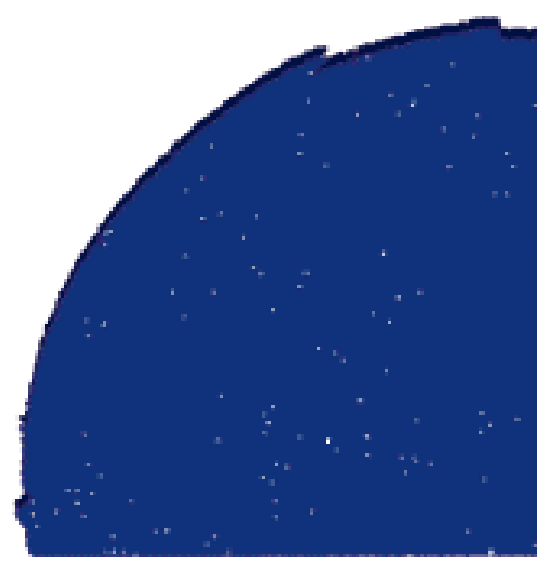


**Executive summary of the public consultation on
the award of 3G licences in the 2.1 GHz
frequency band in Metropolitan France**



Introduction

This document provides a summary of the contributions to the public consultation on the award of 3G licences in the 2.1 GHz frequency band in Metropolitan France, which ARCEP conducted from 13 June to 18 July 2008.

Background to the consultation

The purpose of the public consultation on the award of 3G licences in the 2.1 GHz frequency band in Metropolitan France was to prepare for the launch of a call for candidate submissions for the allocation of remaining spectrum in the 2.1 GHz frequency band, in view of deploying third-generation mobile networks in mainland France.

In a communiqué dated 30 April 2008¹, the Government reported on the disappointing nature of the last call for candidate submissions, which was conducted on 8 March 2007, and in a letter dated 19 May 2008, requested that ARCEP launch the public consultation needed to begin a new awards procedure, with the goal of having the results of this consultation available by 30 September 2008.

The Government also announced that it would then initiate the parliamentary debate provided for in Article 22 of the Act dated 3 January 2008 concerning the development of competition for the benefit of consumers, before setting the new terms of the fees associated with the allocation of these frequencies.

It was thus in this context that ARCEP launched the public consultation in order to obtain the players' analysis and opinions on the issues at hand and on the different possible procedures for allocating the remaining spectrum in the 2.1 GHz frequency band. The allocation of these frequencies is particularly significant as, for a new entrant, it includes access to 900 MHz band frequencies, at a time when available low frequencies continue to be scarce.

Twenty three contributions

Twenty three responses were received, including two that are fully confidential and four that are partially so. The contributors are broken down as follows:

- Local authorities (and their representatives): Avicca (*Association des Villes et Collectivités pour les Communications électroniques et l'Audiovisuel*: Association of towns and local authorities for electronic communications and audiovisual media), Conseil Général (departmental council) of the Gard;
- Operators and electronic communications providers: Altitude Telecom, Bolloré Telecom, Bouygues Telecom, Coriolis Télécom, Iliad (partially confidential)

¹ http://www.premier-ministre.gouv.fr/acteurs/communiques_4/gouvernement_demande_arcep_envisager_59875.html

contribution), Inquam Broadband, Kertel, Numericable² (partially confidential contribution), Omer Telecom (partially confidential contribution), Orange³, SFR (partially confidential contribution), TELE2 Mobile, Transatel (confidential contribution), XG Stream;

- Manufacturers: Ericsson, ip.access (confidential contribution), NextWave, Nokia Siemens Networks;
- User associations: AFUTT (*Association Française des Utilisateurs de Télécommunications*: French association of telecommunications users), UFC-Que choisir;
- One individual: M. Gustave Barth.

N.B.

For each question, this summary reflects only the contributions not protected by business secrecy.

² Throughout this document, “Numericable” refers to the cable operator owned by YPSO France that includes all of the cable networks operating in France under brand names NOOS, NUMERICABLE and EST VIDEOCOMMUNICATION.

³ Throughout this document, “Orange” refers to the France Telecom-Orange Group.

Résumé of the summary

The main points to emerge from this consultation can be summarised as follows.

A significant number of players, both new entrant candidates and mobile network operators, expressed interested in the remaining 2.1 GHz frequencies (question 1). As there is not enough spectrum available in the 2.1 GHz frequency band to satisfy all potential candidates, a new call for submissions is required.

Given the importance of these frequencies and the lack of visibility in their allocation, all of the contributors agreed that this new call for candidate submissions should be launched rapidly, before the end of 2008 (questions 2 and 4).

Issues inherent in the allocation of available spectrum in the 2.1 GHz frequency band

In the feedback concerning the issues inherent in the allocation of these frequencies we find two opposing viewpoints coming, on the one hand, from existing mobile operators and, on the other, from the remaining contributors.

According to all of the contributors, with the exception of existing mobile operators, the main issue inherent in the allocation of FDD frequencies in the 2.1 GHz band is stimulating competition for the benefit of consumers (questions 9 and 10) as the current mobile services market lacks a healthy competition dynamic (question 5).

Most contributors who expressed themselves on the matter viewed the swift entry of a fourth network operator as the preferred means of stimulating competition that would benefit consumers (question 6). It would have a positive effect on the retail market, particularly in terms of pricing and service innovations, but also in the wholesale market by stimulating a momentum that would benefit MVNOs. This entry into the market should be via the 2.1 GHz frequency band, which is already available and for which a wide range of equipment exists (question 7). Improving the conditions under which MVNOs are hosted is also cited as an important contributor to the mobile services market's competition dynamic⁴. This point is supported by detailed feedback from MVNOs in particular (however, the MVNOs contributed little, and provided varying viewpoints, on the question of the market entry of a fourth mobile operator). For most contributors, the development of virtual network operators is an adjunct to the arrival of a fourth MNO into the market – and does not contradict or replace such an eventuality. In this respect, the existence of a fourth network operator is likely to have a positive effect on the hosting solutions offered to MVNOs (question 8).

This analysis is not shared by existing mobile network operators which feel that the market is sufficiently dynamic and competitive (question 5). It is their view that the entry of a fourth mobile operator would have a detrimental effect on the sector and on the economy (question 6). They also believe that the current terms and conditions of MVNO

⁴ For more information on this subject, readers are invited to view the Competition Authority (*Conseil de la concurrence*) Opinion dated 30 July 2008.

hosting are relatively satisfactory⁵ (question 8). In any event, it is their opinion that stimulating competition is not the chief issue involved in the allocation of available spectrum in the 2.1 GHz frequency band, and that the possible allocation of additional frequencies to existing operators should not be contingent on a commitment to improve the hosting conditions offered to MVNOs.

Existing mobile network operators believe that they would make more efficient use of the available 2.1 GHz frequencies than a new entrant operator and request that they be allocated this spectrum (questions 12 and 13). Nevertheless, the reality of existing operators' needs is disputed by the other contributors, citing their current use of the frequencies they have already been allocated, international comparisons and the prospect of future spectrum allocations for very high data rate mobile broadband in the 2.6 GHz and UHF bands (questions 4 and 12).

As concerns national coverage for third-generation mobile services, the feedback received stated that access to 900 MHz frequencies, associated with the allocation of 2.1 GHz spectrum, would be crucial to enabling a new entrant to achieve broad national coverage, as available low frequencies will continue to be scarce (question 16). Here, the vast majority of contributions recommend that the procedure impose the same minimal coverage obligations as the previous calls for candidates (question 25). The allocation of additional 2.1 GHz frequencies to existing operators does not, however, appear to fall under the heading of regional development in light of the coverage obligations already contained in their licences, which must be satisfied, and given that broad national coverage is achieved with low frequencies, below 1 GHz.

Selection procedure for allocating available spectrum in the 2.1 GHz frequency band

Despite the divergent views on the issues inherent in the allocation of available frequencies, there is consensus on the type of selection procedure that should be employed.

The contributors unanimously rejected suggested procedure no. 3, in other words a procedure whereby any player, either new entrant or existing operator could compete for the spectrum licences, while taking account in the selection criteria of the goal of stimulating competition (questions 39 and 40). For the vast majority of contributors, a procedure that included reserving frequencies for a new entrant is crucial to meeting the objective of stimulating competition (question 10). Furthermore, according to mobile operators, a procedure that compared new entrants and existing operators would be difficult to implement, given the differing value of the use of these frequencies depending on whether or not the candidate already holds a licence, and could thus not be based decisively on the criterion of stimulating competition without creating a potential risk of discrimination.

Under these conditions, and in light of the interest expressed by new entrant candidates, the procedure that should be employed is one that maintains a new entrant priority for all or a portion of the frequencies. As a result, the contributors favoured two systems of allocation: reserving all of the frequencies (15 MHz duplex) for a new entrant (procedure no. 1) and reserving 10 MHz duplex for a new entrant (as part of procedure

⁵ The contributions to the public consultation were submitted prior to the Competition Authority's Opinion of 30 July 2008 concerning the MVNO issue.

no. 2). The financial terms appear to constitute the main issue in the choice of procedure.

A procedure similar to the one employed in 2007, reserving 15 MHz duplex for a new entrant would offer several advantages, including the deployment of a cost-efficient network, the ability to compete fully with existing operators by delivering innovative offers in the retail market, an increased ability to stimulate the wholesale market and a continuity with existing licences (question 30). The terms of the licence (questions 23 and 25) and the selection criteria could remain similar to those employed in previous calls for candidate submissions (questions 29 and 32).

A great many contributors nevertheless felt that the financial terms attached to the allocation of spectrum in the 2.1 GHz frequency band for the deployment of a third generation mobile network should be different from those applied in the previous calls for candidates, which derived from the Finance Law of 2002 (questions 3 and 28).

The extent to which the market conditions have evolved since then do seem to justify a review of the terms, without undermining their equity with those applied to existing mobile network operators (questions 18 and 19). In addition, a very different scale has been established for the use of spectrum in the 900 and 1800 MHz frequency bands, which can now also be used in the deployment of third generation networks, pursuant to the Opinion from the Ministry of the Economy, Finance and Employment, dated 16 January 2008, concerning payment of the fees for use of spectrum in the 900 MHz and 1800 MHz frequency bands.

One possibility mentioned by certain contributors would involve decreasing the fixed fee of 619 million euros established in 2001 and/or spreading out its payment over a reasonable portion of the licence's lifespan, with interest (question 22). Another possibility cited would involve an annual fee calculated in accordance with the scale provided for in the Opinion from the Ministry of the Economy, Finance and Employment, dated 16 January 2008, concerning payment of the fees for use of spectrum in the 900 MHz and 1800 MHz frequency bands. Other scenarios were also put forth (question 22).

However, should a procedure that reserves all of the frequencies for a new entrant be employed, existing mobile operators state that it would not be fair to alter significantly the terms of the licensing fees from those set in the Finance Law of 2002 (questions 18, 19 and 22). **A new entrant candidate also expressed the view that market entry of a fourth mobile operator would be possible under the same financial terms.**

Reserving only 10 MHz duplex for a new entrant (procedure no. 2, with 10 MHz, of which a portion can be used to deploy femtocells) **is another possibility** according to some contributors (question 31), provided that it is also accompanied by a consequent reduction in the licensing fee. Other contributors, and mobile network operators in particular felt that, on the contrary, the fact of reserving only a portion of the frequencies for a new entrant should not be accompanied by a significant reduction in the licensing fees (question 20).

Setting aside only 5 MHz does not, however, seem sufficient given the spectrum a new entrant would require for the deployment of a nationwide network.

The impact of a shorter lifespan for the licences was also addressed by some contributors (question 21).

If all of the frequencies are not allocated to a new entrant, a second round, open to existing operators, should be launched to allocate the remaining spectrum. The issues involved in this second round, notably in terms of market competition, would depend on the outcome of the first round, and particularly on whether or not it resulted in the creation of a fourth operator. These issues were addressed very little in the feedback. The question of

whether to include a clause for declaring a failed call for submissions, should the competition criterion not be met, received mixed opinions (question 9). Eventually, questions 11 and 26 addressed the issue with respect to the commitments that could be expected from the players that are awarded 2.1 GHz frequency licences.

As concerns TDD frequencies in the 2.1 GHz band, the feedback commented on the lack of equipment likely to be deployed (question 41). A few contributors stated that a new entrant should have the same access as existing operators, and that a procedure should continue to link these frequencies with FDD frequencies. Other contributors expressed some interest in the possibility of being a candidate for a separate procedure (question 42) whose consideration a great many contributors nevertheless felt was premature at this point in time (question 43).