 2009, the Secretary of State for Overseas France and the Secretary of State in charge of Industry and Consumption requested that ARCEP produce a document that provides a *"status report on the development of the electronic communications sector in the overseas départements,"* and which suggests *"measures capable of stepping up this development that would be beneficial to consumers."*

In accordance with these legislative provisions, and to satisfy the government's request, in the second half of 2009, ARCEP produced a *Report on the electronic communications sector in the overseas regions*[17], which was made public on 8 January 2010. To produce this report, the Authority met with all of the interested parties in mainland France and in the overseas départements.

The report reveals a situation of contrasts between the different markets that make up the electronic communications sector. The fixed telephony markets overseas are by and large comparable to markets in mainland France. Mobile services markets in the overseas départements are very competitive and offer users attractive prices, despite an inevitable additional cost tied to roaming-out calls for users travelling between mainland and overseas France. On the other hand, fixed broadband retail market offers are less attractive overseas than in Metropolitan France. This is due to the fact that the overseas markets are smaller and players have to contend with higher fixed costs, and to the bottleneck caused by the necessary use of undersea cables to access the global Internet.

In its report, ARCEP formulated several proposals and recommendations for enabling the development of more attractive offers in the overseas markets.

- The Authority recommends that more recognition be given to overseas markets in general, and that they be systematically taken into account, which supposes two complementary approaches: first, making a better assessment of the realities of these markets by collecting and disseminating local statistical data and, second, recognising the central role that overseas operators can play in finding and implementing solutions for furthering the development of this sector.
- ARCEP suggests reserving a portion of the digital dividend for mobile services markets, as was done in mainland France.
- In fixed broadband markets

The Authority suggests, first, that competition mechanisms be improved – for instance by publishing quality of service indicators for wholesale solutions for each *département* or collectivity.

Second, ARCEP recommends new forms of public involvement:

- in the retail market, changes need to be made to the regulatory framework even more so than in mainland France, to allow welfare recipients who subscribe to bundled offers that include a fixed telephone service to benefit from the universal service tariff reduction;

- in the undersea cable market, the Authority recommends:
  - examining the possibility of creating a public or private structure that would be in charge of centralising all requests for undersea cable capacity to help balance supply and demand, and which could receive public funding;

2

The authority's main areas of focus

_____

17 - Report available, in French, on the ARCEP website: http://www.arcep.fr/uploads/tx_gspublication/rapport-dom-080110.pdf.

- improving tax exemption schemes – first, by reinforcing the conditions for providing access to cable capacity to all operators in the criteria for awarding aid and, second, by making the purchase of IRU (indefeasible rights of use) eligible for tax exemption under certain conditions;

• finally, to limit the traffic being routed by the undersea cables between mainland France and the overseas *départements* to only what is strictly necessary, ARCEP recommends encouraging market players to install servers in the overseas *départements* and collectivities for hosting the most popular content – with the help of public financing if necessary.

The ARCEP report also provides stakeholders with a framework for discussions to help them find shared solutions and to facilitate their implementation, in addition to demonstrating that the State has a decisive role to play in organising discussions between public authorities and private sector players to develop a high quality offer at affordable prices for our fellow citizens overseas. ■

Enabling the transition to ultra-fast broadband

1. Fixed broadband and ultra-fast broadband

1.1. Ultra-fast broadband

The volume of data streams being exchanged on the Internet, and over fixed networks in general, is increasing at a strong and steady pace, spurred in particular by the massive development of audiovisual content. The gradual extension of optical fibre to the last mile of fixed networks – to customer premises, in other words – will make it possible to support this overriding trend. Although well underway in Japan and South Korea, fibre rollouts are still in the early stages in Europe, and notably in France where the ADSL market's momentum is fertile ground for the development of optical fibre.

Fibre to the home, or FTTH, is a forward-looking infrastructure that will make it possible to satisfy users' growing needs. In the short term, optical fibre will enable symmetrical data rates of around 100 Mbps on access networks, and potentially much more in the longer term given the technical potential of fibre. This in turn will enable the development of new services and applications on optical fibre access networks that will help spur innovation.

It was within this context that ARCEP set itself the goal in 2009 of defining the regulatory framework needed to stimulate investments in and the large-scale deployment of optical fibre networks to the home.

The regulatory framework must encourage optical fibre rollouts while continuing to pursue the objectives set for the sector's regulation, and particularly lasting infrastructure-based competition. The Authority therefore adopted two main tools to stimulate these deployments and to open up an economic area for optical fibre rollouts by alternative players:

- asymmetrical regulation of France Telecom civil engineering infrastructure. This regulation allows alternative operators to deploy their horizontal networks in France Telecom infrastructure under reasonable technical and economic conditions, without duplicating existing civil engineering infrastructure;
- symmetrical regulation on the last mile of optical fibre networks. In late 2009, ARCEP defined the rules for sharing the last mile of FTTH networks in very densely populated areas in France, and adopted a portion of these regulations to apply to the entire country.

These two elements form complementary halves of market regulation, and their adoption will help step up optical fibre rollouts across the country in 2010.

2

The authority's main areas of focus

a) Regulation of France Telecom civil engineering infrastructure

Providing access to existing civil engineering infrastructure is a crucial part of the economic equation of optical fibre ultra-fast broadband network rollouts, as civil engineering works account for between 50% and 80% of deployment costs.

Pursuant to the ARCEP market analysis Decision of 24 July 2008, as the SMP operator, France Telecom became subject to an obligation to provide access to its civil engineering ducts and manholes, which it inherited from the former public monopoly. This access must be provided under transparent and non-discriminatory conditions, and at cost-oriented prices. France Telecom therefore published a first reference offer on 15 September 2008, following the work and a series of multilateral trials conducted under the auspices of ARCEP.

This work carried on into 2009, and primarily involved automating the processes that make up the reference offer, to enable all operators to perform large-scale rollouts. France Telecom published a new version of this offer for accessing its civil engineering ducts on 29 April 2009, which incorporated several operational improvements that had been discussed in the multilateral working group.

The main issues addressed over the course of 2009 concerned:
- the installation by France Telecom of a centralised point of entry for all access requests, and a streamlining of the order process;
- the implementation of a geographical information system that is common to all operators, on which exchanges between the operators and the France Telecom platform dedicated to civil engineering will be based;
- structuring application dossiers according to size to distinguish, on the one hand, horizontal structural meshing along the main arteries and, on the other, connection of buildings on a case-by-case basis;
- the prior transmission of the most comprehensive information possible (existing studies, deployed networks, etc.).

In 2009, the France Telecom duct access offer went from the experimental stage to being employed concretely for the first substantial rollouts by alternative operators: on the outskirts of Paris where optical fibre deployments are being conducted along the sewer system. Alternative operators' fibre deployments in France Telecom ducts represented around 560 km of optical fibre cable as of 31 December 2009. The areas being covered included some 20 municipalities in the Paris region and in major urban centres, or more than 500,000 homes passed at term.

We expect to see this offer – whose operational and non-discriminatory nature is key – translate into widespread adoption of fibre services in 2010.

In addition, ARCEP continues to work actively to ensure that France Telecom complies with its obligation to provide non-discriminatory access to its civil engineering ducts, and particularly the equal treatment of processes that the incumbent carrier uses for its own deployments and those used by other operators. In early 2009, France Telecom therefore submitted a formalised description of its internal sales processes. Work also continued on developing the engineering rules for accessing France Telecom ducts, and the systems for treating depletions in the ducts, to optimize the available space and allow several operators to perform actual deployments in both the civil engineering ducts and the access chambers (i.e. manholes).

Lastly, ARCEP held a public consultation from 17 December 2009 to 15 February 2010 on the economic terms governing access to France Telecom local loop civil engineering ducts. The Authority will draw on the responses to this consultation when preparing its decision on the method to be used

for setting the price of accessing France Telecom local loop civil engineering ducts. Prior to its adoption, a draft of the decision will be submitted to national public consultation, and to the European Commission to obtain its opinion.

b) Sharing optical fibre networks

The Law on modernising the economy defines the symmetrical regulatory framework for sharing indoor optical fibre networks

The Law on modernising the economy of 4 August 2008[1] sets the legal framework for regulating the last mile of fibre networks. It instils the principle of having operators share the last mile of the networks, thereby reducing the amount of work that needs to be done on the private property while ensuring that property owners and tenants can choose their operator freely. It defines regulations aimed at facilitating fibre deployments on private property and pre-equipping new buildings. And, finally, it gives ARCEP the responsibility of implementing the network sharing scheme, and allows the Authority to define those instances when the shared access point – i.e. the point where third-party operators can access the indoor network deployed by the operator hired to do so by the property owner(s) – can be located on private property.

The two components of the regulatory scheme for ultra-fast broadband implemented by ARCEP
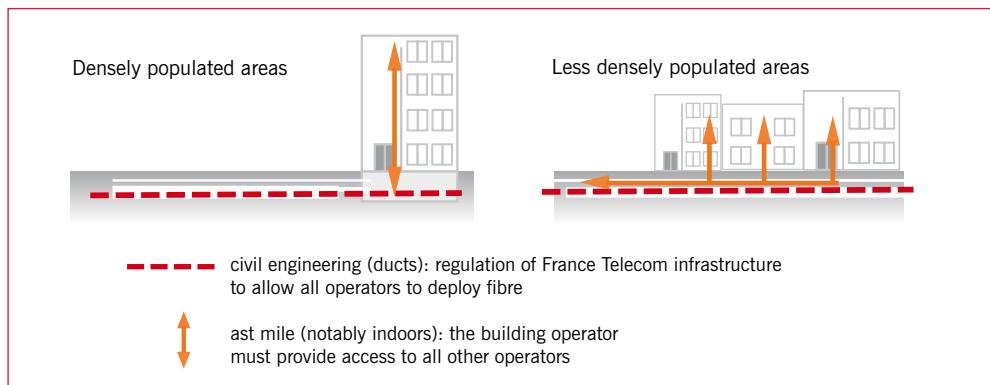
Source : ARCEP.

Based on the work performed in 2008 and 2009, ARCEP has clarified the regulatory framework for very densely populated areas

Since the adoption of the Law on modernising the economy, operators have been calling for more clarity to be brought to the regulatory framework, to furnish them with the financial and legal clarity they need to invest. ARCEP launched trials and assessments in early 2009, and working groups met under the Authority's guidance to study the operational and technical aspects and the cost-sharing terms of infrastructure sharing.

This work led to the presentation of a series of guidelines in April 2009[2], followed by a draft decision[3] and a draft recommendation[4] which were published in June. These draft documents were subject to several public consultations, notably with the Competition Authority and the European Commission. The decision and the recommendation were officially adopted by ARCEP on 22 December 2009[5] –

---

1 - Law No. 2008-776 of 4 August 2008 on modernising the economy, published in the JO of 5 August 2008.
2 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/orientations-fibre-thd-070409.pdf.
3 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/projdec-modal-acces-fibre-220609.pdf.
4 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/projet-recommand-fibre-220609.pdf.
5 - ARCEP Decision No. 2009-1106 of 22 December 2009.

the decision coming into force after it was approved, and published in the official gazette of 17 January 2010.

Operators had one month from that date to publish their access offers, detailing the technical and pricing terms of their shared network rollout offers, based on which sharing agreements were to be concluded between these operators, following calls for co-investment that were issued in spring 2010 for the first list of municipalities located in very densely populated areas. In the meantime, a dedicated working group met under the aegis of ARCEP to achieve consensus between the operators on the principles governing their access offers and their practical implementation, in accordance with the existing regulatory framework.

Network rollout conditions can indeed vary a great deal depending on local features, notably the density and distribution of the population. In highly concentrated areas in particular, it is economically feasible for several operators to deploy their own optical fibre network, either to the premises or close to the premises.

To kick-start the collective approach to fixed ultra-fast broadband rollouts across the country, and in light of the results of trials conducted over the course of 2009, the regulatory framework set by ARCEP in its Decision of 22 December 2009 concerns primarily very densely populated areas, even if some elements already apply nationwide.

A forward-looking, technology-neutral framework

Two technologies can be used in horizontal optical fibre network deployments to the premises: PON (point-to-multipoint) and point-to-point, which do not have the same technical properties and economic equations.

On the matter of the cabling installed on the premises, to ensure its neutrality with respect to operators' technical-economic choices, the system adopted on 22 December 2009 stipulates that, before a building is outfitted, any operator can request that the building operator install an additional dedicated fibre on its behalf for each housing unit, in exchange for pre-financing the cost of its installation, or that a cross-connection apparatus be installed close to the shared access point.

The scheme defined by ARCEP thereby helps stimulate competition and innovation through cost sharing based on a system of co-investment, in addition to having operators consult with one another on the architecture to be deployed. The goal is to help free up operators' investments in very densely populated areas.

Cases where the shared access point can be located on private property

The Law on modernising the economy stipulates that the shared access point for fibre networks will be located outside the boundaries of private property, except in specific cases defined by ARCEP. Following the work performed on this issue, in a Decision dated 22 December 2009, ARCEP provided a list of the exceptions to this rule, which are confined to highly populated areas only where the deployment of several dense networks is possible. In these areas, there is a threshold in terms of the number of households that will make it possible to generate sufficient economies of scale to allow several operators to connect to the installation on the customer premises.

This threshold is set at minimum 12 units per building. It was approved by the majority of players in their responses to the public consultation, and is compatible with operators' technological choices.

In addition, in very densely populated areas, the shared access point can also be located at the foot of

buildings connected to visitable sewers (as is the case in Paris), regardless of the size of the building. The foot of the building is in fact the only natural point of confluence for the different horizontal networks deployed by operators in this instance.

Definition of very densely populated areas

ARCEP assessed the boundaries of very populated areas in French cities with a population of more than 250,000 with respect, first, to population density and, second, to operators' current rollout projects.

148 municipalities are concerned at this point, representing 5.54 million households – more than half of which are outside the metropolitan Paris area.

Within this perimeter, just over 3.5 million households (60%) are located in buildings with more than 12 units or buildings that can be accessed via visitable sewers. Infrastructure sharing configurations were tested for these households that can be served immediately, and clear rules were defined.

At this stage, given the size of the areas involved and the lack of any operator plans to deploy optical fibre there, there are no very densely populated areas in the overseas *départements* or territories.

Definition of very densely populated areas

Very densely populated areas include:
- 148 municipalities in 20 metropolitan areas
- 5.54 million households
- 3.5 million immediately addressable households

Central municipality

Peripheral municipality
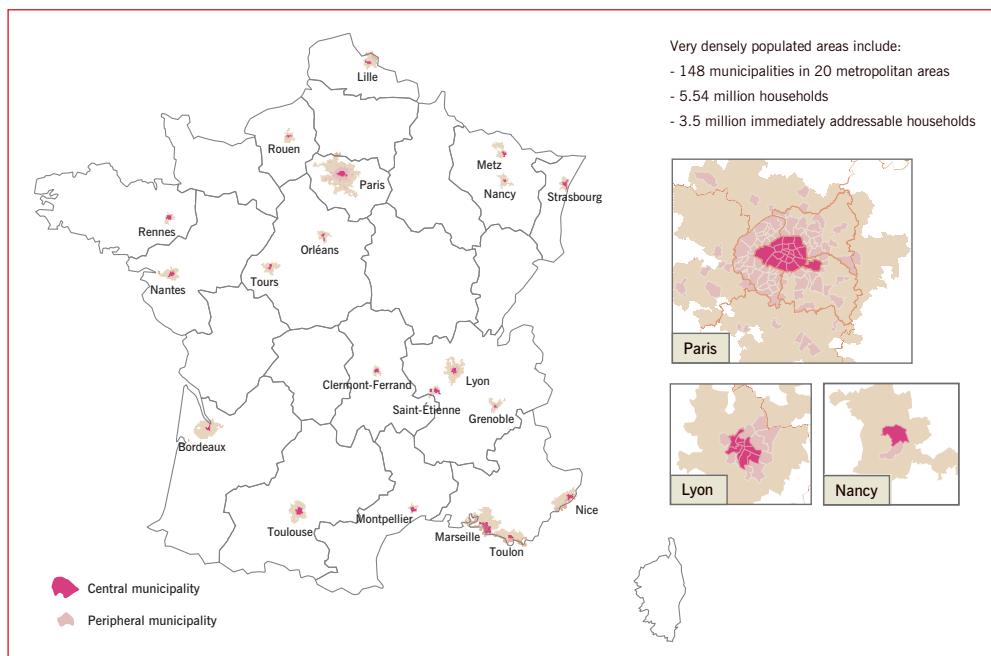
Source : ARCEP.

ARCEP has already set certain rules for infrastructure sharing that apply to the entire country

Some of the provisions contained in the Decision of 22 December 2009 on the terms governing access already apply to the whole of France.

First, when providing access at shared access point, a building operator must also furnish competing operators with the associated resources that are crucial to allowing them to access the line: prior information, supply of an information system, hosting solutions at the shared access point, obligation to provide an offer of passive access at the shared access point.

Second, ARCEP defined pricing principles to enable cost sharing, and offering a risk premium to the building operator to help encourage the equipment of buildings with optical fibre. Operators have been encouraged to negotiate infrastructure sharing agreements with one another that comply with these principles.

Work continues with operators and local authorities to specify the terms of infrastructure sharing in less densely populated areas

As in very densely populated areas, trials need to be conducted before defining the regulatory framework for optical fibre rollouts and for infrastructure-sharing schemes in more sparsely populated areas in France. Operators have already begun to set up trials which are being assessed by working groups under the auspices of ARCEP.

These efforts will make it possible to establish a reasonable definition of the properties of the shared access point (size, hosting, location), and those of the shared network located between this point and the households served in its rear area. This involves setting the terms and conditions that will enable a state of homogeneous coverage nationwide, and a consistency in deployments which is needed to create a feasible economic equation for operators in sparsely populated areas.

ARCEP announced that it would complete the regulatory framework applying outside of very densely populated areas within a timeframe that is compatible with the government's launch of the national ultra-fast broadband programme, which was announced by the Prime Minister on 18 January 2010. In particular, the Authority plans on submitting a draft regulatory framework to public consultation in May 2010 – whose purpose is to give players clarity on the selected guidelines – and on adopting the corresponding decision before the end of the year, after having consulted the Competition Authority and the European Commission.

Furthermore, local authorities will also have a role to play in helping to increase not only coverage but competition as well. Their involvement in broadband rollouts revealed that their actions had a significant effect on the availability of competitive and innovative services in the different regions, provided they were used as leverage to stimulate private investment.

Local authorities can help increase the access rates available in their region on fixed and mobile networks, for instance by expanding the interconnection of the different regions through optical fibre collection networks – a process which has been ongoing for the past four years. They can also help ease the deployment of the urban furniture needed to create shared access points that are located outside private property (e.g. street cabinets).

A sample agreement setting the general terms and conditions of deploying an indoor optical fibre network, regardless of the type of area, was drafted by ARCEP and accepted by all of the parties concerned

This sample agreement is the fruit of a long series of meetings hosted by ARCEP with the different stakeholders from the real estate side of the equation and with the main operators involved in fibre to the home deployments:
- consumer and user associations;
- property and co-property owner representatives;
- property investment syndicates;
- estate administrators and trustees;
- social housing mangers;
- electronic communications operators.

The purpose of this document is to provide a secure framework for deploying optical fibre networks in buildings, which will be beneficial to all parties concerned. The agreement between the building operator and the property owner is to be examined during a general assembly of co-property owners whose agenda includes a proposal to outfit the building with fibre, and an examination of the application(s) from operators. The sample agreement drafted by ARCEP therefore provides co-property owners with guidelines to help them choose their building operator.

In particular, an operator's signature of this sample agreement guarantees satisfactory terms and conditions for fibre deployments in the building for property owners, provided the building operator complies with the regulations defined by the Authority. This document is meant only to serve as a reference, and has no normative powers to the extent that it simply sets the general rules of network deployment. The parties are therefore free to negotiate the specific terms of their agreement, and factor in any specific local circumstances.

The sample agreement has been available, in French, on the ARCEP website since June 2009[6].

The Authority also produced a practical guide for installing optical fibre inside buildings[7]. The purpose of the guide is to describe the main stages involved in indoor fibre installations, from choosing the building operator to performing the work. It also provides details on the guarantees offered by optical fibre network sharing schemes, which allow the residents of a building the freedom to choose their FTTH ultra-fast broadband service provider.

c) Local authority involvement in optical fibre rollouts

More and more local authorities are becoming involved in the issue of ultra-fast broadband rollouts in their area, to prevent a new digital divide like the one that occurred with broadband. The approaches being taken by local authorities, the technology chosen, the progress they have made and the geographical area targeted all differ from project to project.

Some local authorities, such as the urban authority of Valenciennes or the City of Montpellier, have chosen to provide support to private operators' rollout projects by facilitating their access to civil engineering.

Other projects from local authorities, which have been involved in the digital development of their region for some time, are focusing on new markets to increase the access rates available in their areas. The Manche *département*, for instance, is winding up the pilot stage of its FTTH network rollouts in targeted cities by starting to market an optical fibre ultra-fast broadband service. The Seine-et-Marne *département* is nearing the completion of a detailed strategic and technical study of the cost of deploying an ultra high-speed network throughout the region, and the Oise *département* has inserted an additional clause concerning ultra-fast broadband into its existing broadband public service contract.

Some local authorities, such as the Loiret *département*, are planning on a global approach to increasing access rates to ultra-fast broadband levels by creating a public service delegation that combines FTTH rollouts and a scheme for increasing the access speeds supplied by existing networks.

Although some local authorities are planning to achieve complete coverage of their region, as is the case with the projects instigated in the Hauts-de-Seine (830,000 premises passed) *département* and the urban authority of Saint-Quentin in the Yvelines (65,000 premises passed on completion),

---

6 - *Available online at: http://www.arcep.fr/fileadmin/reprise/dossiers/fibre/conf-220609/convention-type-thd-220609.pdf.*
7 - *Available online at: http://www.arcep.fr/uploads/tx_gspublication/guide-fibre-conso-fev2010.pdf.*

2

The authority's main areas of focus

whose first phase began in 2009, others are starting their FTTH rollouts in specifically targeted areas. One example is the joint local planning committee for electricity of the Ain (*syndicat intercommunal d'électricité de l'Ain*) which is beginning its fibre installations in residential neighbourhoods, while the urban authority of Grand Angoulême is starting by deploying fibre in areas where social housing predominates.

Aside from the pioneer rollouts in the city of Pau and the network in Gonfreville-L'Orcher, very few networks have yet reached the marketing stage. Worth noting is that the network in Pau is currently being upgraded to be enable passive sharing solutions, in accordance with the regulatory framework defined by ARCEP.

Local authorities' ultra-fast broadband projects involve exploring the options of deploying FTTH or increasing access rates on existing networks, but also in some instances the option of upgrading cable networks to FTTH – the voluntary municipal consortium of the Bitche region (*syndicat des communes du pays de Bitche*) being an example of one local authority that took this route – or the use of coaxial cable in the last mile, as is the case with the network deployed in Sarreguemines.

It was within this environment that Parliament addressed the issue of the role that local authorities can play in ultra-fast broadband rollouts, through what is known as the "Pintat Act" of 17 December 2009, which concerns bridging the digital divide[8] and provides for the creation of a digital regional development fund for financing local ultra-fast broadband deployments. As part of the national ultra-fast broadband programme announced by the Prime Minister on 18 January 2010[9], this fund will bring local authority rollout projects that are already underway, at least on departmental scale, in line with a national master plan for digital regional development aimed at "encouraging consistency in public initiatives and their proper interrelation with private investment".

1.2. Increasing access rates

a) Work carried out in 2009

One of the most common consumer requests, relayed by local authorities, is to have faster access on fixed networks. Different technical solutions can be employed to provide this increase in access rates, the most future-proof and robust one being the deployment of a new optical fibre local loop that runs to subscriber premises, also referred to as fibre to the home or FTTH. Intermediate, or complementary solutions do exist, including upgrading the copper network by installing solutions for accessing the sub-loop.

The incumbent carrier is subject to an obligation to provide access to the copper sub-loop, as it is to provide access to the copper local loop (unbundling). This distinction is made in the ARCEP market analysis decision on wholesale unbundled access to physical network infrastructure that comprise the local loop[10] (referred to hereafter as "market 4") and reiterated in Article 110 of the Law on modernising the economy of 4 August 2008[11].

The main technical and operational terms need to be defined before sub-loop access can be implemented. It was to this end that ARCEP created a working group in November 2008 that brings together operators and local authorities, called GRACO (Groupe d'échanges entre ARCEP, les collectivités territoriales et les opérateurs). [cf. page XX]

---

8 - *Law No. 2009-1572 of 17 December 2009, known as the "Pintat Act," on bridging the digital divide, published in the JO of 18 December 2009.*
9 - *Available online at: http://www.arcep.fr/fileadmin/reprise/communiques/communiques/2010/disc-1er-ministre-thdebit-180110.pdf.*
10 - *Decision ARCEP No. 2008-0835 of 24 July 2008.*
11 - *Law No. 2008-776 of 4 August 2008 on modernising the economy published in the JO of 5 August 2008.*

The work performed by GRACO in 2009 made it possible to identify and set the terms for three schemes for accessing the sub-loop, to assess technical performances, costs, impact on competition and their operational implementation.

- The first solution examined involves sending a DSL signal to both the local loop, as is currently the case, and to the sub-loop. This is referred to as dual signal supply, and gives operators the ability to be present on either the loop or the sub-loop.
- The second solution involves extending the DSL signal from the central office to the street cabinet through a fibre link. DSL signals are therefore multiplexed as they leave the central office, then carried over an optical fibre to the neighbourhood cabinet where they are demultiplexed, restored and delivered to subscribers over the copper pair. With this solution, referred to as fibre extension to the street cabinet, unbundled operators continue to be collocated in the original central office.
- The third solution consists of transforming the neighbourhood cabinet into a DSLAM. The copper local loop is overhauled to receive the DSL signals of LLU operators which will now be collocated in this new central office. The telephone switch is still located in the central office. This solution has already been deployed as a dead zone subscriber connection point solution, referred to as NRA-ZO (*Nœud de raccordement d'abonnés Zone d'Ombre*). When used to increase users access speeds, this solution requires that all of the operators that were collocated in the original exchange install their equipment in the new premises.

The work carried out within GRACO were also focused on analysing the potentially complementary nature and possible synergies between the implementation of sub-loop access projects and FTTH rollouts.

All of this work was the subject of a public consultation that ran from October to November 2009[12]. Two essential principles were defined:

- first, the technical and operational methods employed, and the investments made in projects for increasing access speeds by providing access to the sub-loop, must not call into question the investments that operators have already made in broadband, and notably in unbundling;
- these methods and investments must not cause delays in FTTH network rollouts.

Parallel to this public consultation, and because of the competition issues that were identified, ARCEP solicited the opinion of the Competition Authority, in accordance with Article L. 36-10 of the code governing French postal and electronic communications markets, CPCE (*Code des postes et communications électroniques*). In response to this request, the Competition Authority issued an opinion on 22 December 2009[13].

b) ARCEP guidelines

After taking all of the responses to the public consultation and the opinion issued by the Competition Authority into account, on 25 February 2010, ARCEP published its guidelines for the actual implementation of a sub-loop access solution, and its interrelation with the development of FTTH networks[14], along with an executive summary of the responses to this consultation[15]. This document is not intended to be prescriptive in nature, but does define the underlying principles for implementing access to the sub-loop and provides the players, notably local authorities, with recommendations that will allow them to use the sub-loop as an additional tool for their broadband market projects.

2

The authority's main areas of focus

---

12 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/consult-montee_en_debit-231009.pdf.

13 - Competition Authority Opinion No. 09-A-57 of 22 December 2009.

14 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/med-orientations-250210.pdf.

15 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/synt-consult-med-250210.pdf.

If sub-loop access helps improve the broadband services delivered to some consumers, the solution nevertheless has the potential to undermine competition, which is something the Competition Authority was careful to point out in its Opinion No. 09-A-57 of 22 December 2009. To prevent any adverse effects on the state of competition, ARCEP is exploring the additional measures that will need to be taken to ensure that access to the sub-loop takes place under satisfactory and non-discriminatory conditions for all operators.

Moreover, it is important that the development and financing of these solutions aimed at increasing access rates not undermine the progress of new FTTH network rollouts, which are major purveyors of technological innovation. As a result, and in light of the European Commission guidelines on State Aid for deploying new generation access networks[16], ARCEP recommends that sub-loop access projects, and particularly those that are subsidised by local authorities, be carried out only in those areas where no FTTH rollouts are scheduled to take place in the medium term.

The Authority's guidelines are therefore as follows:

ARCEP issued a reminder that France Telecom is obligated to grant all reasonable requests to its telephone network's sub-loop[17].

ARCEP therefore requested that France Telecom develop its reference offer so that sub-loop unbundling be operational by summer 2010, to enable the swift implementation of dual signal supply. In accordance with the regulatory framework, rolling out this solution must allow operators to supply DSL signals by having equal access to the local loop and the sub-loop.

As concerns the three technical solutions that were identified as part of the public consultation mentioned above, the practical application of this regulatory obligation means that operators will be able to begin using the dual supply solution in the near future.

ARCEP indicates that sub-loop unbundling is a relevant but secondary solution for increasing Internet access speeds.

Deploying a new optical fibre local loop makes it possible to deliver virtually unlimited bandwidth, which in turns allows users to access an array of new services that require access speeds that are incompatible with the capabilities of copper pair technologies, such as several high definition or 3D video services, etc. This is a crucial technological development that all players agree needs to occur, and a major investment for the national economy, on which operators and public authorities need to focus their efforts.

Investments made in providing access to the sub-loop run the risk of being only marginally reusable for deploying fibre in less densely populated areas. Moreover, there is no consensus over the ability of schemes to increase access rates to lay the groundwork for FTTH. Without any dedicated guidelines or systems, implementing sub-loop access would, on the contrary, be likely to delay FTTH rollouts in a great many instances.

ARCEP therefore recommends that the players, and particularly local authorities, only carry out sub-loop unbundling projects in areas where FTTH rollouts are not scheduled to take place in the next three to five years. These areas should be known very soon, as details on the national broadband rollout programme emerge.

---

16 - *Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks, published on 30 September 2009.*
17 - *In accordance with obligations listed in Decision No. 2008-0835 of 24 July 2008.*

ARCEP also specified that the terms governing sub-loop access, as they apply to both the dual supply and the new DSLAM solutions, must make it possible to maintain the intensity of broadband market competition.

Providing sub-loop access could call into question the investments that all operators have been making in unbundling over the past several years and, in some cases, have a detrimental effect on the services offered to consumers.

The new DSLAM and dual supply solutions, both of which can be quickly put into place from a technical and operational standpoint, carry virtually the same risks to the state of competition. Their impact would be felt immediately if a new central office were deployed, but rather in the medium term with the dual supply solution.

Bringing fibre to the neighbourhood cabinet is a more neutral solution, but operators do not view it as being immediately operational.

Taking these risks into account, led ARCEP to:

- bring forward the review of its analysis of market 4 to determine, before the end of 2010, the obligations imposed on France Telecom as part of the implementation of sub-loop unbundling, and particularly the measures needed to ensure the competitive neutrality of the projects devoted to increasing access rates;
- rapidly engage in multilateral efforts with operators to define, by summer 2010, the technical, economic and operational terms of carrying out projects devoted to increasing access rates via sub-loop unbundling, particularly the terms governing collocation and collection, but also the reuse of sub-loop access infrastructure for the future deployment of FTTH;
- define, in tandem with all of the stakeholders, the additional measures that need to be taken to avoid the potentially detrimental effects on competition that projects to increase access rates could have – also by summer 2010.

To ensure that conditions that are favourable to competition are maintained in those areas that are already unbundled or in the process of becoming so, ARCEP recommends that market players, and particularly to local authorities, abstain from undertaking projects to increase access rates in unbundled areas or areas where unbundling efforts have begun, until the completion of the multilateral efforts to define these additional measures.

2. Ultra high-speed mobile

2.1. Development of ultra high-speed mobile

Mobile communication services are poised to follow the same trajectory as fixed services, in other words an accelerated transition from high-speed to ultra high-speed. Mobile access is expected to become an extension of fixed broadband and ultra-fast broadband access services and be able to provide consumers, both residential and business, continuous and ubiquitous access to Internet services on a wide range of devices, outside the home and the workplace. These services are to be available anywhere, anytime, offering the same ease of use and the same range of applications as high performance wireline connections do. At the same time, new services that are specific to the mobile environment are developing as well, which include location-based solutions in particular.

The market is already moving in this direction, with the rise in bitrates and traffic on UMTS networks and its HSPA successors, along with the introduction of the first unlimited mobile flat rate offers and handsets designed with the mobile Internet in mind. The rollout of 3G networks in France has enabled the launch of new high-speed data services that are helping to spur demand, as revealed by the growth

in the number of active 3G customers, which is illustrated in the graph below. This has contributed to altering mobile consumption habits, with services now expanding steadily beyond voice calls and voicemail to include enhanced services such as Internet access and multimedia content. The introduction of new handsets with larger screens, and of netbook computers enabling access to a richer array of multimedia content, are altering users' behaviour patterns as they consume more and more data services on a personal device when travelling or on the go.

The next stage is now underway in Europe and around the globe, and the process has begun for introducing the systems that will gradually take over from existing third generation networks over the next decade. Mobile technologies capable of delivering performances in line with market expectations have already been announced, one of them being LTE, or Long Term Evolution technology. These technologies offer high performance and increased quality of service, and are expected to achieve their full potential with the use of very wide bands of up to 20 MHz. Over the next few years, mobile technologies are expected to reach speeds of one to several dozen Mbps, and of more than 100 Mbps further down the road, in addition to offering short enough latency to enable the development of high-speed interactive applications. These technologies will prove crucial adjuncts to the consumption of ultra high-speed services.

Ultra high-speed mobile is expected to create an upheaval in user behaviour patterns comparable to the one that occurred with the introduction of broadband and ultra-fast broadband access on fixed networks. From an economic perspective, it will have a positive impact on businesses' ability to compete as it will allow employees to have access to a very high-speed connection outside the workplace, and could help boost the development of teleworking. This improvement to productivity will likely be felt most keenly by businesses located in sparsely populated parts of the country where ultra-fast mobile could be the primary means of accessing the Internet. It is also expected to drive a shift in entertainment and consumption patterns, and especially the consumption of cultural goods by creating new opportunities for users to consume digital content such as news, music, multimedia content and games. Ultra high-speed mobile access could also contribute to the emergence of new services that are in the public interest, such as telemedicine and e-learning solutions, and to improving safety and security, through mobile alerts and video surveillance, for instance. It is also likely to help in the development of new forms of social ties, such as the ones that are taking shape on social networking sites on the fixed Internet.

To be able to roll out these technologies that will enable the development of these new services, two frequency bands were identified and harmonised at the international level: the frequencies ranging from 790 to 862 MHz, referred to as the "800 MHz" band, and those ranging from 2500 to 2690 MHz, referred to as the "2.6 GHz" band.

2.2. The 800 MHz and 2.6 GHz frequency bands

Real progress has been made in setting the regulatory framework governing the 2.6 GHz and 800 MHz frequency bands.

The national frequency allocation table ratified by the Prime Minister has taken this decision into account by assigning this band to ARCEP, as the body responsible for allocating spectrum to mobile services. The timetable set for having the spectrum liberated by the Ministry of Defence – to which it had previously been allocated – led the European Commission to allow France a derogation, which is specified in the national frequency allocation table. Under this timetable, spectrum in most of the largest cities in France will be freed up by the end of 2011, and nationwide by February 2014.

As concerns the 800 MHz band, the European Conference of Postal and Telecommunications Administrations, CEPT, issued a decision on 30 October 2009 in response to the European Commission mandate. The decision sets the technical terms that apply to the 800 MHz band on the European continent. They are not mandatory, however. As a result, the European Commission is in the process of preparing a decision that reiterates the technical terms contained in the CEPT decision, and which makes their adoption mandatory in EU Member States that will be making the 790-862 MHz frequency band available. The Commission is due to adopt this decision in April 2010.

The national frequency allocation table in France was updated in late 2008. ARCEP is to become the sole administrator of the 790-862 MHz band as of 1 December 2011, taking over from CSA and the Ministry of Defence, which occupied the 790-830 MHz and 830-862 MHz segments, respectively.

The issues raised by coexistence with broadcasting in the adjacent band, on either side of the 790 MHz frequency band, are covered by technical conditions provided for in the CEPT decision. They should help limit the risks of interference in mobile network bands adjacent to broadcasting. Treatment of possible residual interference is covered by the regulatory framework that governs spectrum management.

2.3. Preparing for the allocation of the 800 MHz and 2.6 GHz frequency bands

In 2009, ARCEP devoted efforts to preparing for the allocation of 800 MHz and 2.6 GHz-band spectrum. This preparatory work was part of the frequency strategy announced by the Prime Minister on 12 January 2009 for the development of ultra high-speed mobile networks in France.

This allocation procedure is of prime importance for the electronic communications sector. Making these new frequencies available in fact marks a crucial step forward in the development of mobile services towards ultra high-speed solutions, and one that will be unmatched for many years to come.

ARCEP held a public consultation from 5 March to 15 June 2009 on the issues surrounding and system to be used for the allocation of these frequency bands. The complete summary of this public consultation[18], and all of the responses received, were published on 15 January 2010.

A total of thirty five contributions were received from a wide array of players: operators, equipment manufacturers, local authorities, contractors who have been awarded a public service contract by local authorities, service providers, Internet companies, media companies and public administrations.

This consultation provided an opportunity to gather the players' analysis and opinion of the issues surrounding digital regional development and the arrangement of spectrum resources, with a view to their allocation. It also emerged from the contributions that there was far too much interest in gaining access to the 800 MHz and 2.6 GHz frequency bands to be able to carry out the allocations gradually over time. This meant that a selection procedure needs to be put into place for issuing licences to use 2.6 GHz and 800 MHz band spectrum, pursuant to Article L. 42-2 of the French Postal and electronic communications code.

While all of the 3G mobile frequencies have been allocated, preparing a call for applications for the allocation of the 800 MHz and 2.6 GHz band frequencies will be a core area of focus for ARCEP in the first half of 2010.

The 800 MHz band, which is part of the digital dividend, is particularly well suited to achieving broad nationwide coverage and good indoor coverage.

2

The authority's main areas of focus

---

18 - Available online at: http://www.arcep.fr/uploads/tx_gspublication/synt-thtdebit-mobile-150110.pdf.

As a result, the legislature decided[19] that the terms for allocating 800 MHz band frequencies must make digital regional development imperatives a priority. The Law also stipulates that the Parliamentary committee on the digital dividend (*Commission parlementaire du dividende numérique*) will be consulted on the procedure's terms of award.

The goal of the preparatory work being done by ARCEP is to determine how to apply the need to make digital regional development imperatives a priority, and how to factor in the narrowness (72 MHz) of the 800 MHz band, both of which have serious implications, notably for the value of the spectrum, competitive dynamics and infrastructure sharing.

These in turn give rise to a new set of problems concerning the number of licences, the amount of spectrum attached to each licence, the nature and scope of coverage obligations, the terms of infrastructure sharing and the selection methods. This complexity is only confirmed by the occasionally very different answers that the Authority received to the questions posed in the public consultation.

These issues apply differently to the 2.6 GHz band: providing a total capacity of 190 MHz, this band makes it possible to offer wide channels to several players.

What arises then is the matter of achieving the best possible approach to allocating spectrum in these two bands, and whether to treat them separately, simultaneously or one after the other.

These questions will be explored in depth, in tandem with all of the stakeholders. They will be the topic of a consultation with the Parliamentary committee on the digital dividend, the goal being to draft a proposal for the Minister responsible for electronic communications before the summer. ■

---

19 - *Law No. 2009-1572 of 17 December 2009 on bridging the digital divide, published in the JO of 18 December 2008 (referred to as the "Pintat Act").*

Facilitating modernisation of postal operations

1. Developing knowledge of the economic situation and the markets

1.1. The mail market in France

a) Items of correspondence delivered in France

Declining volume and revenue

Items of correspondence as a whole, representing 80% of total volume for addressed items (items of correspondence, parcels, items against signature, press items, export traffic) decreased sharply in 2009: with 15.3 billion items delivered in France, total volume fell 5.1%. Total revenue shrank by about the same percentage to 7.9 billion euros (- 5.2%).

Addressed advertising volumes (4.4 billion items delivered) were hardest hit, down nearly 8% on 2008, compared with a decline of less than 2% in 2007 and 2008. Revenue from addressed advertising plummeted 11%, after remaining stable for the previous two years. The contraction of this marked can be partly explained by a change in the product ranges purchased by postal operators' customers.

Items of correspondence, excluding addressed advertising, dropped about 4%, both in terms of revenue and volume.

Revenue (€millions VAT)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Addressed advertising	1 738	1 647	1 657	1 662	1 486	-10.6%
Items of correspondence, excluding addressed advertising	6 732	6 788	6 924	6 719	6 456	-3.9%
Total items of correspondence	8 470	8 435	8 581	8 382	7 942	-5.2%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

Volumes (millions of items)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Addressed advertising	4 856	4 871	4 795	4 732	4 372	-7.6%
Items of correspondence, excluding addressed advertising	11 950	11 668	11 821	11 422	10 959	-4.0%
Total items of correspondence	16 806	16 540	16 616	16 154	15 332	-5.1%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

Change in revenue and volume for domestic items of correspondence
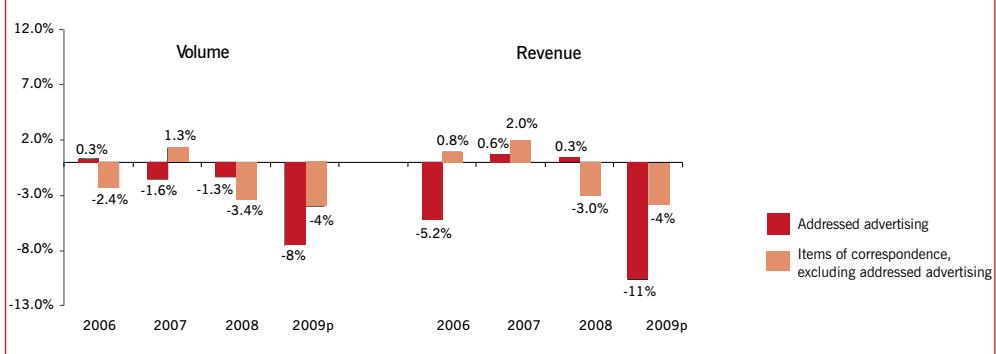
Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

Reserved area and competitive area

The area which still comes under the postal monopoly (items of correspondence weighing less than 50 grams) represents almost three quarters of flows of items of correspondence, i.e. 12.7 billion items, and 83% of revenue (5.9 billion euros). Flows dropped slightly more than revenue, as the tariff increase for items of correspondence weighing less than 20 grams as of 2 March 2009 (+1.8%) helped to partly offset the 5.8% decline in traffic, with revenue down 4.7%.

At 2.7 billion addressed items in France, volumes in the non-reserved area were more buoyant, though nearly 2% lower than in 2008. However, revenue for this category dropped sharply (down approximately 7%).

Revenue (€millions)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Reserved area	7 013	6 201	6 269	6 170	5 879	-4.7%
Competitive area	1 457	2 234	2 312	2 211	2 063	-6.7%
Total items of correspondence	8 470	8 435	8 581	8 382	7 942	-5.2%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

Volumes (millions of items)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Reserved area	15 429	13 804	13 789	13 470	12 693	-5,8%
Competitive area	1 377	2 736	2 827	2 684	2 639	-1,7%
Total items of correspondence	16 806	16 540	16 616	16 154	15 332	-5,1%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

b) Mail exported from France

Export flows also registered a downturn, from 465 million items in 2008 to 452 million items in 2009 (-2.8% in one year). In contrast, for the first time since 2005, revenue for such items grew 2.3% over the year. This increase is partly due to a tariff increase for export traffic in the first quarter of 2009, concerning all outbound cross-border items from Metropolitan France and its overseas territories. Roughly three quarters of export flows are bound for the European Union, and one quarter for the rest of the world.

Revenue (€ millions)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Total items of correspondence	496	419	398	388	397	2.3%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

Volumes (millions of items)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Total items of correspondence	523	475	462	465	452	-2.8%

Source : ARCEP, Observatoire postal - Enquêtes annuelles jusqu'en 2008, enquête avancée pour 2009, estimation provisoire.

1.2. International business intelligence

The postal systems of all the developed have suffered under the economic crisis in 2008 and 2009, and it is especially useful to study how the effects have been analysed by both government bodies and operators and the strategies that have been developed in response. Four events are worthy of mention.

a) The impact of the crisis in the United States on the USPS[1]

Late in 2008, falling volumes to the tune of 15% prompted the *Postmaster General* to ask Congress to consider easing USPS obligations (reduction of weekly deliveries from six to five). It argued that while the economic impact was severe – USPS expects to lose 10 billion items in 2010, i.e. half the French market – it was merely intensifying a structural decline which had already cost the American market 17% of its volumes compared with its 2006 peak.

The Government Accountability Office (GAO)[2], the American equivalent of France's *Cour des comptes*, will report on this issue in 2010, and the Postal Rate Commission, which was recently given more extensive powers over the postal sector, is already leading a public debate on the need for a new management framework for the USPS. The latter wants to be able to extend its operations to subsidiary areas of postal transmission for better cost absorption, emphasizing that it has already slashed costs by 6 billion dollars in two years and is compensating for the reduction in the number of items per letter box (down from 1,500 to 1,200) by stepping up the number of buildings serviced by each mail round (from 340 to over 400).

b) Thoughts on the Hooper Report in the United Kingdom

The context of the Hooper Report[3] submitted to the British Government was that Royal Mail has been destabilised by shrinking traffic volumes, as well as by its pension liabilities. The report paints a grim picture of the ability of postal services to adapt to the economics of a market with increasingly competitive pricing against a backdrop of falling traffic.

To prepare for the future, the report advocates giving priority to cutting costs while retaining robust guarantees for consumers, in particular without eroding the standard of service provided as it was felt that such a measure could aggravate the decline in traffic volumes. In so doing, it took a decision on recommendations that called into question the need for six daily deliveries and the relevance of a next-day (D+1) service. According to the report, the long-term remedy lies in comprehensive satisfaction of the requirements of the big mailers that hold the key to a balanced universal service. With more specific reference to regulation, it cast doubt on the viability of a compensation mechanism

---

1 - *The United States Postal Service*
2 - *For government auditing standards*
3 - *"Modernise or decline – Policies to maintain the universal postal service in the United Kingdom", available at:* http://www.berr.gove.uk/files/file49389.pdf

2

The authority's main areas of focus

when it is not competitive pressure that is threatening the incumbent operator but market developments.

On the subject of Postcomm's regulatory policy[4], the report criticised the fact that not enough thought had been given to access charges, which were set without prior market analysis and without bringing out their medium-term effects on customers and competitors.

c) Freeze on liberalisation of the German market

The introduction by the German government of a higher minimum wage for postal workers than that paid by the competitors of Deutsche Post (the incumbent operator) triggered the failure of PIN, an alternative operator, and prompted TNT, the Dutch postal operator, to threaten to halt its plans to roll out operations in Germany.

While the traffic volumes transported by Deutsche Post's competitors are still considerable, this has been a serious setback to structuring the market around companies operating nationwide. The new government is currently defining its stance on the question of wages and on the preferential VAT system applied to Deutsche Post.

d) Calling into question of integrated operator strategies

The German operator Deutsche Post and the Dutch operator TNT had taken big profits on their domestic market operations (profits which they reinvested in the international express sector) and had already started to expand into other European mail markets.

However, the economic downturn took its toll on their express figures and froze their European projects. These companies also had to review prospects for developing their postal operations in their domestic markets. The Dutch Post (TNT) adopted a stringent cost-cutting policy, noting that its competitors' hourly operating costs were 8 euros, compared with its own 23 euros. It subsequently negotiated industrial agreements on freezing wages and increasing working hours, and claims to be open to partnership where its domestic operations are concerned.

Deutsche Post is stepping up efforts to introduce new products and is also looking for ways to cut costs through increased outsourcing.

1.3. Institutional intelligence and cooperation

a) The WIK report[5]

Requested by the European Commission following its June 2008 Strategy Conference, this report lists the Member States' regulatory practices. The Commission's priority was effective introduction of the new system, over and above mere formal transposition of the Directives.

In particular, the study focusing on the role of regulators in a more competitive postal market suggests a list of good practices to satisfy three of the Directive's main aims as identified by the consultant:

- to ensure provision of the universal service;
- to achieve full market opening;
- to protect users.

ARCEP is presented as an example of transparency on the basis of the various public consultations it has conducted among operators and users, as an independent, impartial regulator. It is also cited as an example in connection with monitoring the incumbent operator's accounting and for its action on access to postal infrastructure with a view to encouraging competition.

---

4 - *Postcomm had chosen a solution that was atypical for Europe by opting for total market liberalisation in 2006 and offering big customers and consolidators extremely low tariffs for delivering mail pre-sorted upstream of the mail processing chain.*
5 - *The WIK report is available at: http://ec.europa.eu/internal_market/post/doc/studies/2009-wik_regulators.pdf.*

The study also looked at cooperation among national regulatory bodies, reaching the conclusion that more intensive coordination among regulators would be expedient. It therefore suggested setting up a specific body in so far as the existing structures include both independent authorities and ministries and are not dedicated solely to regulatory issues. The main mission of this "European Regulators Group for Postal Services" would be to:

• advise the European Commission on desirable developments;
• facilitate consultation, coordination and cooperation among regulators.

ARCEP is keeping a close eye on this issue.

b) CEPT activities

Discussions at European level also take place within the CEPT's European Committee for Postal Regulation (CERP) which groups the postal-sector supervisory bodies (ministries and independent regulators, where these exist) of the continent's 48 countries.

In 2009, ARCEP suggested that the CERP start work on the issue of quality of delivery, a topic which had been flagged up to ARCEP several times by consumers or their representatives as a source of dissatisfaction. However, there are a variety of delivery-related problems, and this makes statistical monitoring difficult. Moreover, there are no standardised or recognised methods for measuring the quality of the different aspects of delivery. ARCEP approached its European counterparts about a joint survey of existing good practices in Europe and the possibility of defining what instruments could be used for effectively monitoring quality of delivery.

The European Committee for Standardization (CEN) also has the task of evaluating the feasibility of technical standards or documents in this connection.

c) Bilateral communication

Cooperation work also involves bilateral communication with regulators from other countries. In 2009, for instance, there were two meetings with Germany's "Bundesnetzagentur" (Federal Network Agency), one in Bonn and one in Paris. These meetings provided an opportunity to exchange information about both regulators' practices (issue of authorisations or licences, monitoring of the universal service, statistics and market studies, cost accounting and price caps).Common dossiers (VAT, standardisation) were analysed and compared, and information was exchanged about postal market developments in both countries.

2. Ensuring the funding and quality of the universal postal service

The universal service is crucial for making the economy and society go round. It is under threat from competition from other communication channels, and certain economic sectors – remote retailing, the Press, administrative and legal procedure – are highly dependent on it.

ARCEP's mission focuses mainly on tariffs and quality of service.

2.1. Postal tariffs

Since 2006, ARCEP has chosen to regulate postal tariffs by means of a multi-year tariff framework, an option provided for in the Post and Electronic Communications Code that has two advantages:

• it gives La Poste a clear overview, enabling it to make budget forecasts based on the room for tariff manœuvre assigned to it (this is easier than approving tariffs on a case-by-case basis);
• it makes it easier for La Poste to define its tariff strategy: working within the price cap margins, La Poste can alter its tariffs so as to create a coherent whole. At the same time, it sends the right economic signals because these tariffs reflect costs.

2

The authority's main areas of focus

A formula known as "CPI (Consumer Price Index) + 0.3" was defined. It was adjusted in line with inflation (the CPI used is that of the initial draft Finance Act) as well as with changing postal volumes, to give the operator a little more leeway if market dynamics were overestimated. This formula helped to achieve positive results from 2006 to 2008.

The economic situation has demonstrated the benefits of having a suitably flexible system because the end of the first tariff framework (at the end of 2008) coincided with a rapid deterioration of the postal market environment in France, mirroring the difficulties experienced by all the other postal markets in industrialised countries. However, La Poste has not exhausted its potential scope for raising tariffs.

Multi-year framework parameters for 2009 to 2011

In 2008, ARCEP and La Poste defined the characteristics of the current multi-year framework covering the period 2009 to 2011, adopting the same principles as the previous system.

The framework is based on assumed inflation of 2% per year, and an estimated decrease in volume of 1.3% per year (with volume being weighted by price). The latter point turned out to be a key factor in tariff movements, especially in the light of the traffic downturn experienced in other European countries. To this was added an assumed increase in La Poste's costs of just 0.9% per year, making it necessary for the company to keep a tight rein on its expenditure.

Adjustment of the tariff ceiling in line with volume was retained, with the same corrective factor as hitherto. In addition, sizeable differences between forecast and actual inflation (if the difference is greater than 25%) can be corrected.

On this basis, the framework allows an overall average annual increase of 2.3% for products over the period in question.

A "sub-stipulation" limiting the average annual increase to 2% is applied to single-piece machine-franked items because ARCEP has noted that the successive tariff increases for single-piece products, which are mainly used by SME customers, have inflated margins on them.

In its Decision of 18 November 2008[6], ARCEP recalled the main characteristics which the tariff system must comprise to induce La Poste to bring its costs under control:
it must allow the operator to retain its profit margin provided it improves efficiency as planned and guarantees that some of these efficiency gains benefit users

it must give the operator an incentive by making it possible for the latter to benefit fully from any gain from efficiency-improving measures that go beyond what is strictly necessary to comply with the tariff-framework constraint

In addition, ARCEP specified that the tariff framework system should allow account to be taken of the actual market situation and of inflation:
it must take account of changing mail markets with their declining addressed-item volumes

it must reflect the risk this development represents for the operator's economic equation, by dividing this risk fairly between operator and users

it must take account of general price movements to promote optimum setting of tariffs.

it strengthens the "adjustment mechanisms" which will in future also revolve around inflation and which are triggered at the request of ARCEP or of La Poste:
- if the inflation observed deviates significantly from the draft Finance Act forecast (more than 25%), the tariff constraint is adjusted, but the adjustment is confined to 50% of the recorded deviation;

---

6 - *Decision No. 2008-1286 of 18 November 2008.*

- if volumes drop further than the estimated trend for a given year, the tariff constraint is relaxed to allow La Poste to adjust its revenue; in the opposite case, i.e. if observed volumes rise more, the tariff system is tightened up and any efficiency gain automatically benefits consumers. In both cases, the adjustment is restricted to 70% of the deviation observed;

- it creates a separate standard (confined to the CPI) for machine-franked items of correspondence: because imposing identical price increases for machine-franked items and items prepaid using stamps actually increases franked-item prices more, which is counter to economic logic and is detrimental to SME customers that use this type of service.

In the course of 2010, ARCEP and La Poste will take stock of 2009. At present, the following data are gradually emerging: compared with initial assumptions of 2%, inflation was estimated at 0.4% in the 2009 Finance Act and will probably be close to zero. According to La Poste, volumes are dropping at an annual rate of around 5%. Finally, the operator raised prices by around 1.3% in March 2009.

2.2. The system for supervising quality of service

A framework decision[7] taken by ARCEP in 2008, in conjunction with La Poste, established the content of the latter's annual report to ARCEP on the universal service mission, excluding quality of service for which there is a separate procedure[8]. Quality targets are set by ministerial order, and ARCEP then ensures compliance with them. It carries out an annual quality study and publishes the findings.

In this connection, ARCEP conducted:
- in 2006, a quality of service audit on priority mail;
- in 2007, a quality of service audit on postal parcels, the universal service and the system for registering user complaints;
- in 2009, a quality of service audit on registered items, which is currently the subject of work with La Poste.

Moreover, an ARCEP quality of service information framework was established in May 2009[9], following several months' work with La Poste's services.

The information, to be provided annually, will deal with:
- the quality levels of the main postal services;
- time-dependent or regional data that explain these levels and why they vary: by its very nature, the universal service has to guarantee quality that is fairly consistent over the course of a year and does not vary overly from region to region.

It will therefore cover the annual quality of service results for national and community level corresponding to the targets set by the Ministerial Order of 22 July 2008.

It will also comprise the next-day (D+1) delivery rate per region, and the national D+1 rate observed for the months with the best and worst quality. Lastly, ARCEP ensures that the testing method used by La Poste complies with its statutory obligations.

In addition, ARCEP lays down a certain number of calculation parameters to be used by La Poste in its quality testing. European quality testing standards delegate to the individual country the task of adjusting methods to its specific geographical context or traffic characteristics.

Finally, ARCEP and La Poste added further universal service performance indicators[10] to the table

2

The authority's main areas of focus

---

7 - *Decision No. XX of*
8 - *Article L5-2 4° of the Post and Electronic Communications Code.*
9 - *Decision No. 2009-0367 of 7 May 2009.*
10 - *Available at the following address; http://www.laposte.fr/Le-Groupe-La-Poste/Nous-connaitre/Le-service-universel-postal.*

reporting on the action taken by La Poste on mail transmission times, service accessibility (geographical accessibility and latest posting times) and complaint handling.

Universal postal service indicators for 2009

As requested by ARCEP, La Poste has been publishing information about universal service quality[11] in a table of performance indicators[12] every year since 2006.

ARCEP attaches great importance to transparency about universal postal service quality because information about these quality standards enables users to make well-informed product choices, as well as giving La Poste an incentive to provide services that meet consumer expectations.

The relevance of the indicators used and any desirable changes are regularly discussed with consumer representatives within the framework of the Post-Consumers Committee. Thus, the information published in the table of universal service performance indicators is changing all the time in line with user needs. Indicators are adopted if they provide reliable test results at reasonable cost.

The list of indicators published in this table expands from year to year and now covers the majority of key user information requirements.

Mail transmission times					
	2005	2006	2007	2008	2009
% of single-piece priority letters delivered in D+1	79.1	81.2	82.5	83.9	84.7
% of single-piece priority letters delivered later than D+2	4.6	3.8	3.8	3.2	3.2
% of imported cross-border mail delivered in D+3	95	95.9	95.5	97	95.7
% of exported cross-border mail delivered in D+3	93	94	94.8	95.4	94.4
% of imported cross-border mail delivered in D+5	99.1	99.3	99.1	99.5	99.3
% of exported cross-border mail delivered in D+5	98.5	98.7	98.8	99	98.7

Source : ARCEP.

At just under 85% in 2009, priority-letter transmission times are gradually improving, but this figure is still lower than that of most of the other major European postal services. This difference could be partly for geographical reasons.

Though this level of quality is improving, it does not provide consumers with relevant information. The national annual percentage of D+1 is an average that "sums up" different local situations. ARCEP believes that a minimum quality of service success rate of 90% is required to provide customers with relevant information.

Transmission times: reliability of the Colissimo service					
	2005	2006	2007	2008	2009
% of Colissimo Counter items delivered in D+2	83.8	84.1	85.8	85	87.7
% of Colissimo Counter items delivered in D+3	92.2	95.5	95.9	96.3	96.6
% of Colissimo Counter items delivered in D+4		98.5	98.6	98.7	98.9
% of Colissimo Counter items delivered in D+7				99.8	99.9

Source : ARCEP.

11- In conformity with article R. 1-1-8 of the Post and Electronic Communications Code
12 - Available at: www.laposte.fr/IMG/pdf/Les_resultats_de_la_qualite_du_service_universel_postal_31-03-2008_.pdf?espace=groupe

After declining in 2008, the percentage of Colissimo items forwarded in D+2 improved significantly in 2009. La Poste pledges to give senders a Colissimo France item voucher if it fails to meet this deadline – an initiative that apparently impacts positively on quality.

Transmission times: reliability of the registered letters service		
	2008	**2009**
% of registered letters delivered in D+2	90.9	88.7
% of registered letters delivered in D+7	99.6	99.7

Source : ARCEP.

The percentage of registered letters delivered in D+2 fell to 88.7% in 2009. Though registration is a priority-letter option, transmission times are longer than those for priority letters.

In 2009, roughly one registered letter in 300 had not been delivered seven working days after posting, a slight improvement on 2008. Nevertheless, this transmission time is too long for a product for which reliability is of the essence.

Distribution of letter boxes in terms of latest posting times (LPTs)					
			2007	**2008**	**2009**
Letter boxes with LPT:	by 13.00	Number	120 837	119 788	119 913
		Percentage	82.01 %	79.95 %	80.37 %
	by 16.00	Number	143 635	142 267	141 795
		Percentage	97.48 %	94.96 %	95.03 %

Source : ARCEP.

ARCEP attaches considerable importance to monitoring latest posting times which directly affect quality of service as perceived by consumers. Collection-box numbers and clearing times have remained much the same for the past three years, with the great majority of boxes being cleared by 13.00.

Complaint-handling statistics					
Mail	**2005**	**2006**	**2007**	**2008**	**2009**
Number of complaints	533 123	591 252	417 237	446 751	627 812
Complaints as a % of total flow	0.003%	0.003%	0.002%	0.002 %	0.003 %
Replies within 21 days	87%	90%	97%	97.7%	95.3 %
Replies within 30 days	93%	94%	98.7%	99%	98 %
Complaints giving rise to compensation	7.6 %	7.7 %	9 %	10.4 %	14.6 %
Degree of satisfaction with the speed and efficiency with which La Poste handles an inquiry in the event of problems			64 %	65 %	69 %

Source : ARCEP.

In 2009, approximately 0.003% of the mail flow total[13] gave rise to the lodging of a complaint. The total number of complaints is on the increase, perhaps because La Poste has opened up new channels for lodging complaints free of charge (Internet, free phone number "36 31", prepaid letter).

Most complaints are processed within 21 days and frequently entitle the user to compensation. Satisfaction with complaint handling is also gradually improving.

2

The authority's main areas of focus

---

13 - *The mail flow total derives from very different flows made up of addressed advertising, invoices, postcards or even registered letters.*

2.3. Sending small items: too little heed paid to customer needs

In response to pressure from ARCEP, La Poste launched the "Mini-Max" service, designed for sending small items at affordable prices, at the end of 2008. Following the introduction of a ban on the insertion of items in letter-rate items in La Poste's terms and conditions of business in 2007, consumers no longer had a reasonably priced option for sending small items such as CDs, DVDs, etc. Furthermore, this ban created an unusual situation because small items are commonly sent at the letter rate in other European countries.

The Mini-Max service was included in the list of universal service products at the end of 2008 to solve this problem and provide consumers with an affordable solution for small items weighing less than one kilogram. However, it appears that this new service does not adequately meet customer requirements.

Firstly, as consumers emphasise according to a recent study published by the magazine *60 millions de consommateurs* (attached to the *Institut national de la consummation (National Consumer Institute)*), users may have problems obtaining this service on the terms specified in the universal service catalogue. Counter staff are sometimes unaware of this product or are unfamiliar with Mini-Max procedures and tariffs, even though the service is now over a year old and no longer in the launch phase. Furthermore, feedback from consumer associations about product characteristics has not been positive. Consumers want to be able to continue sending small items at the letter rate, as they did before La Poste banned this practice in its general terms and conditions of business of 29 October 2007.

ARCEP asked La Poste to quickly suggest expedient ways of remedying this situation, and La Poste undertook to simplify access to this product, in particular by avoiding the need for users to call at the counter and ensuring that the Mini-Max service is really offered to them.

3. Creating conditions for sector development

3.1. Development of alternative operators

ARCEP intervenes in connection with specific problems encountered by postal operators that may, however, also affect a wider public. In this type of situation – which sometimes goes beyond the powers set out in the Postal and Electronic Communications Code – it serves as an intermediary in an effort to find solutions. For alternative operators, the issue of accessing buildings with the VIGIK system, the obligation to have a certain transport capability for transacting postal business or the legal status of items delivered against signature are three cases in point.

When postal regulation first began, alternative operators drew ARCEP's attention to the fact that access to letter boxes in many buildings, as provided for by law, was restricted by various security systems, whereby the VIGIK system put in place by La Poste was particularly obstructive. ARCEP took up this issue as early as 2006 and has since reported regularly on developments in its Annual Report. 2009 marked an important step forward, with La Poste provisionally agreeing to programme the cards needed to access letter boxes in buildings equipped with VIGIK to give small local operators access to them. Now, all that remains is for a permanent technical solution to be introduced.

- The registration of carriers and rental companies is compulsory for any conveyance of goods belonging to others. This registration is subject to three conditions:
  - good professional standing,
  - adequate funding,
  - professional capability.

Some authorised postal operators that have just commenced operations and therefore find themselves in debt flagged up their problems with satisfying the obligation of adequate funding, which requires them to have own funds to the tune of 900 euros per vehicle, including motorised two-wheelers. Every year, the operator has to send the authorities a new calculation sheet so they can verify whether it still complies with the adequate funding condition. Given the current state of the postal market, adequate funding constitutes a regulatory barrier to market entry, while La Poste, as the incumbent universal service operator, is exempt from this obligation in application of the Decree of 30 August 1999[14]. ARCEP is trying to find a satisfactory solution to enable authorised operators to function, in particular in discussions with the Sub-Directorate for Road Transport of the Ministry of Transport.

In 2008, the market for letters and parcels delivered against signature accounted for 276 million items and a turnover of 1,458 million euros. This market, which mainly consists of registered letters, is of interest to authorised operators wishing to establish themselves in this business segment.

Registered items are not part of La Poste's reserved area as defined by law[15], since their price exceeds two and a half times the basic tariff, i.e. €1.40 in March 2010. Furthermore, the term "registered letter", as used to designate a service, cannot be registered as a brand name with the *Institut national de la propriété industrielle* (INPI) (National Institute of Industrial Property). This term describes all items that comply with current legislation.

In an opinion dated 26 April 2007[16], ARCEP recalled the characteristics of a registered item, citing European Directive 97/67/EC[17] and the Order of 7 February 2009 of the Minister Delegate for Industry which defines a registered item as "a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item and/or of its delivery to the addressee".

Thus, any service complying with the characteristics laid down in these texts is indeed a registered item service, and any company with an authorisation under the terms of article L. 3 of the Post and Electronic Communications Code, issued by ARCEP, is empowered to offer this kind of service, since proof of posting and delivery definitely match the characteristics stipulated in regulatory texts. In an opinion of 29 October 2009[18] on the draft Law on the public company La Poste and postal activities, the Competition Authority had stated that, in order to promote development of competition for registered items, it would be desirable for legislation to specify the equal legal status of registered items processed by all authorised operators.

2

The authority's main areas of focus

---

14 - *Decree No. 99-752 of 30 August 1999 on the carriage of goods by road.*
15 - *Law No. 2005-516 of 20 May 2005 on regulation of postal activities.*
16 - *Opinion No. 2007-0377 of 26 April 2007.*
17 - *European Directive 97/67/EC (article 2, § 9) of 15 December 1997.*
18 - *Opinion 09-A-52 of the Competition Authority of 29 October 2009.*

3.2. Regulatory instruments for tariffs and accounting

a) Action taken

In January 2010, ARCEP launched a public consultation[19] in order to take a decision on La Poste's cost accounting rules[20]. This consultation follows on from the Decision of 12 February 2008[21] altering allocation of the common costs of delivery (mail carrier's round) and deals with the accounting rules which mirror the impact of item weight and format on La Poste's costs. The stakes are high, particularly when it comes to setting tariffs, because the postal network conveys items of very different weights and sizes. For instance, on average, a press item is five times heavier than a letter, and a parcel 42 times heavier.

It is important for the methods used in statutory accounting to be known and available for comment by the sector. In this respect, other European regulators are keeping an interested eye on the action taken by ARCEP.

b) The issue

Examination of the postal production chain shows that, in general, the cost of processing items increases with their weight and size, but to degrees which vary with the organisation of each major process in this chain:

- The mail carrier's round (travelling time and delivery) is both a major cost item (28% of total cost) and one that is common to all traffic. It was therefore the focus of special attention to ensure cost-sharing rules are based on transparently established conventions and rest on concepts that send the appropriate economic signal.
- This common cost cannot by its nature be assigned direct to products, so La Poste currently uses a sequential allocation method[22], first applying the "urgency" cost driver and then the "weight/format" cost driver.

The current convention is open to criticism on the grounds that it does not take sufficient account of the combined impact on costs of postal volumes and item weights and formats. While it is indisputable that delivery frequency is the primary cost driver in a postal-delivery system, the resources deployed also depend on traffic, which determines the number of times mail carriers have to stop. Lastly, and harder to measure accurately, the composition of this traffic with items of different weights and formats also influences the common costs of delivery.

Notes p.100

19 - *Available on ARCEP's website : http://www.arcep.fr/uploads/tx_gspublication/consult-reg-compta-laPoste-220110.pdf*
20 - *In application of article L. 5-2, 6 of the Post and Electronic Communications Code.*
21 - *Decision No. 2008-0165 of 12 February 2008.*
22 - *Decision No. 2008-0165 of 12 February 2008.*

Notes p.101

23 - *Source: Postal Economics, Joëlle Toledano (2004): this allocation is based on European data.*
24 - *This figure also includes post office marketing costs.*
25 - *For the purposes of postal cost accounting, postal items are divided into three weight categories which are regarded as a sufficiently faithful reflection of the diversity of items making up postal traffic. These are small format (PF) (weighing less than 50 grams), large format (GF) (weight between 50 grams and 250 grams), and bulky items (ENC) weighing more than 250 grams (350 grams for press items). Moreover, the 50 gram threshold is of regulatory interest since it demarcates the postal monopoly. This regulatory threshold will cease to exist in 2011, with the total opening of the French postal market to competition.*

Impact of weight and format on postal costs

Process	Sensitivity to weight/format		How does cost accounting measure this impact on costs?	Allocation of operational costs[23]
Collection	No	Basically, it is the method of insertion into the postal network (bulk posting, posting in yellow letter boxes , registered item posted at the counter) that determines the type of processing.	Weight and size are secondary cost drivers and are not considered in statutory accounting.	16 %[24]
Sorting • of which manual sorting	Yes	The weight and size of items determine where they are processed, for items more than 2 cm thick for instance, and processing times will also vary depending on the item's weight and format.	The different processing times for the three weight/format categories[25] (timing of process).	20 %
• of which mechanised sorting	Yes	Depending on their format, items will be processed on different machines with different processing times.	The different technical characteristics of the sorting machines (particularly their speeds).	
Conveyance	Yes	The weight and size of items affect conveyance-equipment dimensions.	Average container capacity for the relevant item category (counting).	8 %
Delivery preparation	Yes	Processing times will also vary with item weight and format.	The different processing times for the three weight/format categories (timing of process)	
Delivery • of which loading time	Yes	The weight and size of items affect times for mail delivery to letter boxes, especially if the boxes are not standardised, as this may necessitate delivery to the addressee in person.	The different processing times for the three weight/format categories (timing of process).	56 %
• of which delivery-round time	Yes	There are limits on the total weight a mail carrier can carry on foot or by bicycle.	Allocations are based on theoretical rules and using a technical-economic model.	

2

The authority's main areas of focus

c) Preparation of an ARCEP decision

In its consultation, ARCEP put forward three alternatives to the existing method. Its exploratory analysis produced methods that were more or less similar, but it was noted that, in general, they resulted in a narrower distribution of costs over the various categories making up postal traffic. This is largely due to the fact that the methods take better account of the impact on costs of the volumes transmitted.

The consultation ended on 1 March 2010 and gave rise to Decision No. 2010-363 which updates a certain number of coefficients used for allocating costs among the various types of items forwarded by the postal network. This Decision does not alter the allocation of common costs for the "active delivery round" which will be the subject of a separate decision informed by new economic modelling work conducted with La Poste in 2010.

3.3. Preparation of the future regulatory framework for the universal postal service

The legal framework for postal activities derived from the Law of 20 May 2005 was amended early in 2010 by Law No. 2010-123 of 10 February 2010[26] on the public company La Poste and postal activities (see box). Three important lines of strategic thrust emerge:

- a radical change in La Poste's status to allow its capitalisation: in its Opinion No. 2009-0551 on the Government's draft legislation, ARCEP noted that:

the change in La Poste's legal status would not affect the rights and obligations derived from its capacity of "universal service provider". The change provided for in the draft legislation seemed consistent with total liberalisation of the postal market by putting La Poste on the same legal footing as its competitors, thus avoiding distortion of competition among the various operators in the market.

- elimination of the postal monopoly from 1 January 2011, in conformity with the 2008 Postal Directive, flanked by the corresponding changes to postal regulation procedures (abolition of tariff authorisation procedures and use of the multi-year system already in place to regulate postal tariffs);

- two new missions for ARCEP: handling complaints from consumers not settled within the framework of the procedures established by postal operators, and evaluation of the net cost of La Poste's regional planning and development mission.

At the same time, ARCEP pursued its work on preparing for market liberalisation. As part of that work, it commissioned a study from Wik Consult on the definition, typology and method for evaluating intangible benefits in the context of the universal postal service. Under the terms of the Postal Directive, the setting up of a compensation fund as provided for in article L2-2 of the Post and Electronic Communications Code should necessarily include consideration of any kind of benefit derived by the universal service operator from its mission.

Little work has been done on this topic in the postal sector. This is a sensitive task for several reasons:

- first, the Directive provides no clear, established definition of the concept of "intangible benefits" in the postal sector;

- second, a distinction must be made between intangible benefits arising from universal service obligations and other benefits to the incumbent operator that are not derived from the universal service (such as the benefits linked to being the strongest operator on the market, even though these two sources of benefit are not linked);

---

26 - *Law No. 2010-123 of 9 February 2010 on the public company La Poste and postal activities published in the Journal Officiel (Official Gazette) on 10 February 2010.*

• third, to date there is no precise methodology for evaluating any identifiable intangible benefits, which may be of different types.

This study has triggered considerable interest in France and Europe.

The Law on La Poste and postal activities
(Law No. 2010-123 of 10 February 2010)

1 – Status of La Poste

With effect from 31 March 2010, the public establishment La Poste became a public limited company whose missions are laid down by law. These include the universal postal service, the postal conveyance of press items, postal presence throughout the national territory and accessible banking services.

2 – End of the postal monopoly

The postal monopoly on letters weighing less than 50 grams, representing 83% of items of correspondence, is to be abolished from 1 January 2011, in accordance with the provisions of the 2008 Postal Directive.

3 - Adjustment of regulatory procedures

The system of prior authorisation of postal tariffs by ARCEP will disappear with the postal monopoly. Universal service tariffs will still be subject to ARCEP's multi-year framework, and ARCEP may ask La Poste to reconsider its proposed changes if these deviate significantly from universal service tariff principles, namely geographical equalisation, an affordable service for all users and tariffs geared to costs.

Universal service quality must be tested and the findings published in as much as the Minister has set goals for La Poste.

In future, contributions to the compensation fund implemented in the event of an unfair burden on La Poste as the result of its universal service obligations will be based on the volumes handled by operators and not on their turnover.

4 – Processing of user complaints

ARCEP will handle complaints not settled within the framework of the procedures put in place by postal operators which have an obligation to provide users with free channels for lodging complaints.

5 – Evaluation of the cost of La Poste's contribution to regional planning and development

The Law specifies that La Poste has an obligation to maintain a minimum of 17,000 contact points and that ARCEP has to evaluate the net cost of this mission every year, and submit a report to the Government and to Parliament. ■

2

The authority's main areas of focus

The authority's other responsibilities

The authority's other responsibilities

3 The authority's other responsibilities

Autorité de régulation des communications électroniques et des postes

Ensure the smooth running of the universal electronic communications service[1]

The universal electronic communications service guarantees that all consumers in the whole of France have access to a fixed telephony service at an affordable price, along with the existence of a telephone directory and a directory information service, and the deployment of public payphones. The universal service has both a geographical dimension – the right to connection from anywhere in the national territory (at a single, "balanced" tariff) – and a social dimension, thanks to a preferential tariff for the most underprivileged members of society. The service providers responsible for the different components, which were designated in 2009 following a call for proposals, are France Telecom for the telephone and public payphone services, and Pages Jaunes for the directories and directory assistance services.

1. Scope of the universal service

1.1. Universal service and public service

The universal telecommunications service is one of the three public telecommunications service components which also include the provision of mandatory electronic communications services and general interest missions. It is the only component to be financed by a sectoral fund. It corresponds to a set of basic services that are essential for allowing users taking part in social and economic life, and which are already accessible to most of the population. Through its two dimensions, i.e. geographical and social, the universal service makes it possible to ensure that the services are available nationwide and can be accessed by even the most underprivileged members of society.

Public electronic communications service		
	Universal service	**Mandatory services**	**General interest missions**
Content	Three components: fixed telephony service (tariff balancing and social tariffs), directories and directory assistance, public payphones.	Leased line service, ISDN, packet switching service, advanced voice call services.	Involvement in national defence and national security Development of research and training.
Financing	Financed by the sectoral fund to which all operators contribute.	Shouldered by the operator designated to provide the "telephone service" component.	Included in operators' terms and conditions.

Source : ARCEP.

1 - *The universal postal service is addressed on page XX (à compléter).*

3 The authority's other responsibilities

1.2. Universal service components

The three components of the universal service are available throughout the French territory (Metropolitan France, the overseas départements and the territorial collectivities of Mayotte and Saint-Pierre and Miquelon) and include:

- the telephone service which covers, on the one hand, the installation and connection to the fixed public network and the provision of a quality telephone service over this connection ("geographical" sub-component) and, on the other hand, special pricing and technical provisions for low-income users and those with disabilities ("social" sub-component). The designated operator is required to supply telephone services (subscription and calls) at the same price nationwide;

- the Universal Directory and Universal Directory Information Service which covers the provision of a directory enquiry service and a printed directory that is made available for free to all public telephone service subscribers, both fixed and mobile;

- and the Public Payphone Service which covers the installation and maintenance of public payphones (at least one public payphone in each municipality, and two in those with more than 1,000 inhabitants) in the public thoroughfare, and the provision of a quality and reasonably-priced telephone service over these payphones.

The supply of the telephone service and the supply of mandatory services[2] are bound by a law[3] which specifies that all of the services included in the universal service must include measures in that take account of the needs of people with disabilities.

2. Universal service implementation and management schemes

2.1. The service providers

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

Components	Designation period 2005-2009			Designation period 2009-2012		
	Provider	Duration	Period ends	Prestataire	Duration	Period ends
Telephone service (nationwide)	France Télécom	4 years	3 march 09	France Télécom	3 years	13 december 2012
Public payphones (nationwide)	France Télécom	4 years	3 march 09	France Télécom	2 years	25 november 2011
Printed directory (nationwide)	France Télécom	2 years	29 march 09	Pages Jaunes	2 years	27 november 2011
Directory information services (nationwide)	France Télécom	2 years	29 march 09	Pages Jaunes	2 years	10 december 2011

Source : ARCEP.

---

2 - *Unlike universal service components, no financial compensation is given for the supply of mandatory services.*
3 - *Law No. 2003-1365 dated 31 December 2003 concerning public service obligations in the electronic communications sector, published in the OJ of 1 January 2004.*

In addition, with respect to the "social" dimension of the telephone service, the code governing postal and electronic communications affairs in France, CPCE, includes the "pay-or-play" system whereby any telephone operator providing a service similar to the one supplied by the universal telephone service can take the initiative of submitting a proposal to the minister to offer a monthly reduction of €5.03 incl. VAT[4] to its subscribers who receive certain types of welfare allowance.

The beneficiaries of this social tariff are people who receive the social integration minimum income, or RMI (*revenu minimum d'insertion*) – which in Metropolitan France has been replaced by the earned income supplement, or RSA (*revenu de solidarité active*) – a specific solidarity allowance, or ASS (*allocation de solidarité spécifique*), the disabled adult allowance, or AAH (*allocation aux adultes handicapés*) or the allowance given to disabled ex-servicemen[5]. With the publication of the decree[6] accompanying the implementation of the earned income supplement (RSA), changes needed to be made to the social dimension of the universal service: because the earned income supplement replaces the social integration minimum income (RMI), the single-parent allowance, or API (*allocation de parent isolé*) and the different back-to-work incentive schemes, the revised social dimension of the universal service now also concerns former recipients of the single parent allowance who had previously been excluded. It also includes most recipients of the earned income supplement (RSA), in other words people whose income is below the guaranteed minimum income, which varies depending on the make-up of the household. The still transitional measures in place during the implementation of the RSA scheme, which include the social tariff reduction for telephone services, could change after 30 June 2010 with the prospect of extending the RSA scheme to the overseas territories, and the possible adoption of a resource criterion that would replace basic welfare benefits in the specific solidarity (ASS) and disabled adult (AAH) allowances.

Once the minister has approved its proposal, the operator will be compensated by the universal service fund for the sums committed to offering a social tariff reduction. In 2008, the minister approved the proposal submitted by the firm TLIC.

2.2. Financing the universal service

The costs that can be attributed to fulfilling universal service obligations, and which correspond to the costs that the service provider would not incur were it not for these obligations, are assessed annually by the Authority and are compensated by sectoral fund.

All electronic communications operators[7] with an annual retail turnover of more than € 5 million contribute to the universal service fund in an amount that is proportionate to their annual sales.

3. The Authority's role with respect to universal service

3.1. Determining the total cost of universal service

Based on the universal service provider's costs and audited revenue, ARCEP calculates the resulting net cost of the universal service for each of the components (total costs – total revenue + all intangible benefits). This net cost factors in the intangible benefits of being the universal service provider.

Then, based on the statements of relevant income submitted by the operators as part of their universal service obligations, the Authority determines the contributions due from the operators concerned and informs them of the amount. In 2009, ARCEP calculated the final cost of universal service for 2007 and made a provisional net cost assessment of the universal service in 2010.

---

4 - This amount has remained unchanged since 2000.
5 - The reduction for this category of users has been increased to € 4.79, incl. VAT.
6 - Decree No. 2009-716, dated 18 June 2009.
7 - As defined by Article L. 32, Para 15 of the CPCE, "Operator" refers to "any physical or legal entity that operates an electronic communications network open to the public or which provides the public with an electronic communications service".

3 The authority's other responsibilities

The following table lists the provisional contributions for each operator for 2010:

| Public electronic communications service		
Contributing operator	Contribution for 2010 (€)	Share of the total contribution
France Télécom	8 337 076	36.4%
SFR (FrNet2)	5 694 648	24.9%
Orange France	4 700 292	20.5%
Bouygues Télécom	2 222 587	9.7%
Free	520 537	2.3%
Orange Caraîbe	158 225	0.7%
SRR	120 434	0.5%
Colt Telecommunications France	114 390	0.5%
Completel SAS	91 614	0.4%
Other	955 385	4.2%

Source : ARCEP.

The Caisse des Dépôts et Consignations (Deposit and consignment office) is responsible for managing the universal service fund. It ensures the financial and accounting management of the contributions from operators and the compensation paid out to these operators following the final and estimated universal service net cost assessments performed by the Authority. An agreement was established between ARCEP and the Caisse des Dépôts that defines the technical system for managing the fund, and which was approved by the minister on 19 December 1997.

3.2. Changes in the cost of the different universal service components

The net cost of providing the universal service has remained unchanged since 2004[8], but the share of this cost that each of the components represents has evolved. In 2008, therefore:
- the cost of geographical balancing declined sharply, and accounted for only € 0.2 million (of the total € 22.7 million),
- the cost of public payphones increased (€ 15 million),
- the cost of the social tariff decreased (€ 25 million) due to a decline in the number of beneficiaries, but still remains the largest cost item for the universal service,
- the cost of intangible benefits also decreased slightly (-€ 18 million).

Final net cost of the universal service
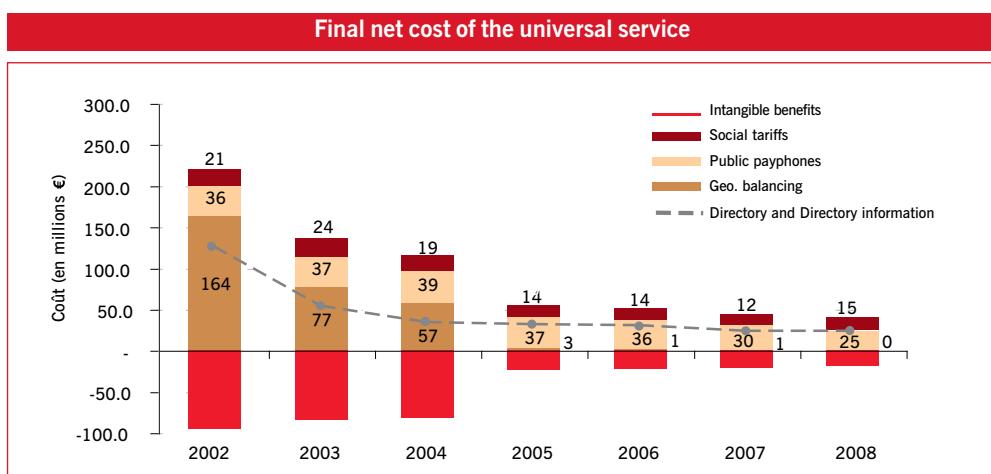
Source : ARCEP.

8 - *The fact of replacing the RMI scheme with the earned income supplement (RSA) could nevertheless bring changes to the welfare beneficiary categories and so to the number of people who are eligible for social tariffs.*

3.3. Monitoring quality of service

The operators responsible for providing the universal service must comply with several quality of service obligations, and publish QoS parameter data for the universal service component(s) they have been designated to provide.

These parameters, which concern turnaround time for supplying the initial connection, for fault repairs and unsuccessful call ratios[9], can be viewed on the France Telecom website at the following URL: http://www.orange.com/fr_FR/groupe/reseau/documentation/#

New quality of service obligations were added to universal service providers' terms and conditions, which came into effect starting in 2009. In addition to annual national and regional data, operators will provide ARCEP with a detailed quarterly status report on the most extreme situations concerning connection and fault repair turnaround times[10].

Obligations with respect to publication have also been strengthened. As a result, the deadline for publication of national indicators is 31 March of year n+1 for year n, and a month after the quarter for which data is being produced has ended, which allows public authorities to react quickly to any potential decline in QoS parameters.

3.4. Tariff supervision

The Authority has the power to veto any universal service tariff (e.g. the price of calls made from public payphones or the price of calls to the directory information service).

In the period running from 2005 to 2008, France Telecom complied with its multi-year tariff schedule. Average spending on all types of call combined (local and national calls and calls to mobiles in Metropolitan France) decreased by more than 11%, with an especially significant decline for calls to mobiles (-23.6%) and a smaller one for national calls (-11.85%). As concerns the price of telephone service subscriptions, when designating France Telecom as the universal service operator, ARCEP allowed the incumbent carrier three successive increases in subscription price (from € 10.87 to € 11.70, excl. VAT, in 2005; from € 11.70 to € 12.54, excl. VAT, in 2006; and from € 12.54 to € 13.38, excl. VAT, in 2007). The price of a subscription currently covers the costs incurred by France Telecom. The decrease in calling prices combined with the increase in subscription price has meant relatively unchanged spending for the average universal service consumer (of around € 23.50, excl. VAT, a month).

4. Upcoming changes

Several recent regulatory changes are likely to alter the universal service system.

The *France Numérique* 2012 (Digital France 2012) programme

The first is the France Numérique 2012 programme under which the government plans on issuing a call for applications in 2010 for the provision of a broadband access service available to all French consumers at a price of less than € 35 a month[11].

Amongst mobile operators

The Law on Modernising the Economy[12] provides for an agreement between the State and mobile operators that will offer social tariffs, but not as part of the universal service system.

---

9 - *Parameters listed in Annex 3 of the Universal Service Directive, restated in the Orders of 12 December 2009 and 24 November 2009 which designate France Telecom as the universal service provider.*
10 - *Indicating the number of connections installed or pending more than 30 days after the request was made, and the number of faults that had yet to be repaired two weeks after having been reported*
11 - *The government has specified that the State will establish a universal broadband access service agreement with the selected operators, which will contain all of the terms under which consumers will be able to access the service.*
12 - *Law No. 2008-776, dated 4 August 2008, on modernising the economy, published in the Official Journal 5 August 2008.*

3
The authority's other responsibilities

Will broadband access be included in the scope of universal service?

The process of transposing the directives from the new Telecom Package could well lead to changes in the regulatory framework governing the universal service, and lead to the inclusion of broadband access. In its clauses, Directive 2009/140/EC, amending Directive 2002/22/EC, no longer contains a minimum data rate figure. The Directive now refers only to "functional Internet access […] taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State". This new text reiterates the conclusions of the European Commission communication of September 2008[13]. As a result, if they so desire, Member States can now include broadband within the scope of universal service. The review of the Telecom Package did not set out to make a definitive ruling on this issue, however. It was as part of a public consultation running from 2 May to 7 May 2010 that the European Commission began in-depth discussions on the question of broadband and universal service, with the goal of finding "the best approach to ensure that basic telecoms services are available for all EU citizens". As of this writing, it is unknown whether the scope of universal service will be harmonised at the European level. Providing broadband access to all citizens, which is a goal shared by the European Commission, may in fact be financed in some way other than the universal service fund.

The transposition of the Universal Service Directives into national law will in all likelihood be ratified during the 2010-2011 session. The French legislator will therefore be able to issue a well-informed statement, thanks notably to the results of the consultation which the Commission could make public in a communication in autumn 2010. If need be, the Commission could propose measures before the end of 2010.

Are we moving towards a universal triple play bundle?

The social accessibility of the universal fixed telephone service is declining year by year, as revealed by the significant decrease in the actual number of beneficiaries of the social tariff, which has gone from close to 700,000 households in 2004 to fewer than 430,000 in 2008 – which represents less than 21% of potential beneficiaries. Bundled solutions that combine landline telephony and broadband access are steadily taking hold as the most attractive offers. Meanwhile, the social tariff, which was put into place before these offers became so popular, makes no explicit provision for including bundled services. As a result, unless measures are taken to increase the size of the reduction compensated by the universal service fund, a good solution would seem at least to make changes to the regulatory framework by clarifying the texts pertaining to social tariff offers. ARCEP has already indicated that it would like to see the scope of offers likely to be covered by social tariffs expanded to include fixed telephony offers that combine not only subscription and calling, but also other services (such as Internet access and television), and this regardless of the technology being used. This would mean that, depending on possible regulatory amendments, the social tariff system would be capable of taking account of the massive shift in consumer behaviour in the fixed telephony segment. The amount of the tariff reduction compensated by the universal service fund could be increased to guarantee the affordability of these bundled offers.

It was in this spirit that, at the request of the Prime Minister, the Minister responsible for Industry launched a public consultation[14] on possible changes to the social dimension of electronic communications services which concern, in particular, the terms of eligibility for beneficiaries – extending the scheme to include the telephone component of bundled solutions and having the universal service fund cover the cost of doing so. Operators have already expressed their interest in possibly supplying offers of this kind. ■

---

13 - Communication from the European Commission to the European Parliament and Council, the European Economic and Social Committee and the Committee of the Regions, dated 25 September 2008, in which the Commission invites NRAs "to contribute to a debate on achieving broadband for all in the EU. These contributions will feed into a Commission Communication in the second half of 2009 and possibly legislative proposals in 2010".
14 - The public consultation was held from 18 January to 5 February 2010.

Market analysis

1. Figures on the electronic communications market in France

1.1. Telecom carriers' business

The sector weathering the recession

The electronic communications sector has weathered the economic downturn relatively well. Even if operators' revenue in 2009 (€ 40.7 billion) was down slightly overall (-0.3% compared to 2008), mobile services (€ 20.4 billion) grew by 1.5% over the previous year and generated more revenue than fixed network services (€ 20.3 billion) for the first time ever. Broadband and ultra-fast broadband revenue also continues to increase steadily (+ 13.7%) even if it is not managing to fully offset the combined decrease of income generated by narrowband and capacity services.

Evolution of electronic communications operators' revenue, and breakdown by segment

Legend:
- Other services
- Mobile network services
- Capacity services
- Narrowband servicesbas débit
- Broadband and ultra-fast broadband services
- ○ Total electronic communications market
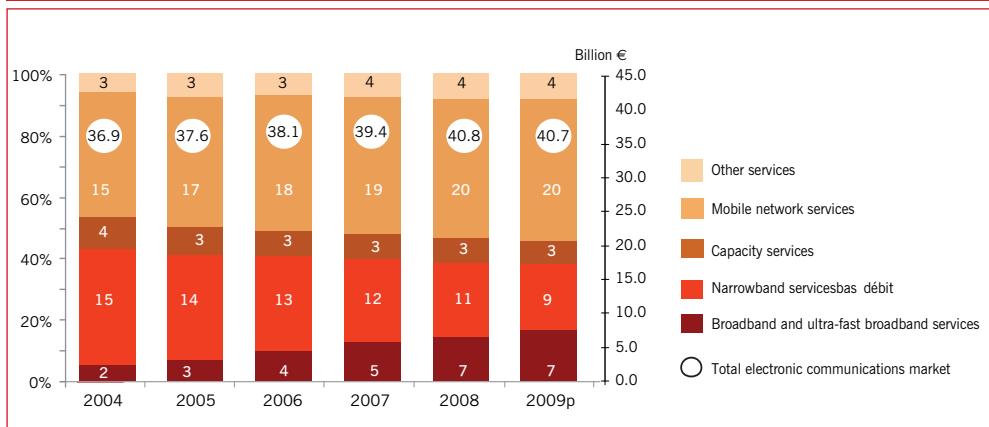
Source : ARCEP.
Note: Figures for 2009 are provisional estimates.

Operators' retail market revenue (billion €)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Fixed network services	20.2	20.1	20.5	20.7	20.3	-2.1%
Broadband and ultra-fast	2.8	3.9	5.4	6.5	7.4	13.7%
broadband services	14.0	12.7	11.6	10.7	9.4	-11.4%
Narrowband services	3.5	3.4	3.4	3.5	3.4	-3.0%
Mobile network services	17.4	18.1	19.0	20.1	20.4	1.5%
Total electronic communications market	37.6	38.1	39.4	40.8	40.7	-0.3%
Other services	3.0	2.9	3.3	3.6	3.7	1.1%
Operators' total end-market revenue	40.6	41.0	42.7	44.4	44.3	-0.2%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).
Note: "other services" revenue is not derived from the electronic communications market, per se. It includes revenue generated by the sale and rental of terminals and equipment, including the rental of IP boxes, hosting and call centre management revenue, and revenue derived from print directories, advertising and the sale of databases. Contributions from declared operators provide only a partial view of these market segments.

Subscriber growth

Equipment levels in the electronic communications market have been increasing steadily. The number of fixed lines increased by 400,000 during the year thanks to a rise in the number of households equipped with a landline connection.

Meanwhile, the number of broadband and ultra-fast broadband subscriptions increased by 1.9 million to reach 19.7 million at the end of 2009, which was comparable to the growth rate in 2008 (+ 2 million). This increase is due to an ongoing rise in the number of households equipped with a personal computer, which was up by +5.6% over the year before, bringing the rate of residential PC equipment at the end of 2009 to 68.3%.

After a middling year in 2008 (+ 2.7 million), the 3.5 million new mobile customers in 2009 brought the growth rate back up to what it had been in previous years. In December 2009, mobile operators were serving a base of 61.5 million customers, of which close to 70% were subscribing to a flat rate solution.

Equipment						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Number of fixed lines	33.7	34.1	34.5	35.1	35.5	1.2%
Number of mobile customers	48.1	51.7	55.3	58.0	61.5	6.0%
Number of broadband and ultra-fast broadband fixed network subscriptions	9.5	12.7	15.8	17.8	19.7	10.4%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Slight decline in traffic volume

For the first time ever, mobile traffic declined slightly in 2009 (-0.6%). Traffic originating on fixed networks also decreased very slightly. Text and multimedia message traffic, on the other hand, continued to increase at an even greater rate than in the past two years. A total of 63.4 billion messages were sent in 2009, compared to 35.1 billion in 2008.

Traffic volume (billion minutes)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Originating on fixed networks	106.2	105.7	106.0	109.3	109.2	-0.1%
Originating on mobile networks	81.7	94.0	99.5	101.8	101.2	-0.6%
Number of person-to-person SMS/MMS (billion)	12.9	15.3	19.5	35.1	63.4	80.7%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

1.2. Employment and investment

There were 124,800 people working in the electronic communications sector in France in 2009, which marks a slight decrease compared to 2008 – although the decline is less significant than the one posted the year before.

After an upswing in 2008, telecom carriers' investment levels were down again in 2009 (-€ 500 million). The most significant decrease was in fixed network spending, which is reflective of lesser growth for ADSL broadband connections and a decline in investments in dial-up networks. In addition, although they have begun in earnest, spending on optical fibre rollouts remained moderate in 2009. Meanwhile, mobile operators focused their financial efforts on increasing the density of their 3G networks, although it did not allow them to maintain the same investments levels as in 2008.

Employment and investment						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Number of direct jobs (000s)	140.4	133.1	129.9	126.1	124.8	-1.1%
Investments (billion €)	6.3	7.0	6.1	6.5	6.0	-8.6%
by fixed network operators	3.7	3.8	3.8	4.1	3.7	-9.4%
by mobile network operators	2.6	3.2	2.4	2.4	2.3	-7.4%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Electronic communications investment levels

Source : ARCEP.

3 The authority's other responsibilities
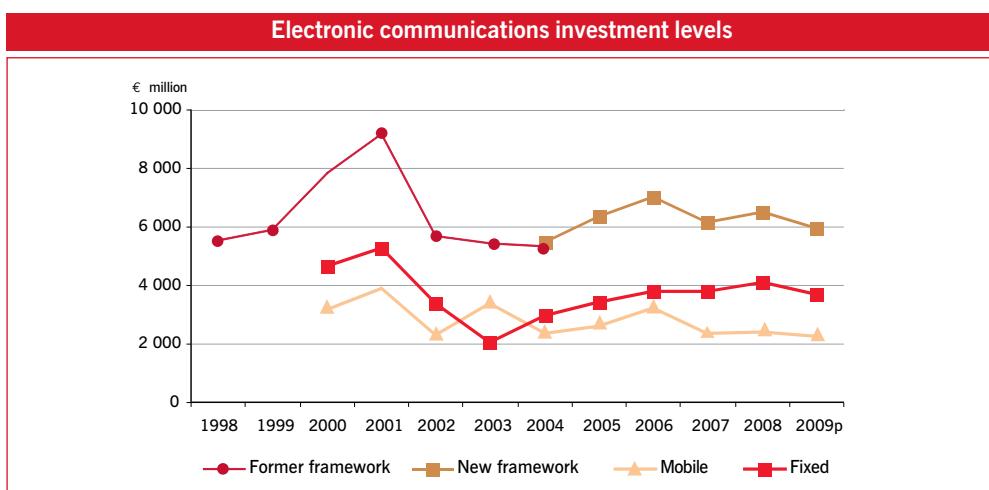
1.3. Fixed broadband network services

Broadband market revenue continues to rise, increasing by close to € 1 billion in 2009 to a total € 7.4 billion, of which € 6.2 billion was generated by broadband access (revenue from Internet access and bundled offers)

There were 19.7 million broadband subscriptions in France at the end of the year, with a growth rate comparable to what we saw in 2008, i.e. an increase of around 2 million subscriptions during the year, compared to an annual increase of 3 million between 2005 and 2007. Close to 90% of all broadband subscribers also subscribe to a telephone service, with the number of voice over broadband subscriptions totalling 17 million in December 2009. The number of people accessing TV services over ADSL is rising at a tremendous rate, growing by 40% in 2009 which brings the subscriber base to close to 9 million households.

VoIP calling traffic increased by 14.5% in 2009 to reach 54.4 billion minutes, or half of all calling traffic originating on fixed networks.

The revenue generated by overage calls is also increasing.

Retail market revenue						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Access	2.4	3.3	4.5	5.5	6.2	14.2%
VoIP calls (flat rate overage)	0.1	0.2	0.4	0.6	0.7	21.4%
Other revenue	0.3	0.4	0.4	0.5	0.5	-0.4%
All broadband services combined	2.8	3.9	5.4	6.5	7.4	13.7%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Subscriptions (million)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Internet access	9.5	12.7	15.8	17.8	19.7	10.4%
Voice over broadband	3.4	6.7	10.9	14.4	17.0	17.6%
TV over ADSL	1.3	2.6	4.5	6.2	8.7	40.0%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Calling volume (billion minutes)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Voice over broadband calls	8.4	18.7	33.2	47.5	54.4	14.5%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Percentage of IP traffic originating on a fixed line, by call destination
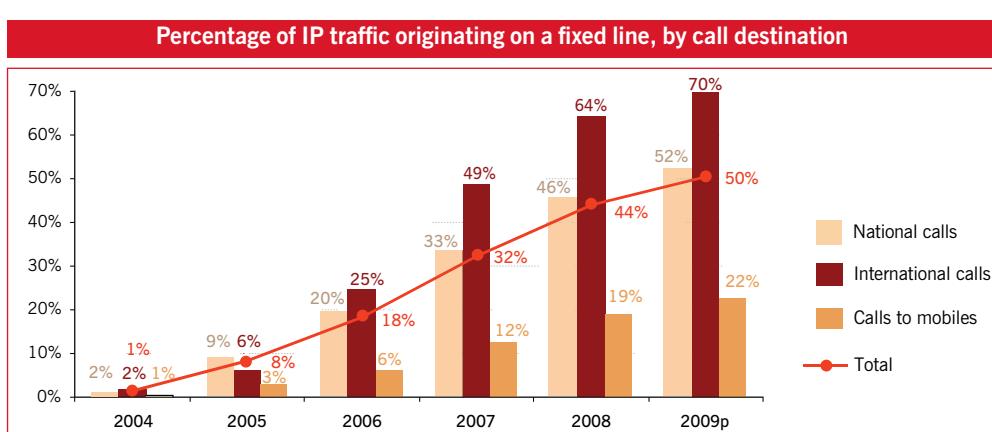
Source : ARCEP.

1.4. Broadband wholesale market

Unbundling grew by more than 20% in 2009, which is more than in 2008. This solid performance can be attributed to a decline in the use of bitstream. At the same time, the decrease in the use of shared access has slowed down (-90,000 connections in 2009 compared to -220,000 the year before), while full unbundling continues to growth at the same pace as in previous years, adding another 1.5 million more lines to the existing base.

Unbundling (million)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Number of shared access lines	2.248	1.826	1.613	1.393	1.309	-6.0%
Number of fully unbundled lines	0.592	2.160	3.625	4.939	6.414	29.9%
Total LLU lines as of 31/12	2.840	3.986	5.238	6.332	7.723	22.0%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Bitstream (ATM and regional IP) and national IP (million)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Total number of lines	1.782	2.090	2.233	2.196	1.892	-13.8%
Of which naked ADSL		0.188	0.942	1.186	1.245	5.0%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

1.5. Fixed narrowband network services

The market for services supplied over narrowband fixed networks continues its inexorable decline. Revenue is shrinking at an ever increasing rate, and was down by 11.4% in 2009, or 3 points more than in the previous three years.

The revenue generated by subscriptions to the public switched telephony network (PSTN) decreased by 5.5% in 2009 (or by close to twice as much as in 2008), while calling revenue on fixed lines (or from public payphones, phone cards and narrowband Internet calls) shrank by 17.4% – compared to a 13% decline in 2008. And, finally, income from value-added services[1] is also down for the second year in a row, by more than 15%.

The volume of calling traffic on the PSTN originating on fixed line devices continues its downwards trajectory, due to the popularity of voice over broadband offers and the decrease in the number of narrowband subscriptions.

Retail market revenue (billion €)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
PSTN subscriptions	5.7	5.6	5.5	5.4	5.1	-5.5%
Public payphones, cards and narrowband Internet	6.8	5.7	4.7	4.1	3.4	-17.4%
Value-added and directory services	1.5	1.4	1.4	1.2	1.0	-17.4%
Total	14.0	12.7	11.6	10.7	9.4	-11.4%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

3 **The authority's other responsibilities**

---

1 - Telephone services (directory assistance, free services, premium services) whose number starts with 08, or with 3 for short numbers.

Subscriptions (million)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
"Classic" telephone subscriptions	33.1	31.6	28.7	26.3	24.2	-8.0%
Carrier selection	8.2	6.9	4.9	3.3	2.8	-16.3%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Calling volume (billion minutes)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Calls on the PSTN	97,7	87,1	72,8	61,9	54,8	-11,4%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

1.6. Capacity services on fixed networks

Retail market revenue (billion €)						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Leased lines	1.5	1.5	1.4	1.5	1.5	4.8%
Data transport	2.0	1.9	2.0	2.1	1.9	-8.6%
Capacity services revenue	3.5	3.4	3.4	3.5	3.4	-3.0%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

The revenue generated by capacity services has evolved very little, and totalled €3.4 billion in 2009. X25 and Frame Relay technologies are being replaced massively by IP and Ethernet based services.

1.7. Mobile network services

The mobile services market is still growing, with operators' retail market revenue having risen by 1.5%. Income from value-added services is down, due to the legislative measures adopted in 2008 which included the provision that the price of calls from a mobile line to "green" numbers starting with 080 be included in customers' flat rates, as of 1 April 2009.

The revenue generated by mobile data services rose substantially again in 2009 (+23.7%). This increase can be attributed not only to a thriving SMS market, whose volume virtually doubled during the year, but also to an increasing use of the mobile Internet by smartphones and dedicated cards: 3G USB keys, which also doubled in number during the year, accounting for 3.4% of SIM cards in December 2009.

More and more consumers are using 3G networks, either for data transport or simply for their calls. They now account for 27.5% of all mobile subscribers, compared to 19.7% one year earlier. This increase can be attributed to operators' increasingly dense coverage, combined with healthy sales for the latest 3G handset models.

The volume of traffic originating on mobile lines decreased for the first time ever. Although it was only slight (-0.6%), it is nevertheless telling of the growing trend amongst young users of preferring text-based messages (SMS, e-mail, etc.) to voice calls.

Retail market revenue (billion €)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Voice services	14.3	14.6	15.1	15.6	15.3	-2.2%
Data services (SMS and data)	1.9	2.1	2.4	3.1	3.8	23.7%
Value-added and directory services	1.2	1.3	1.4	1.4	1.3	-6.3%
Total mobile services	17.4	18.1	19.0	20.1	20.4	1.5%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Subscriptions (million)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Mobile network customers	48.1	51.7	55.3	58.0	61.5	6.0%
Of which active 3G subscribers			5.9	11.4	16.9	47.9%
Of which data-only cards (3G keys)			0.5	1.0	2.1	109.6%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Calling volume						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Voice calls (billion minutes)	81.7	94.0	99.5	101.8	101.2	-0.6%
Number of person-to-person SMS/MMS (billion)	12.9	15.3	19.5	35.1	63.4	80.7%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Person-to-person messaging
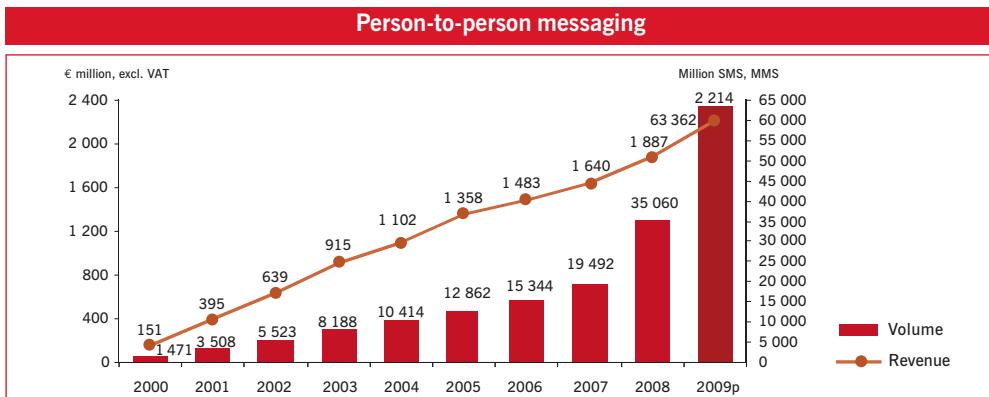
Source : ARCEP.

1.8. Number portability

One million more numbers were ported in 2009 than in 2008.

Number retention (million)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Total numbers ported during the year	1.0	2.3	3.4	3.7	4.7	26.6%
For fixed network subscribers	0.7	1.9	2.5	2.3	2.9	24.2%
For mobile network subscribers	0.3	0.4	0.9	1.4	1.8	30.6%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

3 The authority's other responsibilities

1.9. Average consumption indicators

The average monthly invoice for a fixed line (including monthly spending on landline calling and Internet access) stood at € 36, excl. VAT, in 2009, which is 70 eurocents below the year before – after having increased for two years straight. This invoice corresponds to what a customer pays in a month to access the fixed network, whether or not they have an Internet connection, broadband or narrowband, and whether or not they have a PSTN or IP telephony subscription, or both.

As the number of households equipped with an Internet connection was rising and broadband was replacing narrowband access, the average invoice had increased slightly in previous years. It appears that this trend was more than offset in 2009 by the decline in PSTN subscription revenue and especially in calling revenue (of around -12%).

Average consumption is tending to decrease. The average amount of traffic generated by customers who use IP telephony shrank by 23 minutes this past year (to 4 hours and 49 minutes a month), but still far exceeds the volume of traffic generated by customers who call over the PSTN: 2 hours and 56 minutes a month, which is 6 minutes less than in 2008.

Average monthly consumption per fixed line						
(€ excl. VAT, or minutes a month)	2005	2006	2007	2008	2009f	Growth 2009-2008
Average monthly invoice: access and calls over the phone service and the Internet	35.9	35.5	36.2	36.6	36.0	-1.7%
Average monthly volume of outbound voice calls	255.0	252.8	252.0	257.7	254.9	-1.1%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Average monthly fixed line consumption per customer						
	2005	2006	2007	2008	2009p	Growth 2009-2008
PSTN subscription						
Average monthly invoice per customer (€, excl. VAT)	28.8	27.2	27.0	27.7	27.1	-2.0%
Average monthly volume per customer (minutes)	236.7	217.0	194.9	182.2	176.4	-3.2%
VoIP calls						
Average monthly invoice per customer (€, excl. VAT)	3.7	3.7	4.0	3.8	3.7	-2.1%
Average monthly volume per customer (minutes)	325.4	309.7	315.6	312.3	288.7	-7.6%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Monthly mobile invoices decreased by 3.2%, on average, compared to 2008 due to the combined effect of a decrease in the amount of calling traffic and the growing use of text messaging and the mobile Internet.

Customers who subscribe to a flat rate pay an average €33.90, excl. VAT, a month and spends 3 hours and 10 minutes on voice calls and sends 105 text messages a month, on average. Customers with prepaid cards generated much less traffic, spending an average of only 35 minutes a month on voice calls and sending 49 text messages, for monthly average spending of €10.70, excl. VAT, or 6% more than the year before.

Mobile customers' average monthly consumption						
	2005	2006	2007	2008	2009f	Growth 2009-2008
Average monthly invoice per customer (€, excl. VAT)	29,1	28,0	27,4	27,5	26,6	-3,2%
Average monthly volume of calls per customer (minutes)	147,0	157,1	155,0	149,7	141,2	-5,7%
Average monthly number of SMS sent per customer	22,7	25,1	30,0	51,0	87,8	72,2%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

Mobile customers' average monthly consumption, by type of subscription						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Flat rates						
Average monthly customer invoice (€, excl. VAT)	39.8	37.7	36.4	36.1	33.9	-6.3%
Average number of monthly calling minutes per customer	214.5	226.4	219.3	206.8	190.1	-8.1%
Average number of SMS sent per customer a month		29,0	36,3	60,2	105,4	75,1%
Prepaid cards						
Average monthly customer invoice (€, excl. VAT)	11.3	10.7	10.3	10.1	10.7	6.0%
Average number of monthly calling minutes per customer	34.3	32.6	34.1	35.3	34.6	-2.0%
Average number of SMS sent per customer a month		18.1	18.0	32.5	49.2	51.6%

Source: ARCEP, EC Observatory - Annual surveys up to 2008; quarterly survey for 2009 (estimated figures).

1.10. Household equipment levels

Residential fixed telephony equipment levels have been increasing steadily since 2004 thanks to the introduction of voice over broadband solutions. According to Médiamétrie, 86.2% of French households had a fixed line at the end of 2009. The percentage of households equipped with Internet access has also been rising at a tremendous rate: increasing from 37.7% to 62.6% between 2005 and 2009. Nine out of 10 households equipped with a microcomputer at home also have an Internet connection.

Household equipment levels at year end (%)						
	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Fixed telephony	82,0	82,2	83,6	85,4	86,2	0,9%
Microcomputer	49,1	54,9	60,0	64,7	68,3	5,6%
Internet access	37,7	44,3	49,4	57,8	62,6	8,3%

Source: Médiamétrie – Référence des equipments multimédia

	2005	**2006**	**2007**	**2008**	**2009f**	**Growth 2009-2008**
Active mobile penetration rate (% of the population)	74.9	80.8	84.6	88.7	92.8	4.6%

Source: ARCEP, Mobile market status report

2. Market analyses performed by ARCEP in 2009

In addition to reviewing or implementing analyses of the seven markets listed in the European Commission recommendation, ARCEP also performed an analysis of two other markets in 2009, namely SMS call termination and broadcasting transmission services.

2.1. The broadband market

Although the retail market is not regulated, its momentum is strongly affected by wholesale market regulation. The state of competition that exists in this market is the direct result of the state of upstream wholesale markets, and particularly of wholesale LLU and broadband access delivered at the regional level, a.k.a. bitstream offers.

As the SMP operator in this market, France Telecom is required to offers alternative operators:
- direct access to the local loop via unbundling;
- a wholesale offering activated and delivered at either the regional or departmental level, i.e. bitstream;

3 The authority's other responsibilities

- a wholesale broadband access service at the national level, delivering broadband traffic to a single point nationwide. This offer has not been regulated since 2006.

Unbundled access is a France Telecom wholesale offer that allows alternative operators to gain direct access to the copper pair. To take advantage of this solution, alternative operators must install their own equipment in the incumbent carrier's premises, at the MDF level and, naturally, must remunerate France Telecom for use of its local network.

There are two types of unbundling:
- shared access, whereby the customer continues to subscribe to a classic telephone service;
- and full unbundling, whereby the customer no longer subscribes to a classic telephone service.

Bitstream can be delivered in Ethernet, IP or ATM mode in areas where operators have not deployed a dense enough network to be able to use unbundling. It allows alternative operators to collect Internet traffic at various regional points on the France Telecom network and then use their own complementary transport infrastructure.

As with unbundling, there have been two types of bitstream access available since 2007:
- "classic" bitstream whereby the customer continues to subscribe to a classic telephone service;
- and what is referred to as naked ADSL, whereby the customer no longer subscribes to a classic telephone service.

General principles governing broadband market regulation

In 2005, ARCEP adopted market analyses decisions that set the framework for the ex ante regulation of broadband markets. Then, in December 2007, the Authority launched a new cycle of analysis that ended on 24 July 2008 with the adoption of two market analysis decisions[2], based on the European Commission Recommendation on relevant markets dated 17 December 2007.

These two decisions cover the period from 2008 to 2011 and concern the two broadband markets listed by the Commission: wholesale unbundled access to physical network infrastructure (market 4) which includes unbundling and access to civil engineering infrastructure, and wholesale broadband access (market 5), which includes broadband access offers activated on DSL, otherwise known as bitstream offers. These two markets have been defined for the whole of France.

The ARCEP market analysis concluded that France Telecom enjoyed significant power in both of these markets, particularly with respect to its market share and due to the fact that its infrastructure would be difficult to duplicate. As a result, the incumbent carrier is subject to several obligations. For its wholesale unbundled and bitstream offers, it must:
- grant all reasonable requests for access under non-discriminatory conditions;
- publish a set of indicators (QoS indicators, etc.) and other information, including a reference offer that the Authority has the power to modify;
- comply with transparency and accounting separation obligations.

As concerns France Telecom wholesale offers tariffs, unbundling tariffs must reflect the cost of providing the service. Pursuant to bitstream market regulation, the tariff obligations incumbent on France Telecom aim to provide a geographical complement to unbundling without competing with it directly. More specifically, bitstream tariffs must be:
- sufficiently low to guarantee dynamic competition in the retail market;
- but sufficiently high so that it is not economically appealing for an alternative operator to subscribe to a wholesale bitstream offer in a zone where unbundling is due to expand.

The decisions adopted by ARCEP renew existing provisions by and large, with certain modifications

---

2 - *Decision No. 2008-0835, dated 24 July 2008, and Decision No. 2008-0836, also dated 24 July 2008.*

to take account of past and future market developments: enhanced retail offers, consumers' increasing quality of service demands, extensions made to collection networks, migration to Ethernet, etc.

In 2009, full unbundling was the most widely sold wholesale DSL market product. It is especially worth noting that the base of fully unbundled lines grew at a greater rate than sales of wholesale broadband DSL connections in their entirety, due to the various migrations and to expanded LLU coverage.

This expansion of unbundling continues to be made possible by network rollouts instigated by local authorities and on the optical fibre link (LFO) commercial offer for connecting distant exchanges marketed by France Telecom. As a result, at the end of 2009, alternative operators had unbundled 4,660 exchanges, enabling them to reach 76% of the population.

2.2. Mobile telephony markets

a) Voice call termination market analysis

All operators that market a telephone service must allow their customers to be able to reach any mobile number in France. To do so, operators must purchase a "call termination" service from each of the other mobile operators under terms which, in the absence of regulation, will be decided unilaterally by the operator providing the termination service. That operator therefore has a monopoly over the market for call termination on its own network, and it is this significant market power that forms the basis of the regulation that governs mobile call termination markets.

Background on the second cycle of market analysis for Metropolitan France, 2008-2010

In its Decision of 4 October 2007[3], ARCEP designated all three mobile operators in mainland France as having significant market power (SMP) in the wholesale mobile voice call termination market on their respective networks. To remedy the competition issues that had arisen in these markets, these operators are subject to several obligations: grant all reasonable requests for access, non-discrimination, transparency, cost accounting and accounting separation and, finally, tariff supervision. This last obligation means that ARCEP imposed certain conditions on the tariffs that these operators can charge in the wholesale market for their voice call termination services, according to a principle of cost-oriented pricing. It is decision, the Authority set the ceiling tariffs that applied up to 30 June 2009, based on full distributed costs. ARCEP then set the ceiling tariffs to apply from 1 July 2009 to 31 December 2010 in its Decision dated 2 December 2008[4], based on long-run average incremental costs.

In accordance with the European Commission recommendation on the regulatory treatment of call termination tariffs, which was adopted on 7 May 2009, the Authority concluded that call termination tariffs that were symmetrical at the incremental cost level were the most economically sound, given the current state of development of mobile telephony markets in France, and particularly because of their ability to enable fair competition to develop between mobile operators (high-volume offers for calls to all networks) and between fixed and mobile operators (convergence offers). By applying the principle of proportionality, however, the Authority intended to create a transitional period for the gradual switch from cost-oriented pricing to avoid destabilising the market and to give operators the time to adjust the pricing structure of their retail offers.

This transition period has meant that there is still a gap between call termination tariffs and the relevant underlying costs. This gap, combined with an imbalance in interconnection volumes between Bouygues Telecom and its competitors, Orange and SFR, was creating an artificial increase in the financial

3 - *Decision No. 2007-0810, dated 4 October 2007.*
4 - *Decision No. 2008-1176, dated 2 December 2008.*

<div style="writing-mode: vertical">**3** The authority's other responsibilities</div>

balance of the interconnection fees being paid by Bouygues Telecom, which could potentially create an imbalance in competition that would be detrimental to Bouygues. ARCEP therefore maintained a temporary asymmetry in the ceiling tariff applied to Bouygues Telecom – the purpose being to partially lessen the effects of a sub-optimal regulation on the operator's financial balance during the transitional period.

The Authority therefore imposed the following ceiling tariffs:
- 4.5 eurocents a minute for Orange and SFR, and 6 eurocents a minute for Bouygues Telecom, during the period running from 1 July 2009 to 30 June 2010
- 3 eurocents a minute for Orange and SFR, and 4 eurocents for Bouygues Telecom, during the period running from 1 July 2010 to 31 December 2010.

∑ The new decision setting the tariff framework for Bouygues Telecom for the second half of 2010

In early 2009, Orange and SFR each filed an application with the Conseil d'Etat for annulment of the ARCEP decision[5] that sets mobile call termination tariffs. In its Decision of 24 July 2009, the Conseil d'Etat states that the principles applied by the Authority are in accordance with the objectives assigned to it by the code governing electronic communications in France, CPCE, and notably Articles L.32-1 and D.311. In particular, the Conseil d'Etat noted that the applicants had not proven that the decision would necessarily penalise consumers or act as a disincentive for investments.

The Conseil d'Etat nevertheless expressed the view that the ceiling tariff applied to Bouygues Telecom in the second half of 2010 was disproportionate with the stated objective of partially offsetting the imbalances encountered by the operator due to the gradual shift from cost-oriented pricing. The Conseil d'Etat therefore approved all of the ceiling tariffs listed in Decision No. 2008-1176, with the exception of the tariff of 4 eurocents a minute for the second half of 2010.

To establish a new tariff schedule for Bouygues Telecom for the second half of 2010, the Authority began by updating the technical-economic cost model for an efficient mobile operator operating in Metropolitan France in autumn 2009, which was then submitted to public consultation from 6 November to 7 December 2009.

On 13 January 2010, the Authority published and notified the European Commission of a draft decision that sets a ceiling tariff of 3.4 eurocents a minute for voice call termination on the Bouygues Telecom network during the second half of 2010. The final decision was adopted on 18 February 2010[6].

Evolution of voice call termination tariffs since 2002									
	2002	2003	2004	2005	2006	2007	2008	As of 1 July 2009	As of 1 July 2009
Orange	20.12	17.07	14.94	12.5	9.5	7.5	6.5	4.5	3
SFR	20.12	17.07	14.94	12.5	9.5	7.5	6.5	4.5	3
Bouygues Télécom	27.49	24.67	17.89	14.79	11.24	9.24	8.5	6	3,4

Source : ARCEP.

Voice call termination tariff supervision in overseas markets

As they are in mainland France, mobile voice call termination markets are also regulated in the overseas départements. In its Decision of 16 October 2007[7], ARCEP designated each of the mobile operators in the overseas *départements* and territories as having significant market power in the voice call

5 - Decision No. 2008-1176, dated 2 December 2008.
6 - Decision No. 2010-0211, dated 18 February 2010.
7 - Decision No. 2007-0811, dated 16 October 2010.

termination market on their respective networks. To remedy the competition issues that had arisen in these markets, these operators are subject to several obligations: grant all reasonable requests for access, non-discrimination, transparency, cost accounting and accounting separation (this applies only the incumbent mobile operators in overseas markets, SRR and Orange Caraïbe) and, finally, tariff supervision. The tariffs charged for call termination are therefore supervised by ARCEP, in the form of an obligation to charge cost-oriented prices for SRR and Orange Caraïbe, and an obligation to charge non-excessive prices for Orange Réunion, Outremer Telecom, Digicel, Dauphin Telecom and UTS Caraïbe.

In July 2009, ARCEP adopted a decision setting the ceiling tariff for call termination on the SRR and Orange Caraïbe networks in 2010 and specifying the Authority's definition of non-excessive pricing as it applies to call termination on the other operators' networks[8]. Like in Metropolitan France, and in accordance with the European Commission recommendation, the Authority held the view that it had become relevant to use the long-run average incremental costs of an efficient generic operator in the overseas *départements* as the basis for its tariff supervision. By applying the principle of proportionality, however, and given current mobile call termination prices in the overseas markets, the Authority implemented a transitional period for the gradual switch to the target tariff levels, and to allow for the progressive reduction in the asymmetries between the different operators' prices. The goal is to avoid destabilising the market and to give operators the time to adjust the pricing structure of their retail offers. ARCEP therefore ordered a decrease in mobile call termination tariffs in overseas markets, over the course of 2009 and 2010, of between 28% and 47%, depending on the operator.

Preparatory work on the third cycle of market analysis covering the period from 2011 to 2013

In preparation for the third cycle of voice call termination market analysis for the period running from 2011 to 2013, ARCEP began in 2009 by reviewing the specifications of the accounts submission and cost accounting obligations imposed on SMP operators in wholesale markets. Accounting obligations are intended to provide ARCEP with a detailed and reliable knowledge of these operators' costs, which will allow the Authority to implement a tariff schedule that reflects relevant costs, and to ensure that operators are complying with the obligation to be non-discriminatory.

After a series of exchanges with operators, the accounting specifications review process ended with a draft decision[9] being submitted to public consultation on 18 December 2009.

Preparatory work will continue in 2010 with an update of the technical-economic cost model for an efficient mobile operator operating in Metropolitan France, which will be adjusted based in particular on the accounts submitted for 2009 that were produced in accordance with the revised specifications.

b) SMS call termination market analysis

In Metropolitan France

As with voice calls, all mobile network operators must provide an SMS call termination service so that text messages sent from competing operators' networks can be delivered to their subscribers. In the absence of regulation, this structural bottleneck allows each mobile operator to set the terms and conditions applying to this service unilaterally. As a result, in 2006 ARCEP established a first cycle of regulation for these markets for a three-year period, requiring that all three mobile operators in Metropolitan France provide SMS call termination access and interconnection services under transparent, non-discriminatory conditions and at cost-oriented prices.

---

8 - Decision No. 2009-0655, dated 27 July 2009.
9 - Decision No. 2010-0200, dated 11 February 2010.

3 The authority's other responsibilities

A scorecard for the first regulatory cycle was published in November 2009. The Authority's overall assessment was a positive one since, in the retail market, regulation enabled the emergence of offers that included unlimited text messaging and spurred a tremendous increase in the use of SMS at no additional cost to heavy consumers. ARCEP nevertheless noted that the decrease in the average price of the service did not benefit users who send only the occasional SMS, as the unit price had changed very little, or not at all.

The Authority did, however, point out that wholesale SMS call termination markets had not evolved, and that the tariffs being charged were still the ceiling tariffs that had been set by ARCEP in 2006, even though the amount of text messages being sent by consumers had increased significantly since then, which meant that average costs had decreased as a result. The Authority noted that, contrary to what it had recommended back in 2006, the operators do not yet offer interconnection to other operators of non mobile networks. This observation confirms a point that had been made in 2006, namely the lack of any real competition in wholesale SMS call termination markets. ARCEP therefore proposed extending the regulation implemented in 2006, and submitted a new analysis of these markets to public consultation.

This analysis determines the existence of a relevant market for each operator, as each enjoys a monopoly over its own networks that cannot be offset by consumers' countervailing buying power. The Authority also pinpoints instances where distorted competition has developed in the retail market, and plans on carrying over the set of obligations imposed during the first regulatory cycle, while lowering the ceiling tariffs and eliminating any existing asymmetries in pricing.

This public consultation document, which was published in November 2009, constitutes the first stage in the market analysis process that will continue on into 2010.

Overseas markets

The scorecard published by the Authority also includes a status report on SMS offers and consumption in overseas markets, both of which vary a great deal from one département to the next. Regardless of the situation in the retail market, ARCEP notes that SMS call termination prices are high across the board in the overseas markets which, combined with asymmetrical market share, is preventing a state of lasting competition from taking hold – especially in the core retail market of prepaid offers. As a result, the Authority believes it relevant to regulate overseas SMS call termination markets as well, and therefore included them in the market analysis it submitted to public consultation.

2.3. Broadcasting services

a) Market analysis review process carried out in 2009

The market analysis decisions on the upstream wholesale market that supplies terrestrial broadcasting services[10] were in effect up to 1 April 2009. The Authority therefore began the process of reviewing this analysis in 2008. As part of this process, a document entitled "Analysis of wholesale broadcasting services – status report and outlook" was submitted to public consultation from 18 November 2008 and 9 January 2009, in which ARCEP:
- provides a status report on the development of different audiovisual broadcasting platforms, and of the obligations imposed on TDF during the first cycle of market analysis;
- identifies the outstanding issues in this market, along with its development outlook, and proposes changes to the corresponding *ex ante* regulatory measures, while taking account of the particular situation caused by the removal of the wholesale broadcasting services market from the list of relevant markets contained in the European Commission Recommendation of 17 December 2007.

---

10 - *Decision No. 06-0160, dated 6 April 2006, and Decision No. 06-0161 dated 6 April 2006.*

After having summarised the contributions from the different players, and solicited the opinion of the Competition Authority and the Audiovisual Broadcasting Authority, CSA (*Conseil supérieur de l'audiovisuel*), on 7 May 2009 ARCEP notified its drafted decision to the European Commission and the other national regulatory authorities in European Union Member States. The Authority adopted its final decision on 11 June 2009.

b) The new regulatory measures

In its decision[11], the Authority defined the *ex ante* regulatory framework to apply from 2009 to 2012 in the wholesale digital terrestrial television broadcasting market.

ARCEP designated TDF as the SMP operator in this market, as a result of which it is subject to the obligation to grant reasonable requests for access, to provide access under non-discriminatory conditions and to be transparent, along with cost accounting, accounting separation and tariff supervision obligations. These tariff-related obligations have been strengthened since the first cycle of market regulation (2006-2009).

Considering that the ability to deploy alternative infrastructure to TDF's depended a great deal on the typology of the sites needed for DTT (digital terrestrial TV) broadcasting, and that infrastructure-based competition had developed very little, especially on the main network, the Authority drew a distinction between two types of tariff supervision obligations governing TDF's DTT wholesale broadcasting offers depending on whether or not they could be replicated – i.e. whether or not they could be accessed by alternative operators.

TDF is therefore subject to an obligation to charge cost-oriented prices for the 78 sites determined to be impossible to replicate during the period covered by the market analysis – which are listed in the annex to the decision, and which are chiefly sites belonging to the main DTT network – as well as an obligation not to charge excessive prices or create a price squeeze on other sites – which are primarily sites belonging to the subsidiary network – in such a way as to maintain an incentive to deploy alternative infrastructure. If necessary, the list of sites that cannot be replicated can be amended after the market analysis decision comes into force, following prior notification to the European Commission.

2.4. Capacity services

The first cycle of market analysis led ARCEP to implement regulatory measures in capacity services markets for the period running from 2006 to 2009, which would be in effect up to 1 September 2009 and centred on combined regulation of the wholesale and retail markets.

In spring 2009, ARCEP began a new cycle of analysis, covering 2009 to 2012, based on the European Commission Recommendation on relevant markets that was published on 17 December 2007. As part of the process, the Authority submitted a document that provided an assessment of the regulation adopted during the first cycle of market analysis to public consultation, from 28 April to 28 May 2009, and asked for stakeholders' views on the possibility of maintaining regulation in the different markets and, if applicable, on the implementation of ex ante regulation.

The Authority then solicited the Competition Authority's opinion of its analysis before notifying it to the European Commission and to the other European national regulatory authorities in February 2010, in accordance with Article L. 37-3 of the CPCE.

3 The authority's other responsibilities

---

11 - *Decision No. 2009-0484, dated 11 June 2009.*

In its draft decision, the Authority plans on maintaining existing regulation in the wholesale terminal segment market, which includes:
- an obligation of cost-orientated pricing for wholesale offers supplying data rates of less than 10 Mbps;
- and forbids price squeezes on wholesale offers supplying data rates of more than 10 Mbps.

ARCEP also proposes maintaining the regulation governing the inter-territorial wholesale trunk circuit segment market for links running between mainland France and Reunion, mainland France and Guyana and between Martinique and Guyana, focusing on the complementary terrestrial component which is the bottleneck, in particular by imposing a cost-oriented pricing obligation on this service.

The main departure from the previous cycle that is being proposed is the lifting of regulation in the capacity services retail market, in the wholesale intra-territorial trunk circuit segment market and in the inter-territorial wholesale trunk circuit segment market between mainland France and Guadeloupe and mainland France and Martinique. In any event, ARCEP will continue to monitor these markets and has the power to intervene, for instance by appealing to the Competition Authority to resolve competition issues that arise.

In addition to engaging in this review of its market analysis of capacity services, in 2009 ARCEP also reinforced its capacity to monitor the enterprise market in a targeted fashion:
- by assigning one of its units a cross-cutting task of monitoring this market;
- by announcing that it would be performing an assessment in 2010 of the enterprise market and of the stakeholders' (businesses, operators) needs and expectations.

2.5. Fixed telephony

An analysis of the fixed telephony market was performed in 2008, which led to a decision[12] that is in effect until 31 July 2011. As a result of this analysis:

- France Telecom is obligated to practice cost-oriented pricing for call termination on its local loop, which is translated into a multi-year ceiling tariff of:
  - 0.45 eurocents a minute starting on 1 October 2008;
  - 0.425 eurocents a minute starting on 1 October 2009;
  - 0.4 eurocents a minute starting on 1 October 2010.

- The other local loop operators have an obligation not to charge excessive prices for call termination on their local loops, which is translated into a multi-year ceiling tariff of:
  - 0.9 eurocents a minute starting on 1 October 2008;
  - 0.7 eurocents a minute starting on 1 October 2009;
  - 0.5 eurocents a minute starting on 1 October 2010.

The call termination rates for fixed line calls charged by France Telecom and alternative carriers therefore continued to decrease in 2009. Moreover, the relative difference between the rates charged by France Telecom and competing carriers has narrowed, the ultimate goal being eventually to achieve harmonised fixe call termination.

Indeed, in accordance with the European Commission recommendation on regulating call termination tariffs, which was adopted on 7 May 2009, ARCEP believes that the ideal situation, from an economic standpoint, is achieving symmetrical call termination rates based on long-run incremental costs, given the current state of development in fixed telephony markets in France, and particularly to enable fair competition between landline carriers. With an eye to the next cycle of analysis of the fixed telephony

---

12 - *Decision No. 08-0896, dated 29 July 2008.*

market, which is planned for the first half of 2011, ARCEP will begin analysis on fixed call termination costs in 2010, in addition to deliberating over the complete implementation of the European Commission recommendation, which should lead to a significant decrease and to a symmetry in the call termination fees charged by fixed operators in Metropolitan France and the overseas *départements*.

3. Market analyses in Europe in 2009

ARCEP exercises its powers in accordance with the European regulatory framework which requires that the Authority notify the European Commission and the other European national regulatory authorities (NRAs) of its market analyses.

3.1. List of the relevant markets to be analysed by national regulatory authorities

A European Commission recommendation[13] lists the electronic communications markets that are relevant for analysis by national NRAs in view of potential ex-ante regulation.

An explanatory memorandum attached to the directive describes the principles that a national regulatory authority must apply when performing its analysis of the relevant markets. It specifies that a market can be regulated ex-ante if it meets all three of the following criteria:
- the presence of barriers to market entry and to the development of competition;
- lack of prospects for a shift towards effective competition;
- the inefficiency of existing competition laws.

The aim of the recommendation is to harmonise the scope of regulation in Member States, while not being prejudicial to the possible relevance of a market at the national level. As a result, while it is mandatory for an NRA to analyse all of the markets listed, imposing regulation is not if a market does not meet all three criteria, or if there is no SMP operator in the market. On the flipside, an NRA can also decide to regulate a market that is not listed in the European Commission recommendation, provided it satisfies all three criteria – as was the case in France with the SMS call termination market – and provided the Commission does not oppose it.

NRAs must perform an analysis of seven markets with a view to potential *ex-ante* regulation:
- three fixed telephony markets:
  - 1- access to the public telephone network;
  - 2- call origination;
  - 3- call termination;
- three residential or enterprise broadband and ultra-fast broadband markets:
  - 4- wholesale unbundled access to physical network infrastructure (including full unbundling and shared access) for the purpose of providing broadband and/or voice services at a fixed location;
  - 5- wholesale broadband, or bitstream, access;
  - 6- wholesale terminating segments of leased lines;
- and one mobile telephony market:
  - 7- voice call termination.

3 The authority's other responsibilities

---

13 - European Commission Recommendation on Relevant Markets Susceptible to Ex-Ante Regulation of 17 December 2007 (2007/879/EC).

3.2. Status of European NRAs' market analyses

How are market analyses notified?

Article 7-3 of the Framework Directive stipulates that the measures taken by national regulatory authorities (NRA) as part of their market analyses must be notified to the European Commission and the other European Union NRAs.

National regulatory authorities perform their formal notification by publishing the relevant documents (draft decisions, public consultations, players' responses, opinion of the competition authority, etc.) on the Circa[14] website. The Commission and the other NRAs then have one month to submit their remarks. This period can be extended by up to two more months if the Commission has "serious doubts" about the definition of the relevant market or the SMP operator designation (launch of a phase II procedure). At the end of these two months, the Commission can either withdraw its "serious doubts" or veto the draft decision – in which case the NRA must submit a new analysis – or the NRA can withdraw the draft measure of its own accord.

In 2009, the NRAs in the 27 Member States notified some 150 market analyses to the European Commission, which put them over the symbolic threshold of 1,000 market analyses notified since the adoption of the regulatory framework of 2002. Two phase II procedures were launched, which is comparatively fewer than in previous years (four launched in 2009 and five in 2007 and 2006). Neither of these procedures resulted in a Commission veto. In the first instance, which concerned market 5 in Finland, the national regulator, Ficora, withdrew the elements that had caused "serious doubts" from its analysis. In the second case, which concerned this same market 5 in Austria, the Commission withdrew its "serious doubts" after having received a revised version of the notification from the Austrian regulatory, RTR.

Also worth noting is the fact that, of all the market analyses in 2009, two types of notification attracted particular attention.

• First, the voluntary commitments made by some of the SMP operators in this market. Regulating through commitments of this kind is not a new phenomenon. Already back in 2005, British Telecom had submitted a series of voluntary commitments to Ofcom ("BT undertakings") of which the most spectacular had been the creation of an independent division called Openreach. Since then, other markets – notably in Denmark – have also been regulated in this fashion which is not provided for explicitly in the regulatory framework. It results in the NRA lifting regulation in the market in question after the SMP operator has made certain commitments with respect to its behaviour in this market. Such was the case in 2009 with Deutsche Telekom in the wholesale line rental (VGAST) market, and with Telecom Italia in markets 1, 4 and 5 which resulted in a form of functional separation.

  Both of these notifications provided the Commission with an opportunity to impart several basic principles to the NRAs:

  - the fact of accepting voluntary commitments must treat operators in a completely neutral fashion, compared to a purely regulatory approach;
  - markets where voluntary commitments are made must continue to be subject to the same transparency procedures (national public consultation) and notification to the Commission;
  - although there may be a desire to implement a dedicated system for settling disputes in these instances, doing so must not have a detrimental effect on the market in terms of delays or red tape.

---

14 - *http://circa.europa.eu/*

Second, some markets that the Commission deemed to be no longer relevant, and so removed from the list in the recommendation of 2007, continued to be notified in 2009, either to lift the regulation that had been in place up until then (e.g. market 7 for the minimum set of leased lines) or to be subject to *ex ante* regulation (e.g. market 18 for broadcasting).

OVERVIEW OF THE STATUS OF MARKET

European Commission Document

The following table provides a snapshot of the status of market analyses in Europe and of the regulation in place in the different Member States.

	New recommendation						
	Access to PSTN for res & non-res.	Call orig. on fixed network	Call term. on fixed network	Unbund access	Broadb. access	Term. segments LL	Voice call trem. on mobile networks
	Market 1	Market 2	Market 3	Market 4	Market 5	Market 6	Market 7
Austria	3	3	3	3	2	2	3
Belgium	1	1	1	1	1	1	1
Bulgaria	1	1	1				1
Cyprus	1	1	2	2	2	1	2
Czech Republic	1	2	2	1/R	2	1	2
Denmark	1	1	1	2	2	1	2
Estonia	1	1	1	2	2	1	2
Finland	1	2	2	3	3	1	1
France	2	2	2	2	2	1	2
Germany	2	2	2	2	1	1	2
Greece	1	1	1	2	2	1	2
Hungary	2	2	2	2	1	2	1
Ireland	2	2	2	2	1	2	1
Italy	2	1	2	2	2	2	1
Latvia	1	2	2	1	1	1	1
Lithuania	1	1	2	1	1	1	1
Luxemburg	1	1	1	1	1	1	1
Malta	1	1	1	1	1	1	2
Netherlands	2	2	3	2	2	2	1
Poland	1	1	2	1	1	1	2
Portugal	1	1	1	2	2	1	1
Romania	1	1	1				1
Slovakia	2	2	1	1/W	1	1	2
Slovenia	2	2	2	3	3	2	3
Spain	2	2	2	2	2	2	2
Sweden	2	2	2	1	1	1	1
UK	2	2	2	1	2	2	2

	Effective competition - no *ex ante* regulation
	No effective competition - *ex ante* regulation
	Partial competition - partial *ex ante* regulation

W	Withdrawal (totally or partially) not yet-renotified
V	Veto

1	1st round-competition/regulation
2	2nd round-competition/regulation
3	3nd round-competition/regulation

REGULATION IN EUROPE (MARCH 2010)

Old recommendation								
Local national call for res.	Internat. call for res.	Local national call for non-res.	Internet call non-res.	Retall LL	Transit on network	Trunk segments LL	Access & call mobile network	Broadcast Transmis.
ex-Market 3	ex-Market 4	ex-Market 5	ex-Market 6	ex-Market 7	ex-Market 10	ex-Market 14	ex-Market 15	ex-Market 18
3	2	3	3	2	1	2	1	2
2	1	2	1	1	1	1	1	W
1	1	1	1					
1	1	1	1	1	1	1	1	1
2	2	2	1	2	1	1	1	2
1	1	1	1	2	1	1	1	1
1	1	1	1	1	1	1	1	1
1	1	1	1	1	1	1	V	2
1	1	1	1	1	1	1	W	2
2	1	2	1	2	2	1	1	1
1	1	1	1	1	1	1	1	1
2	2	2	2	2	2	2	2	1
2	2	2	2	2	2	2	1	1
1	2	1	2	2	1	2	2	1
1	1	1	1	1	1	1	1	1
2	1	2	1	1	1	1	1	1
1	1	1	1	1	1	1	1	
2	2	2	2	1	1	1	1	1
2	2	2	2	2	2	2	1	2
1	1	1	1	1	1	1	1	1
1	1	1	1	1	1	1		1
1	1	1	1		1			1
1	1	1	1	2	2	1	1	1
1	1	1	1	2	2	1	2	2
2	2	2	2	2	2	2	1	2
1	1	1	1	1	2	1	1	2
2	2	2	2	2	2	2	1	1

The left-hand side of the table lists the market analyses performed in accordance with the Recommendation on Relevant Markets of 2007, while the right-hand side lists those carried out based on the Recommendation of 2003. The number 1 indicates regulation that is still in place from the first round of market analysis (which most NRAs performed between 2003 and 2007). The number 2 indicates regulation that was implemented based on renewal of these analysis (since 2007 in most cases). A number of NRAs have already begun their third round of market analysis, which is represented by the number 3. The letter W indicates market analyses that were withdrawn by the NRA following the launch of a "phase II" procedure. The letter V indicates market analyses that were vetoed by the Commission. In both cases, the NRAs have not yet performed an analysis that takes account of the Commission's remarks. ■

3 The authority's other responsibilities

Scare resource management

1. Spectrum management

1.1. Satellite-based mobile services in the S band

In 2009, one of the main issues in the area of managing the spectrum used by mobile satellite services (MSS) was the use in France of the S band at 2 GHz (1980-2010 MHz/2170-2200 MHz duplex band) and the possible introduction of a complementary ground component in this band.

In 2004, several operators and industry players began expressing their interest in developing pan-European mobile satellite services in this frequency band. Some of these projects planned on including the deployment of a complementary ground component to increase the availability of the MSS in those areas where satellite could not guarantee a proper level of quality for communications (especially in urban areas and indoors).

A decision from the European Commission that assigned the S band in priority to mobile satellite services was adopted on 14 February 2007[1]. This Community-wide decision ensures that the band will be available for use by these systems in a harmonised fashion in all Member States.

Given the large number of projects for the 2 x 30 MHz of spectrum that are available, along with the pan-European nature of these projects, efforts were made at the Community level to conduct a common, coordinated selection and authorisation process on a European Union-wide scale. On 30 June 2008, the European Parliament and Council adopted a decision[2] that details the selection and authorisation process, after which the Commission launched a call for applications on 7 August 2008, with a view to selecting the operators.

On 13 May 2009, the European Commission adopted a decision[3] selecting InMarchat Ventures Limited and Solaris Mobile Limited as the operators of pan-European systems providing mobile satellite services for the automotive and transportation sector, along with multimedia services and applications that are in the public interest.

---

1 - European Commission Decision dated 14 February 2007 on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services (2007/98/EC).
2 - Decision from the European Parliament and Council, dated 30 June 2008, concerning the selection and authorisation of systems providing mobile satellite services (MSS) (626/2008/EC).
3 - European Commission Decision dated 13 may 2009 concerning the selection of operators of pan-European systems providing mobile satellite services (MSS) (2009/449/EC).

3 The authority's other responsibilities

In accordance with the European provisions and with Article L. 42-1 of the French postal and electronic communications code, CPCE (Code des postes et des communications électroniques), it is the Authority's duty to award spectrum licences for the operational implementation of mobile satellite services networks open to the public in the 1995-2010 MHz and 2185-2200 MHz frequency bands, to the selected operators that so request.

On 22 October 2009, in response to the application from said company, ARCEP issued Solaris Mobile Limited with a temporary spectrum licence for the satellite component and a temporary spectrum licence for the complementary ground component. Both of these licences were awarded to enable Solaris Mobile Limited to conduct trials on a hybrid network in the Paris region.

The trials that were carried out made it possible to demonstrate both satellite's capacity to provide services on-board vehicles, and the successful use of terrestrial repeaters for delivering these services in densely populated urban areas.

Following an application from Solaris, on 16 February 2010 ARCEP issued the company with a long-term spectrum licence for the satellite component to allow Solaris to market services, notably multimedia and interactive solutions, throughout France starting on 1 March 2010.

1.2. Fixed terrestrial and satellite services

In 2009, the operational process of issuing spectrum licences for the fixed service and for fixed satellite services, which resulted in a technical and administrative coordination report prepared by the Authority, translated into:
- the creation of 7,699 point-to-point links, or 587 more than in 2008;
- 2,545 changes to existing point-to-point links;
- the elimination of 7,094 point-to-point links.

As of 31 December 2009 the Authority's database was also managing:
- 79,048 in-service frequency assignments for the fixed terrestrial service;
- 3,532 in-service frequency assignments for the fixed satellite service.

Overall, spectrum assignments for the fixed terrestrial and satellite services remained relatively unchanged from 2008 to 2009.

The fees billed in 2009 totalled:
- for the fixed service: € 21 million for accessing the fixed service and € 2.6 million in fixed service management fees;
- for satellite services: € 736,000 for accessing the service and € 100,000 in management fees.

1.3. Professional mobile radio networks (PMR)

In 2009, 179 decisions were adopted concerning PMR networks:
- 43 concerning allocations;
- 136 concerning assignments.

This represents a total of more than 1,500 spectrum assignments created, more than 3,000 amended and over 15,000 renewed.

The fees invoiced by ARCEP for these networks in 2009 totalled:
- for allocated networks: € 105,000 in management fees and € 9.12 million in spectrum access fees;
- for networks open to the public and services other than mobile: € 25,000 in management fees and € 81,000 in spectrum access fees.

2. Numbering

2.1. ARCEP's missions

The Authority is responsible for establishing the national numbering plan (including the plan's operational management, its management rules and ongoing development) and for allocating to operators the numbering resources needed for their business.

This competency concerns the assignment of telephone numbers (geographic, non-geographic, short and special numbers and prefixes), as well as the attribution of addressing resources for data networks, post-paid card numbers, signalling point codes and MCC+MNC codes (for GSM network SIM cards and TETRA networks).

ARCEP is also responsible for ensuring the proper use of these numbers and the operational implementation of the structures needed to ensure this function (files, databases).

The terms attached to ARCEP's assignment of numbers to operators are defined by Article L.44 of the CPCE and an order from the Minister responsible for Electronic Communications. For example: a block of 10,000 "classic" numbers – such as 01 40 47 WX YZ – costs the operator € 200 a year, while a four-digit prefix costs € 40,000 a year.

ARCEP ensures the ongoing monitoring of European and international technical and regulatory developments in the area of numbering. The French national numbering plan is in fact part of a global system that was implemented worldwide by the International Telecommunications Union (ITU) and regionally by the European Conference of Postal and Telecommunications Administrations (CEPT).

2.2. The situation in 2009

Status of numbering resources at the end of 2009	
Type of number	**Total numbers assigned**
Person-to-person communications	
Geographic numbers (starting with 01, 02, 03, 04, 05)	200 850 000
Non-geographic numbers (09)	29 480 000
Mobile numbers (06 and 07, incl. roaming)	88 440 000
Value-added services	
Special numbers (starting with 10XY)	38
Short numbers (3BPQ)	269
Six-digit numbers (starting with 118)	20
Non-geographic numbers (starting with 08, excluding 087B and 085B)	11 555 000
Codes	
E format prefixes	4
6XY format prefixes	31
Number retention prefixes (0Z0, 0600, 0840, 0842 and 0900)	1664

Other resources allocated as of year-end 2009	
National signalling point codes	5638
International signalling point codes	138

Source : ARCEP.

3

The authority's other responsibilities

2.3. Measures taken in 2009

In 2009, the Authority made 225 decisions on numbering:

- two decisions that were general in scope: one concerning mobile portability prefixes and the other on opening up the block of numbers starting with 07 for mobile lines;
- 223 decisions on the day-to-day management of numbering resource, which were broken down into: 173 allocation decisions, 19 operator-to-operator transfer decisions, two decisions amending previous decisions and 29 repeal decisions.

a) Opening up the 07 block

The main decision taken in the area of numbering in 2009 concerned opening up the 07 block for mobile services. Following the public consultation that was held in 2008, ARCEP decided that it was necessary to create additional numbering resources for mobile usage which continues to grow, due to the combined effect of four elements in particular:

- increase in the number of mobile subscribers;
- the number of mobile operators, both network operators and MVNOs;
- growing use of machine-to-machine communications,
- the fact that some subscribers have several numbers.

The block of 06 resources provides 100 million numbers, of which a portion is used for the overseas *départements* and collectivities – for which 6 million numbers are reserved – and for technical applications (portability, roaming, etc.) for which 3.5 million numbers are reserved.

Given all of these factors, combined with the scarcity of resources (the 07 block is the last block of 100 million numbers that is still available), the Authority decided to open up, at this point, five sub-blocks of 10 million numbers (i.e. 075 to 079) for mobile services.

The first mobile numbers starting with 07 were assigned in early 2010.

b) Machine-to-machine communications

The analyses performed by ARCEP when opening up the 07 block helped increase the Authority's knowledge of the currently growing phenomenon of machine-to-machine (M2M) communications. More and more services are now using (preferably mobile) numbers to deploy networks of communicating devices (cars, electric meters, "*Vélib*" public bike rental stations, etc.). These services, which are poised to undergo tremendous development in the coming years, to provide consumers and businesses with a range of new services, are likely to consume a substantial quantity of numbering resources. The use of mobile numbers for fixed equipment may, however, not necessarily be the best choice over the long term, even if it is currently the most easy solution to implement.

This is why the Authority will continue to work to deepen its understanding of this new market over the course of 2010, and to define a solution for M2M in tandem with operators to enable the development of these services, without threatening the future viability of the numbering plan. ◼