

FRANCE

MAIN MARKET DEVELOPMENTS

The total revenues acquired in the electronic communications sector in France throughout 2009 increased slightly to around €49.81 billion from around €49.79 billion recorded at the end of 2008 (an increase of 0.04% in 2009 in contrast to a 2.9% increase in the previous year). The total value of annual tangible investments in electronic communications networks in France has decreased by 9.6% in 2009, from €6.53 billion at the end of 2008 to €5.9 billion at the end of 2009.

Competition intensified in 2010 with regard to bundled offers combining television, broadband and fixed telephony and increasingly also mobile services. As of July 2010, 27.4% of the population used bundled offers, compared to 22.4% as of December 2008. Quadruple play offers become more plentiful in 2010, while several operators began including free fixed-to-mobile calls within the scope of their bundles, at least up to a certain threshold.

There was steady growth in broadband penetration in France throughout 2010. The market was concerned by an increase in the VAT rate for offers that include broadcasting services, which could diminish the attractiveness of the pricing of bundled offers. The incumbent has kept its overall strong position on the French market.

MAIN REGULATORY DEVELOPMENTS

The regulatory framework for the rollout of next generation networks continued to be a major subject for discussion in France in 2010. In parallel, the NRA continued in its active approach, and adopted a number of regulatory measures, concerning, inter alia, the SMS termination rates, regulation of fibre deployment, mobile termination rates for the third mobile operator for the second half of 2010 (which had been declared excessive and annulled by the Conseil d'Etat in 2009) and finally the decision on the wholesale terminating segment of leased lines and the inter-territorial wholesale trunk segments of leased lines (i.e. between Metropolitan France and overseas territories). In February 2010, the NRA adopted a decision specifying the accounting and cost reporting obligations imposed on SMP operators on the wholesale markets for the termination of mobile voice and SMS termination on their respective networks.

A bill empowering the Government to adopt an *ordonnance* that will implement several pieces of EU legislation, including the revised regulatory framework, was adopted by the Parliament in early 2011. Within six months of its publication, the *ordonnance* must be submitted for ratification by the Parliament in order to become a regular law. While the French Ministry of Economy, Finances and Industry held a public consultation on the draft legislative changes in May 2010, the text of the *ordonnance* had not been finalised by the end of 2010.

NRA

In the context of the reduction of public spending, the State has imposed a budget reduction of 10% over 3 years (5% in the first year) on the regulatory authority (*Autorité de régulation des communications électroniques et des postes* – ARCEP). The number of personnel working in

this institution remains stable. Both the size of ARCEP's staff and its skills enable ARCEP to work proactively.

The operators turned more frequently to the NRA in the framework of its dispute resolution competences. The Authority took a total of eight decisions in 2010, compared to one in 2009 and five in 2008. Two of the decisions targeted excessive wholesale rates for the provision of value added services from a fixed line (call origination), while two other important decisions helped clarify the rules for the deployment of fibre networks.

Appeals against the Government's decree and ARCEP's decision regarding the fourth 3G licence at €240 million were rejected by the Council of State which considered that the price and conditions of the licence were justified in order to allow the new player to enter the market.

ECONOMIC REGULATION

Broadband

Broadband plans

The Government's national ultra-fast broadband programme published in June 2010 aims to provide operators and local authorities alike with the means, notably financial, of initiating large-scale next generation access network (NGA) rollout across the whole of France. The programme does not lay down any goals in terms of speed of the network. This programme is organised among four axes: (1) Experimental deployments outside of densely populated areas. Certain pilot projects have already been launched in 2010. (2) Call for interest of operators for the deployment in areas not necessitating public aid, thus drawing up a map of black, grey and white areas. (3) Public long-term loans and official labelling of projects, in order to stimulate operators' investment into NGA in the 'profitable' areas. (4) In the remaining areas, subsidies will be available for projects initiated by local authorities, typically in the form of public/private partnership.

The abovementioned tools were expected to be available in the beginning of 2011. The national credit programme (*les investissements d'avenir*) will provide initial funding of €2 billion, €1 billion of which will go for the 'profitable' areas, €750 million to the remaining areas and €250 million for other possible solutions (e.g. satellite, copper local loop modernisation...) in areas where the deployment of fibre network will not be feasible. In a study done for the Government services (DATAR) by a consultancy company (TACTIS), it was estimated that the coverage of 80% of the population by fibre networks might cost €15 billions and require €6 billions public financing. Concerning the assurance of subsequent public financing, discussions were still ongoing on possible revenue sources for the fund for the Digital Development of the Territory which was established by the 2009 Law on the Reduction of the digital divide. Nevertheless, in December 2010, the NRA defined conditions for eligibility to receive financial aid from the fund.

Market situation (including NGA)

The broadband penetration rate in France, which stood at 32.9% in January 2011 compared to 30.3% in January 2010, is well ahead of the EU-27 average (26.6% in January 2011), thereby placing it in fourth position in the EU. France increased the total number of broadband lines to 21.3 million in January 2011, compared to 19.5 million in January 2010 (7.7% annual growth), which shows a slowing pace in the process, given the 12.9% growth rate experienced

over the previous year. As of January 2011, the incumbent had a 42.9% market share in broadband lines, in comparison with 45.6% as of January 2010.

The DSL market share decreased slightly between January 2010 and January 2011, from 94.9% to 93.2%. As of January 2011, 72% of lines on wholesale market in France were fully unbundled, compared to 66.7% as of January 2010.

As of January 2011, fibre to the home (FTTH) lines represented only 0.54% of the total broadband lines, in comparison to the EU-27 average of 1.8%. FTTH deployment has started in about 100 out of the 148 municipalities that ARCEP defined as very densely populated areas. In the third quarter of 2010, almost one million households were eligible for FTTH offers. However, the take-up of very high speed broadband offers in France was still relatively slow in 2010. Moreover, cable network operators account for the large majority of very high speed broadband clients.

Regulatory issues

While in 2009 ARCEP focused primarily on fibre regulation for the most densely populated areas, in its December 2010 decision ARCEP set out rules for the deployment of fibre in the remaining areas, touching approximately 80 percent of the French population. Both measures represent symmetric regulation. As opposed to the very densely populated zones, where point-to-point technology is preferred, a higher degree of sharing is imposed in less densely populated areas (at least 1.000 lines). The shared part of the network is always point-to-point behind the concentration points in order to allow passive access. The Commission also asked ARCEP to assess, in the course of the implementation of the access obligation, if the size of the proposed concentration points is adequate to ensure co-investment in less densely populated areas. Furthermore, the Commission called upon ARCEP to ensure the consistency between symmetric regulation and SMP regulation and to impose additional asymmetric forms of access to the fibre infrastructures of the SMP operator (in addition to existing asymmetric regulation of France Telecom's ducts), in line with the NGA Recommendation, if necessary.

Having gained first hand experience with the regulatory measures in very densely populated areas, some alternative operators express concerns that symmetric regulation may not be sufficient to ensure economically reasonable conditions for them. These operators are concerned by the incumbent's margins for access to buildings in which it is deploying fibre. Alternative operators also find that there are too many co-location points (in every larger building in very densely populated areas). It is costly to obtain entrance to each of these buildings and to create a robust presence in a given area. In December 2010, two alternative operators joined forces by way of a co-investment agreement for optical fibre rollout in certain municipalities in very densely populated areas.

In November, ARCEP settled a dispute between the incumbent and one of the alternative operators concerning the conditions for the participation in the investment in fibre rollout. In order to reduce barriers to entry faced by small operators and for operators entering at a later stage, ARCEP held that the initial operator that recruits a new client must bear at least 90% of the corresponding costs of the connection of the hallway. Furthermore, the new entrant should be offered access to FTTH lines, thus granting it a long-term right of use and the possibility to amortise its investment (*droits d'usage pérennes et amortissables*) under reasonable conditions, taking into account the risk premium.

The framework of the fibre rollout was completed by the decision of November 2010 on the economical conditions concerning the access to the incumbent's ducts. The Commission invited ARCEP to address also cost accounting rules and pricing principles applicable to aerial networks.

In February 2010, ARCEP published its non-binding guidelines on the increase of the capacity of the existing copper network through access to the incumbent's local sub-loop. The NRA recommends that public authorities favour fibre deployment over the upgrading of the copper network, at least in the zones where the fibre is expected to be deployed within three to five years. The association of the French local communities expressed its disappointment with the NRA's position, as they consider that the copper upgrade could be useful in the less populated areas prior to the arrival of the fibre.

In April 2010, ARCEP adopted a decision analysing the market for the wholesale terminating segments of leased lines and the inter-territorial wholesale trunk segments of leased lines (i.e. between Metropolitan France and the overseas territories). ARCEP imposed access and interconnection obligations on the incumbent under non-discriminatory and transparent conditions, as well as the obligation of price control and of accounting separation.

ARCEP's new analyses of markets 4 and 5 were expected to be notified in early 2011.

Mobile

Market situation

The mobile penetration rate, which stood at 94.1% as of October 2010, is still well behind the EU-27 average of 124.2%, but up from 90.1% as of October 2009. There remained the relatively small share of pre-paid users in the mobile market in France (25.8% of SIM cards as of October 2010). A sharp increase in data traffic continued throughout 2010. The volume of SMS sent monthly from one SIM card increased by 54.3% to 140 SMS per month in September 2010 compared to September 2009 thanks to unlimited offers by all three operators. Revenues from voice decreased by almost 0.4% over the same period.¹ The mobile market overall grew by 1.35% in terms of revenues over the year 2009.

The main mobile network operator's market share slightly decreased from 41% to 40.7% (in terms of SIM cards). The second operator's share decreased from 33.4% to 32.4% between October 2009 and October 2010. The postal services incumbent announced its entry onto the MVNO market for 2011. MVNOs had a 6.3% market share in terms of subscribers as of September 2010, compared to 5.6% from one year earlier². MVNOs regret that it remains impossible to implement the model of full MVNO in France, as the successful candidates for the last two licenses in the 2.1 GHz frequency band did not make the appropriate commitments. MVNOs hoped that the conditions for the full-MVNO could be created by the 4G licenses which are to be awarded in 2011.

The fourth mobile operator began deploying its network in order to meet its obligation to cover 27% of the population by the beginning of 2012. At the same time, a 3G national roaming agreement with the main mobile network operator were expected to be concluded in early 2011.

¹ According to data processed by IDATE and published by the Association française des opérateurs mobiles (AFOM).

² dtto.

Regulatory issues

In November 2010, ARCEP adopted its decision concerning the third round of regulation for wholesale mobile voice call termination services. This decision extends the asymmetrical ceiling tariffs currently in effect in Metropolitan France to the period running from 1 January to 30 June 2011, and sets the new maximum tariffs from 2011-2012 for French overseas markets, which continue to be lowered gradually to cost-oriented prices, and states that, according to the EC Recommendation, tariffs will reach incremental costs at the end of 2012. The cost models applicable for Metropolitan France were subject to revision in 2010 and the model for overseas markets is to be reviewed in 2011. ARCEP sees in particular a new competitive impulse coming from the fixe-mobile convergence and from the inclusion of mobile communication in multiplay offers.

In July 2010, ARCEP adopted a decision on the SMS termination market, according to which each mobile operator holds SMP on its own SMS wholesale termination market. The termination rates should continue in their glide-path and should sink to 1€-cent in Metropolitan France in July 2012 and in the overseas territories in July 2013. The Commission is looking into the issue of the 'reciprocity reserve', which appears to allow French operators to charge rates higher than the regulated ones when a foreign based operator charges higher rates than the regulated French operator.

Roaming Regulation

No particular problems were reported in 2010 concerning the implementation of the revised Roaming Regulation. In most cases, the retail prices were set at or very close to the maximum level indicated by the Regulation. Retail data rates remained high.

Fixed

Market situation

The incumbent's market share remains robust, although it has decreased between December 2008 and December 2009 from 55.1% to 53.7% in terms of traffic volume. The market share of VoIP operators on fixed calls (by volume of traffic) has increased, and with 47.2% as of December 2009 is considerably higher than the EU average of 16.6%.

In terms of total call volume, the proportion of fixed voice traffic vis-à-vis mobile continued to decrease, and represented 53.2% of voice traffic throughout 2009 compared to 54% the previous year.

Regulatory issues

ARCEP held public consultations on its draft decision concerning the technical and economical model for the determination of cost of fixed call termination in the summer of 2010 and the beginning of 2011. Based on the Commission's Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, this decision will follow the model based on the costs incurred by an efficient operator, and will use a bottom-up modelling approach using long-run incremental costs (LRIC) based on economic depreciation (simple annuities) as the relevant cost methodology. Once finalised, the model is expected to be used by the regulator in order to set fixed call termination tariffs in the summer of 2011.

Broadcasting

Market situation

Digital terrestrial TV (DTTV) continued to be deployed, and according to the National Broadcasting Regulator CSA (*Conseil supérieur de l'audiovisuel*) covered 93.74% of the population of Metropolitan France at the end of 2010. According to the relevant law, national free-to-air broadcasters will have to cover 95% of the population by November 2011, when it is planned to switch off analogue terrestrial TV in the last French region. During 2010, relevant French regions were switching to digital TV in line with the schedule defined by CSA. Digital terrestrial TV is the main platform, with 60.2% of households having subscribed, whereas exclusive analogue terrestrial TV has decreased to 7.9% of households as of July 2010. As of July 2010, cable represented about 11.1% of households, the satellite figure was about 25.2%. IPTV is accessible by about 36% of households (compared to 28.52% as of July 2009)³.

Mobile broadcasting (*télévision mobile personnelle*) has suffered from further delays. While TDF (*Télédiffusion de France*) envisaged the setting up of a joint project with one of the MVNOs, these discussions continued to focus on the choice of the technology standard in 2010.

Regulatory issues

In November 2010 the Commission has launched infringement proceedings against France regarding the awarding of right to obtain compensatory digital channels to historical private broadcasters, in view of the complete switch-off of the analogue broadcasting in November 2011.

HORIZONTAL REGULATION

Spectrum management, including refarming, digital dividend

In 2010, France implemented the revised GSM Directive allowing the use of the 900MHz frequency band for systems other than GSM in its frequency plan. The relevant licences awarded to mobile operators have already been amended, following public consultation in 2007.

Having awarded the fourth 3G mobile licence in January 2010 to a new entrant, ARCEP continued in licensing procedures for the two remaining lots in the 2.1 GHz frequency band for 3G services. In May 2010, ARCEP selected the bids of the incumbent's mobile operator and of the next biggest mobile operator. The key criteria in this regard concerned the conditions for the hosting of MVNOs, and the amount offered for the licences. The selected bidders committed themselves to improve the hosting conditions offered to MVNOs, though neither of them committed itself to host a full MVNO. The bid submitted by France's future fourth mobile operator was not successful.

In 2011, ARCEP was expected to launch a new licensing procedure concerning the digital dividend frequencies (800 MHz band) and of the 2.6 GHz band which is reserved for the roll-out of very high broadband wireless networks. The licences are expected to be awarded in 2011. The three key elements of the selection criteria are expected to be: (i) coverage of the

³ Source : Conseil Supérieur de l'audiovisuel, S2 2010. The total makes 126.2% due to overlap of different forms of TV reception.

territory, (ii) competition and (iii) price offered. ARCEP has already granted several experimental licences for 4G networks.

According to information available to the Commission, not all of the necessary preparation has been made in France which would facilitate the granting of an authorisation to the operators of systems providing mobile satellite services selected by the Commission in accordance with European Parliament and Council Decision No 626/2008/EC.

Rights of way and facility sharing

ARCEP's decision of December 2010 concerning fibre regulation for less densely populated areas stipulates that the building operator provides access, under reasonable and non discriminatory conditions, to a shared access point located near the incumbent's ducts or other infrastructure offering equivalent access conditions. The building operator also has to meet any reasonable and justified request to accommodate other operators' facilities at the shared access point. In contrast to the densely populated areas, it is not envisaged that the shared access points are located within the private property limits.

Administrative charges

The Commission opened an infringement case in January 2010 concerning the charge of 0.9% imposed from 2009 on the electronic communications operators' turnover. The Commission questions the compatibility of the tax with Article 12 the Authorisation Directive, which provides that administrative charges should only cover the administrative costs for management, control and enforcement of the authorisations.

The French Parliament decided that, from 2011 onwards, the top 19.6% value added tax rate will apply to the entirety of a triple-play bundle (previously, the reduced rate of 5.5% could apply to TV services that could represent up to 50% of the price of a bundle).

THE CONSUMER INTEREST

Consumer complaints

In July 2010, ARCEP published its report on impacts on the market of the consumer protection legislation ("*loi Chatel*") of 2008, pointing at several persistent issues such as the long duration of contractual commitments, unfavourable conditions for the termination of contracts, lack of transparency, in particular on tariffs or conditions of the contracts. In September, the largest association of French operators took several voluntary commitments, regarding notably the duration of contracts and easier unblocking of devices. In November 2010, ARCEP submitted 23 recommendations to public consultation (until January 2011) on how to improve the situation of clients of electronic communications providers.

Tariff transparency and quality of service

One consumer association took a legal action against two mobile operators for alleged "deceptive trading practices" concerning offers made by these undertakings for unlimited mobile Internet that nevertheless included certain restrictive conditions. The said consumer association also noted recurring problems related to the termination and duration of contracts. Furthermore, many mobile users find that the tariffs for mobile services lack transparency, and that a high number of slightly different tariffs makes it rather difficult to make an

informed decision. There are also concerns that certain triple play subscribers cannot receive IPTV due to technical reasons and are not sufficiently informed before signing contracts.

Based on ARCEP's decision of 2008, fixed operators with more than 100,000 subscribers are since June 2010 obliged to publish quarterly results of the measurements of the quality of their services on their website. ARCEP also follows the quality of service of mobile operators, and publishes a yearly report on this issue.

Number portability/switching

As of October 2010, the average time for the porting of a fixed number was ten days, and seven days for mobile numbers. This figure is above the EU-27 average for both facilities (over seven days for fixed numbers and four days for mobile numbers). While porting is free for residential consumers, corporate clients usually pay, given the costs induced by the quantity of numbers that they port at once. The wholesale price of porting is €7.5 per number for fixed numbers and free for mobile numbers.

The total accumulated volume of ported mobile numbers, which was 5 702 523 in Metropolitan France (overseas excluded) as of October 2010, represented 9.4% of the total amount of mobile numbers. 1 566 830 mobile numbers were ported between October 2009 and October 2010.

The volume of fixed numbers ported in 2010 has decreased, and reached the accumulated total of 9 587 225 as of October of that year. Certain issues remained with regard to the porting of numbers in directions other than from the incumbent. The new database which allows for the direct exchange of information between the operators, and which was established pursuant to ARCEP's decision of July 2009, was becoming operational during 2010.

Number portability mechanism will, however, need to be adapted to the stricter obligations relating to number porting under the reformed EU regulatory framework.

Net neutrality

Building on its public consultation, on the conclusions of its international conference in April 2010 and on the Government's report submitted to the Parliament in the summer of 2010, ARCEP published its ten proposals and recommendations on Internet and network neutrality in September 2010. ARCEP proposed specific directions aimed at promoting an open, neutral and high quality access to content and services, and also added some comments on the issues that are not within its competence (regulation of contents, terminals interoperability, etc.), with the intention of contributing to the public debate. The Authority's general approach is one of prevention above all, with a focus on monitoring, and promoting co-regulation, for some key recommendations. Multi-stakeholders working groups have been set in particular regarding the topics of transparency, quality of service and traffic management mechanisms.

Overall, the prevailing opinion in France is that net neutrality will be safeguarded by the transposed reform package. Notwithstanding this, several members of Parliament, who would like to see more detailed provisions on this issue, submitted a proposal for a specific law on net neutrality to the National Assembly at the end of December 2010. A draft law on telecommunications, which was adopted by the Senate in December 2010 and then transmitted to the National Assembly, aims to prohibit mobile operators from refusing access to their network to some mobile manufacturers. This law also aims to prohibit mobile

manufacturers from denying the use of their devices on the networks of certain mobile operators.

The new authority in charge of the protection of the creation of the Internet content (Hadopi) became operational in 2010. In October this authority ordered the sending of the first wave of warnings to end users whose Internet connection was used for offences related to certain intellectual property infringements. These can be sanctioned by a suspension of the connection, which may be imposed by a single judge, potentially in simplified proceedings.

Universal service

The Ministry of Economy, Industry and Employment held a public consultation in the beginning of 2010 on the possible inclusion of "multiplay" offers in the social tariffs eligible for financing through the universal service funding. Its intention is to set out a rule under which the provision of access at a fixed location, and the provision of telephone services within a bundled offer, could benefit from a contribution from the universal service fund. The motivation is to increase the use of social tariffs, as they are so far only used by about 400 thousand out of 2.5 million eligible end users.

European emergency number 112

The Commission services were monitoring the operation of the 112 number in 2010. There seems to be an issue concerning the time needed to locate callers whose number is placed on a red list, i.e. a number that cannot be published in the directory. State authorities together with operators examine the possibility of an overall improvement of the caller location information, in light of the stricter conditions to be imposed by the revised telecoms package.

Harmonised numbers for harmonised services of social value (116)

Only the 116000 number out of the 116 range, which has been assigned in France to the service for missing children, is now operational. The application for assignment of the 116111 number to a helpline for children was subject to examination in 2010 and finally accepted.

e-Privacy

Following a first reading in the Senate, a bill on better safeguards of privacy in the digital age was submitted to the National Assembly in March 2010. No further progress had been made on this issue by the end of 2010. This bill aims at implementing the amendments to Directive 2002/58/EC on privacy and electronic communications as introduced by the "Reform Package" into the French law.

In October 2010, several Internet stakeholders signed the Charter on the Right to digital oblivion. This aims at improving transparency associated with the processing of the data published on the Internet, while also making it easier for a person to manage this data. Notwithstanding this, major players, such as the largest search engine and social network, did not subscribe to the Charter.