

FRANCE

Note: This document is an excerpt from the Staff Working Document attached to the Communication 'Towards a Single European Telecoms Market – 13th Progress Report (COM (2008)153)). The Communication and the Staff Working Document, as well as the corrigendum of 28th May 2008 can be found on Europa at the following url address: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/13th/index_en.htm

INTRODUCTION

France has continued on its positive trend regarding the broadband sector in 2007, thanks to dynamic competition leading to low prices and an increasing number of services for consumers, mainly through bundled offers. The mobile market has not evolved similarly in terms of penetration, prices and competition, notably following the negative decision on the ineligibility of the single candidate for the fourth UMTS licence and the limited impact of mobile virtual network operators (MVNOs) and of number portability in the distribution of market shares.

The regulator has started the second round of market reviews and reduced the number of obligations imposed on the incumbent on the fixed markets. At the same time, regulatory challenges related to new technology developments, mainly the deployment of fibre networks, have increasingly focused the attention of the regulator and stakeholders. Investment plans on fibre are high on the agenda of the main operators, not to mention the interest shown by several local authorities. The debate on the digital dividend developed further after the adoption of a law stipulating the progressive switch-off of analogue television between 2008 and 2011. Legislation aimed at reinforcing consumer protection and including an amendment modifying the universal service mechanism was expected to be adopted in early 2008.

REGULATORY ENVIRONMENT

Main regulatory developments

France published several laws relevant to electronic communications in 2007. A law on broadcasting, covering *inter alia* the switch-off of analogue television, was approved in March. Another law containing several provisions on roaming was adopted in December 2007. The main provisions focused on the application of regulated roaming tariffs to calls between mainland France and the overseas departments. Finally, a law on competition and consumer protection, with a specific chapter on electronic communications, was expected to be adopted in early 2008. The draft law included provisions on customer care services and on premium rate services, providing free-of-charge waiting time for on-net calls to customer care services and no overrated calls for off-net calls. The possibility for users to terminate their contracts after 12 months under certain conditions and a reduced advance notice for termination by users were also introduced. The French regulatory authority, ARCEP, launched in October 2007 the second round of market analyses, starting with the market for wholesale mobile termination rates, both in mainland France and overseas. A consultation on high speed and very high speed Internet as part of the broadband market analysis was organised by ARCEP in December 2007.

Organisation of the NRA

There is generally a good perception of ARCEP's work regarding the *ex-ante* regulation and its implementation among operators, consumer associations and local authorities. Stakeholders have participated actively in the public consultations organised by the regulator, such as the consultation on access to infrastructures and fibre networks. Nevertheless, some operators are less positive on the *ex-post* measures. According to them, dispute-resolution procedures, which have been a useful tool in previous years, are no longer delivering the desired results. As a consequence, the number of procedures was reduced from 12 in 2005 to two in 2007¹.

ARCEP was tasked by the March 2007 broadcasting law to intervene on the pending issue confronting local authorities and cable operators regarding ownership of network and the contractual clauses setting specific obligations for cable operators. ARCEP was requested to report on the legal situation of these contracts. Cooperation between ARCEP and the broadcasting authority (Conseil Supérieur de l'Audiovisuelle or CSA) seems to work satisfactorily.

Decision making

In 2007, ARCEP continued the process of deregulation of fixed telephony markets, lightening some of the measures imposed on the incumbent, and more specifically of the measures related to the transit services between mainland France and the overseas departments. Some operators have qualified this development as too rapid, and expressed their concerns that competition law measures may not be sufficient to protect competition in this market.

The last market notifications under the first round of market reviews were in 2006. Wholesale market analyses related to mobile access and call origination and to broadcasting transmission services to content operators, which constitutes a part of the broadcasting transmission services, were not notified. With its first decision in the second round of market reviews, ARCEP again reduced mobile termination rates, and maintained asymmetric regulation for the smallest mobile operator. The new price caps will apply from 2008 until the first semester of 2009.

As ARCEP's decision on cost accounting and accounting separation was only adopted in December 2006, ARCEP's verifications under the new system were still ongoing by the end of the year. Accounting separation provisions are aimed at preventing discriminatory practices in favour of the incumbent's own activities or unfair cross-subsidies, and the verification will allow to check that the costing of wholesale offers is appropriate. In the meantime, alternative operators have complained about the lack of transparency and the complexity of the model.

¹ Source: ARCEP's website.

MARKET AND REGULATORY DEVELOPMENTS

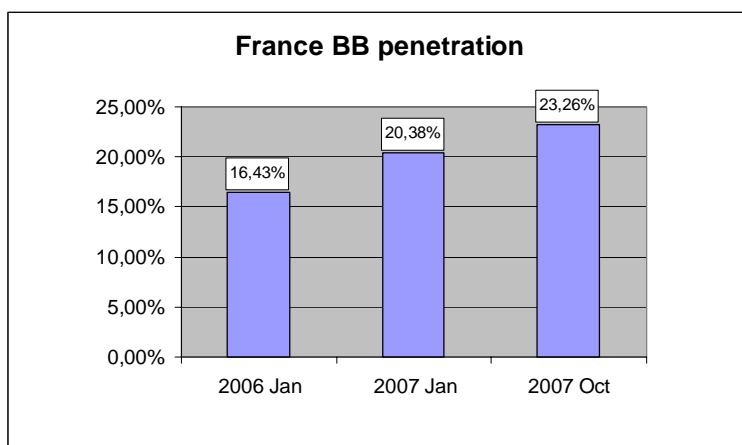
The total revenue in the telecommunications sector in France was 2.57% of GDP, below the EU average of 3% of GDP in 2006. The total turnover of the telecommunications sector in France was €46.1 billion as at 31 December 2006. The revenue contribution from the fixed market was €23.6 billion, and that of the mobile market, €22.5 billion. The total value of tangible investments in France was €7 billion, of which €3.27 billion came from mobile operators and €3.7 billion from fixed operators.

French operators have continued to compete actively on bundled offers, in particular offers combining television, broadband and telephony. Competition has prompted several operators to invest in fibre technology. The cable operator has already started deploying fibre; the incumbent has announced pre-deployment plans in Paris and other big cities; the main alternative fixed and broadband operator has similar plans.

A first call for tenders on mobile personal television (“télévision mobile personnelle”, TMP) for broadcasters was launched by the CSA (“Conseil Supérieur de l’Audiovisuel”, the broadcasting authority) in November 2007. Moreover, a call for tenders for a digital terrestrial TV multiplex operator (TNT) was also launched.

Broadband

Market situation

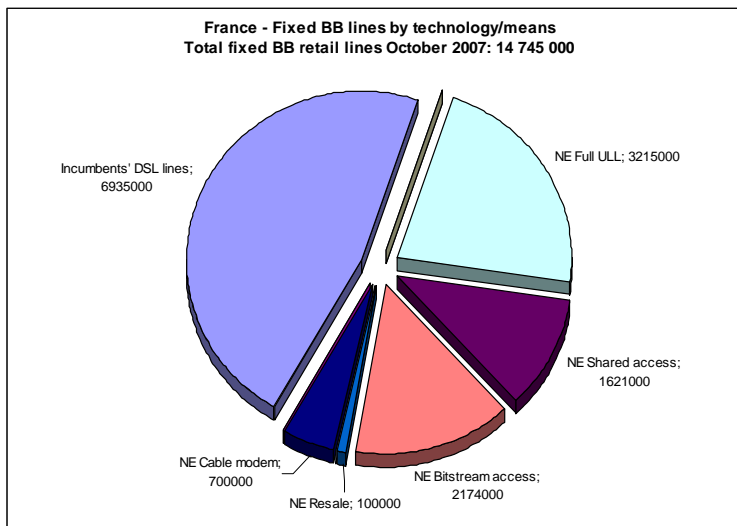


The broadband market continued to grow, with a penetration rate of 23.26% in October 2007, compared to 20.38% in January 2007. However, the growth rate, that started declining slightly last year, has continued this tendency, moving France from eighth to ninth position in the EU regarding broadband penetration². Moreover, the

increase in the penetration rate was 2.9% from January to October 2007, below EU average growth, which was 3.8% from January 2007 to January 2008. The EU27 average penetration rate was 20.04% as at January 2008. France had 14.74 million broadband lines, 95.3% of which were DSL lines, as at October 2007.

² This may be partly due to the fact that 31 December 2007 data were not available.

France had a total of 4.84 million unbundled lines as at October 2007, compared to 3.92 million in January 2007, most of them being fully unbundled lines. This growth has built on the development of the fully unbundled lines and the naked DSL offers, according to ARCEP. 3.21 million lines were fully unbundled as at October 2007, compared to 2.1 million as



at January 2007. The incumbent's market share decreased slightly, from 48.2% to 47% of the total broadband retail lines as at October 2007. This trend was also observed in the DSL market, where the incumbent's share decreased from 51% to 49.37% as at October 2007. The importance of the incumbent's resale and bitstream access products decreased to the benefit of unbundling.

DSL coverage in rural areas was high, 96.5% (in terms of population), close to the coverage at national level, which was 98.4% as at December 2006. Nevertheless, the coverage gap between rural areas and national average was very significant for cable. France had the lowest coverage rate in rural areas in the EU (in countries where cable was present in rural areas), only 1.1%, compared to 26% at national level as at December 2006³.

Regulatory issues

Regulation has contributed significantly to the development of competition on copper networks, based on local loop unbundling and bitstream offers. Attention has started to shift towards the challenge of competition in a 'fibre to the home (FTTH)' context. The main French broadband operators have announced their plans for the roll-out of new fibre local loop networks.

The NRA thus launched in July 2007 two public consultations: one on access to the incumbent's civil engineering infrastructures, i.e. ducts, and one on the sharing of last part of the fibre network inside buildings. It also organised an audit on the incumbent's infrastructure in order to assess the capacity of these ducts available for alternative operators through this solution.

ARCEP launched a new round of market analysis along these lines in December. The main new proposed measure in the wholesale network infrastructure access market is to open up the incumbent's ducts for alternative operators. ARCEP proposed to maintain in substance the current regulatory measures as regards the wholesale broadband access market. New legislation is under preparation to provide a legal basis for the sharing of

³ Source: IDATE report (October 2007): Broadband Coverage in Europe.

fibre networks inside buildings, which would apply to all operators and not only to the incumbent.

Access to the fibre network itself is not considered by ARCEP as necessary at this point. The preferred solution for the coming years is access to ducts. It remains to be seen whether this approach will be sufficiently effective in developing competition in the fibre sector. It seems that precise information on the effective capacity of ducts is missing for part of the network, and possibly could prevent an accurate evaluation of the availability of the incumbent's ducts as a real alternative for access to fibre. Moreover, alternative operators have expressed concerns on the current ducts' capacity left, in particular in highly populated areas.

Mobile markets

Market situation

The French mobile market has remained relatively unchanged in terms of penetration, market share, prices and competition for the past few years. The revenues growth of the mobile sector has continued its slowdown process, from 12% in 2004 to 9% in 2005 and 4.1% in 2006⁴. The mobile penetration rate, at 82.87% as at October 2007, has increased by less than one point during this year (0.87%) and was still well below the average for the EU27, which stands at 111.8%. The market shares of the three main mobile network operators (MNOs) have experienced no significant changes since last year, despite new rules on number portability and the presence of MVNOs in the market. The leading operator's and the main competitor's market share were respectively 44.3% and 34.1% (in terms of subscribers) as at October 2007, compared to 45.3% and 35.1%. The third operator's market share has not developed and even decreased from 17.6% in October 2006 to 17.4% in October 2007. Prices are still relatively high compared to other Member States and have not experienced significant improvements over the last years.

Thirteen MVNOs were on the market as at October 2007, none of them having control over network elements. This figure does not include mere resellers of the MNOs' products. Market shares have only slightly increased, from 1.99% in September 2006 to 4.2% in October 2007, this figure including MVNOs owned by mobile operators. It seems clear that MVNOs do not exercise much competition pressure on the mobile market. One reason could be the restrictive conditions imposed by the mobile operators for providing access to their networks, in the absence of any regulatory measure on access to mobile networks on this market.

⁴ Source: ARCEP's Annual Report 2006.

Regulatory issues

The mobile access and call origination wholesale market was notified in 2005 and then withdrawn, in order to assess the impact of the MVNOs on the market, according to ARCEP. Notification was then postponed again, in order to study the impact on the market of the attribution of the fourth 3G licence, whose allocation process was opened in March. Nevertheless, this market surveillance has not significantly encouraged competition in the mobile market. The opportunity to inject more dynamism and improved competition, by taking regulatory measures, seems to have been lost.

No new 3G licence was awarded to the (only) candidate, as a result of the applicant's non-conformity with the financial criteria. By the end of the year, an amendment to the law allowed the Government to modify the financial conditions for obtaining the fourth licence. Therefore, it remains to be seen whether a new procedure will be opened in the near future, under new terms and conditions.

ARCEP analysed the mobile call termination market under the second notifications round in July 2007. The regulator further lowered the mobile termination rates, aiming at tariffs gradually approaching costs. In conjunction, ARCEP continued to impose asymmetric regulation, allowing the third mobile operator to charge higher mobile termination rates than the other two operators, which has been controversial for the leading operators.

Roaming

Implementation of the Roaming Regulation in France has been satisfactory. Two operators, one MNO and one MVNO, offer more advantageous tariffs than required by the Regulation. Also, a law approved in December 2007 contains several provisions on roaming, the most important being on the implementation of roaming tariffs to the calls between mainland France and the overseas departments. Following these provisions, all operators are applying the roaming tariffs to these territories.

Fixed

Market situation

The fixed market remained stable compared with last year. The incumbent, 27.4% of which is owned by the State, continues to hold a very significant position in the market share. Its market share was at 69.7% (by revenues) as at January 2007, compared to 70.5% last year. VoIP operators reached 14% of voice traffic as at January 2007, while the incumbent's share was 57.5% of voice traffic.

The wholesale line rental offer (VGAST), which was put on the market quite late, has not provided, according to alternative operators, an effective alternative for fixed telephony services in non-unbundled areas (the main use has been for professional users). In these areas most alternative operators have developed alternative voice service offers through broadband using naked DSL. There has been very active competition on bundled offers, mainly in the form of low flat rates and new services to be added to the basic commercial offers. Double play (voice and broadband), triple play (data, voice and television) and quadruple play (data, voice, television and mobile) had a total of approximately 7.8 million subscribers as at July 2007.

Regulatory issues

ARCEP has continued the process of removing obligations imposed on the incumbent in the fixed retail markets, initiated in 2006. The NRA has lightened the obligations related to the inter-territories transit wholesale market. Alternative operators are reluctant, arguing that the incumbent has still a very significant share of the fixed market. Accounting obligations have remained in all these markets.

The NRA decisions on cost accounting and on accounting separation under the current regulatory framework, only adopted in December 2006, have been imposed on the incumbent on several markets, but their effects remain to be seen. ARCEP has not yet finalised the verification process for the first new regulated accounts. According to alternative operators, this can only have little value as it is restricted to old figures.

Broadcasting

Market situation

The market shares of the different broadcasting platforms in 2007 remained in the same proportion as in 2006. The main platform is terrestrial TV, with 58.5% of households. Satellite has 21.4% and cable 13.6%. IP TV has doubled, with 6.4%.

Digital terrestrial television (DTTV) is deploying satisfactorily, with a coverage of 80-85% of the population by the end of 2007. The March 2007 broadcasting law (“Loi sur la télévision du futur”) sets 95% as the final coverage goal. 27% of households were equipped with DTTV adapters as at September 2007. Analogue terrestrial broadcasting should be definitely switched off by November 2011.

Regulatory issues

ARCEP regulation focuses on the wholesale market for DTTV transmission services. While competition is emerging on transmission services offered to the DTTV multiplexes for broadcasting digital television, the main operator owns most underlying infrastructures. ARCEP imposed accounting obligations and non-discrimination obligations on that operator following the market analysis.

Horizontal regulation

Spectrum management

The MSS Decision (Decision 2007/98/EC) was implemented in June, and the ex-ERMES Decision (Decision 2005/928/EC) as well as the UWB Decision (Decision 2007/131M/EC) were finally endorsed in September. Implementation of the amended WAS/RLANs Decision (Decision 2007/90/EC) is still under way.

An important issue in 2007 has been the launch of a call for applications for the fourth 3G licence. However, the NRA finally decided in October that the financial criteria were not respected and, therefore, the licence was not granted to the only applicant, the main alternative broadband operator. In late 2007, the Government was afterwards allowed to modify the financial criteria for an eventual new call. The use of 2G bands for 3G

services was submitted to public consultation in May 2007. Following this, ARCEP published its guidelines on the use of the 900 and 1800 MHz bands for 3G.

Discussions on the digital dividend continued throughout 2007 in the context of the “Comité stratégique pour le numérique”, which includes the relevant Ministries and authorities (ARCEP, CSA). The new law adopted in March 2007 (“Loi sur la télévision du futur”) set the switchover date at 2011, with a transition starting in 2008. Broadcasters and telecom operators both claim the frequencies to be released in order to improve their services or provide new ones. The March 2007 broadcasting law, however, has reserved the possibility for the three main analogue terrestrial broadcasters to be authorised to broadcast a digital channel from the date of the switchover of their analogue signal.

In the meantime, the possibility for secondary trading of frequencies, created in 2006, has been used for wireless local loop, enabling regional authorities to transfer their frequency authorisation to smaller administrative entities. It would appear that secondary trading has so far not been used in a significant manner.

Rights of way and facility sharing

The 2005 Decree on rights of way, providing for maximum thresholds to be imposed for the use of the public domain and appealed against by some local authorities and operators, was confirmed by the Conseil d’Etat in 2007. Nevertheless, some cities have been reported to charge high fees for access to facilities. The Commission services are looking into the matter.

Authorisations

The new broadcasting law adopted in March 2007 requested ARCEP to report on the conformity of existing contracts between cable operators and local authorities. The French law requires that these contracts be brought into line with the provisions on electronic communications on authorisations. This issue has been pending for several years. While local authorities claim ownership of part of the network, cable operators reject some contractual clauses as either abusive or incompatible with the general authorisation conditions applicable to other operators.

ARCEP published its report in July 2007, stating *inter alia* that the property of the network in many cases belongs to local authorities, and asking operators and local authorities to negotiate a solution concerning the contested clauses. Such negotiations had not started by the end of 2007.

Numbering

ARCEP adopted a decision on premium rate services. This decision sets the relations between the different operators in the value chain, by imposing an obligation of giving access to these numbers and an obligation of recovering part of the user’s bill for the benefit of the service provider. ARCEP also adopted a decision requiring the incumbent to launch a reference offer for billing and recovery. Some issues such as pricing, transparency and access from mobile networks remain to be clarified. ARCEP has put in place a round table with operators to deal with them.

THE CONSUMER INTEREST

Tariff transparency

A new law on competition and consumers was approved in December. It includes a specific chapter on electronic communications, providing *inter alia* for: the absence of charge while waiting over a hotline; the prohibition to charge premium rates for customer care service and the reduction of the advance notice for contract termination.

Universal Service

The Commission referred France to the Court of Justice in May 2007 for infringing EU rules, which stipulate that the designation mechanism of the universal service provider has to be non-discriminatory, transparent and efficient and that all undertakings can therefore participate in the designation mechanism; also, the designation mechanism should ensure that universal service is provided in a cost-effective manner. While the case is pending before the Court, an amendment to the French law on competition and consumers was expected to address the issue in early 2008. The Commission services are currently examining whether the new provisions allow operators to take part in the universal service designation mechanism in a non-discriminatory manner.

A new designation proceeding took place in 2007, linking the comprehensive directory service and the comprehensive directory enquiry services. The fixed incumbent was designated as the universal service provider for the two elements in March 2007 for a two-year period.

Directory services and directory enquiry services

While the liberalisation of these services initially attracted a high number of players, leading even to some confusion among consumers, there was a trend towards consolidation in 2007. ARCEP published a decision in March 2007 clarifying the conditions for making available the relevant information for provision of these services.

Number portability

New rules on number portability were implemented in 2007, reducing the porting time from up to two months to a maximum of ten days and establishing a one-stop-shop process for users. Ported numbers have increased significantly as a consequence. The total accumulated number of fixed ported numbers was 5 300 000 as at October 2007, compared to 2 702 500 the year before. 2 600 000 fixed numbers were ported in 2007, compared to 1 700 000 the year before. The number of mobile ported numbers was 1 490 600 as at October 2007 compared to 837 000 one year earlier. Consumer associations have, however, argued for a new reduction to one day. Currently, it seems that the average time for fixed number portability is four days and for mobile, seven days.

Consumer complaints

The communications and telephony sector was the object of a large number of consumer complaints in 2007. It was the most frequently targeted sector in complaints to the DGCCRF (Directorate-General for Competition, Consumer Policy and Fraud Control) in 2007. 28.1% of the total number of complaints concerned telephony and Internet,

representing 17 808 in the 2nd semester of 2007. The majority of complaints concerned failure to fulfil the provision of services (28%) and non-respect of contract termination requests (17%). The number of complaints related to billing issues increased by 31%, and forced subscriptions also experienced a large increase (30%) between the third and the fourth quarter of 2007.

The powers of DGCCRF concerning consumer protection were reinforced by a law adopted in December. An injunction power can now be used by DGCCRF in order to compel operators to comply with their obligations or to withdraw any illicit clause following a dispute-resolution process. DGCCRF will also be able to act before the courts to request the annulment of any illicit or abusive contractual clause, as well as to request measures to compel operators to comply with their contractual obligations towards users. Consumer associations had been claiming for a class action, but this was not included in the Law.

The Mediator, put in place by telephone operators to deal with consumer complaints on a voluntary basis, became the Electronic Communications Mediator in January 2007, as its remit was extended to Internet conflicts. The number and variety of bodies involved in out-of-court dispute resolution might still be confusing for users, as their competences are potentially overlapping.

European emergency number 112

Difficulties in reaching the “112” emergency number from ported (fixed) numbers and in specific cases of roaming were reported to the Commission. It is also not clear whether there is a proper transmission of caller location information in France. The Commission services are looking into these matters.

Data protection

A data-retention decree, adopted in March 2006, included a list of data to be stored by operators and the time to retain them, i.e. one year. This Decree was appealed against but confirmed by the “Conseil d’Etat” in August 2007. According to operators, this Decree adds on a set of other secondary laws, also dealing with data retention, which brings confusion and overlapping of the obligations to be respected by stakeholders.