

3.6 FRANCE

1. REGULATORY FRAMEWORK

1.1. National Regulatory Authorities

In these circumstances there is continued pressure on the *Autorité de Régulation des Télécommunications* (ART) to intervene to improve the situation either on foot of a request for intervention or on its own initiative, and this has meant that there is continuing attention being paid to the effectiveness of the ART's procedures.

The Seventh Report identified the problem caused by the necessary emphasis placed on procedure and the motivation of a decision in order to ensure that it is fully substantiated and is not unduly exposed to appeal on procedural grounds. Nevertheless these requirements can have the effect of delaying intervention and inhibiting the rapid enforcement of sanctions in case of non-respect of ART decisions.

In February 2002, a ruling of the *Cour d'Appel de Paris* demonstrated that the ART's detailed procedures were not a guarantee against the substance of its decisions being brought into question. In a case brought by the incumbent against the ART's decision on third party billing, the Court ruled that there appeared to be grounds for suspecting an error in the substance of the decision as regards tariffs, and appointed an outside "expert" to review the details of the decision.

The ART have always held the view that it is essential to build up a solidly reasoned analysis before reaching a decision, including respecting all the procedural issues in order to avoid even more legal challenges. At the same time, all parties involved in the sector accept the need for full judicial review and that the above ruling was a confirmation of the French administrative law in regard to independent regulatory authorities. The *Cour d'Appel's* decision, however, tends to suggest that a party seeking intervention or redress from the ART in regard to a market opening measure not only has to put up with lengthy and elaborate procedures but now has no guarantee that these procedures will protect the substance of any subsequent decision from substantive legal review, giving rise to further delays and uncertainty.

In the case referred to, following the failure of negotiations with the incumbent during 2000, a new entrant launched a request for ART intervention in January 2001, but the experts' report to the Court on the decision is not expected to be ready until March 2003, nineteen months after the ART's decision. While that decision remains in force pending the Court's decision, this lengthy delay gives rise to great uncertainty and effectively inhibits the development of competition through the use of shared-revenue services.

1.2. Management of Numbers

There have been no complaints or issues raised concerning the management and distribution of numbers over the last year; there has been some discussion about the need to make more short codes available given the apparent success of carrier preselection.

1.3. Frequency Management

The ART is responsible for the attribution of frequencies to telecommunications operators and radiocommunications operators, and the Conseil Supérieur de l'Audiovisuel (CSA) is in charge of the management and attribution of radio and television frequencies. They work in close co-operation with the *Agence Nationale de Frequences* (ANFr) which is responsible for managing the national frequency plan. There have been no reports of problems in this area.

2. INTERCONNECTION AND ACCESS REGIMES

2.1. Interconnection

2.1.1. Reference Interconnection Offer

Until last year the ART did not have the power to intervene on its own initiative in interconnection negotiations. Instead the ART had developed quite detailed procedures requiring one party to request intervention – only after negotiations have failed – putting a greater burden on new entrants to justify the need for regulatory intervention and delaying an effective resolution of disputes. But while this has now changed in theory, there has been no corresponding change to the ART's internal rules of procedure allowing it to intervene on its own initiative. The growing experience of the ART in intervening in unbundling matters does however show the usefulness of such an intervention under specific circumstances.

The authorities point out that the ART has always had the power to intervene when there was a breakdown in negotiations or when an interconnection agreement was notified, and that intervention at an earlier stage may interfere with commercial negotiations. However, the ART does not exclude the possibility of using such a power and that it is not strictly necessary for it to transpose it into the ART's internal procedures.

New entrants want the ART to have full powers to be able to intervene in interconnection, and not just in a reactive manner following a request for intervention. However, they also criticise the current system for drawing up the annual RIO as inappropriate and lacking transparency. Their main concern is that the incumbent's original offer tends not to reflect the needs or wishes of new entrants, and that there is very little visibility in how the final version is agreed between the incumbent and the ART once new entrants have given their views on the draft (preliminary) offer. Certainly there does appear to be a clear problem concerning the relevance of certain elements of the reference offers to the actual needs of the market, as it has sometimes taken a long period of negotiation, and also further intervention by the ART, before services such as FRIACO, third-party billing or partial circuits become effective.

As regards the 2003 reference offer, there have been attempts this year to modify the manner in which it is prepared. The ART requested the incumbent to present a draft RIO for mid-August, following discussions with other operators, and hopes to have the RIO adopted before the end of October. In preliminary discussions it did not appear that many new services were being requested, apart from collection of traffic for third parties.

2.1.2. Interconnection charges

The RIO 2002, adopted in December 2001, introduced further reductions in the incumbent's interconnection charges to other operators. The per minute interconnection cost for single transit was set at 1.07 cents [when calculated using the EU norm of a three minute call plus call set-up costs], which was a reduction of 13% and brought France below the EU average.

In a parallel exercise to the 2003 reference offer, the ART is working on a price cap system with the incumbent. The system was signalled by a public consultation last year, following which the ART drew up a system model that they are now trying to put into practice. Apart from its potential usefulness under the future regulatory framework, the price cap should underpin the annual exercise of forward-looking cost calculation and will provide some predictability and greater visibility for operators while allowing for a more rapid adoption of reference prices. However, new entrants insist that the annual reference offer must be continued for both tariffs and interconnection conditions. The ART have assured operators that the obligation to publish an interconnection catalogue will continue, and that 2003 will be seen as a transitional year. The incumbent feels that it is not useful to have the two systems in place and that the RIO should cover only the interconnection conditions.

2.1.3. Fixed to mobile call termination

There have been significant developments in regard to fixed to mobile call termination over the last year. In November 2001 the ART adopted a decision obliging the two mobile operators with SMP in the national market for interconnection, to reduce their tariffs by approximately 40% over a three year period, starting in March 2002. So while France was one of the more serious cases of apparent overcharging when benchmarked against other EU countries, there have been improvements.

The fixed to mobile termination rate now applied by the two SMP operators is now €0.18223 per minute, which is just below the EU average for SMP operators, while Bouygues Telecom applies a rate of €0.2238 per minute. The next reduction will take place in January 2003 when the two SMP operators will reduce their rates by 15%.

Nevertheless, there appear to be certain shortcomings to the ART's decision, particularly as it calls for a series of reductions over three years rather than identifying what is the cost oriented figure and mandating that directly, as would be the case for interconnection prices. Furthermore, the cost calculation is based on historical costs, and the ART's decision appears to have the effect of allowing the SMP operators not to develop a LRIC cost model for termination.

2.1.4. FRIACO, third-party billing

The system of FRIACO finally appears to be working well technically, but there has been limited demand given the price levels. In June 2003, however, the ART issued its decision in a dispute resolution concerning the method of calculating the average revenues of Internet communications, which will have a direct effect on the revenues of operators availing of this interconnection product. However, the development of new retail ADSL products, including an offer for a cheap 128 Kbit/s service, may make the FRIACO service unattractive as it is less attractive technically while being very similar in price.

Third-party billing (for "shared revenue services") was included in RIO 2001, but was not availed of because of the original conditions which were the subject of appeals to the ART.

An ART decision last year set a lower tariff but also removed the obligation on the incumbent to offer debt recovery to operators using the service. However, the incumbent was also obliged to place its own downstream services (e.g. Wanadoo) on a separate page of the bill together with those of other service providers.

Neither the incumbent nor the other operators were happy with the decision, which the incumbent subsequently challenged and which was the subject of the Cour d'Appel decision referred to above, which effectively calls into question the calculations carried out by the ART in setting the tariffs. In the meantime, while the Court's decision does not have a suspensive effect, there appear to be problems in applying the decision and with the system of debt collection when a customer does not pay the part of the bill relating to the OLOs services.

2.2. Interconnection leased lines / partial circuits

2.2.1. Availability

As part of the outcome of a dispute resolution procedure between a new entrant and the incumbent, the ART issued a decision in February 2002 on a number of leased line issues in dispute. More importantly, at the same time it obliged the incumbent to introduce interconnection leased lines, into its RIO, and to modify the conditions for delivery including the penalty clauses applicable.

These decisions should alter substantially the leased lines market in France and have a direct impact on the cost of high-speed access services. The ART also introduced a mechanism to be followed to allow operators to migrate from their existing leased lines to interconnection leased lines, setting down the timing and limiting the set-up costs to be applied, and applying a temporary reduction in leased lines prices of 27% until operators have had the opportunity to migrate to the new products. The interconnection offer applies to all the main data rates, starting with all lines up to 2 Mbit/s and subsequently for 34 and 155 Mbit/s lines. According to the ART's own calculation, for a typical range of distance and data rates that would be used by a new entrant, the interconnection offer represents a price reduction of approximately 40% from the standard leased lines offer without taking into account the discounts offered to operators at the moment.

While new entrants are experiencing problems with the practical implementation of the new offer, it is close to what they were requesting and provides much greater scope for tailoring the use of leased lines more closely to the operators network and the needs of their clients. Operators had to wait for a final offer from the incumbent until late July 2002, and this has caused problems in the timing given that the ART established a window during which certain price reductions and the conditions for transfer would apply.

2.3. Unbundling

2.3.1. RUO

Since the Unbundling Regulation entered into force in January 2001, the ART has intervened actively in order to obtain effective implementation, primarily in terms of the tariffs and conditions offered by the incumbent to other operators in its Reference Unbundling Offer (RUO). Nevertheless, progress has been slow, and while 9 unbundling contracts have been signed very few lines have been unbundled (576 according to the ART, 750 according to the incumbent as of June 2002). Because of the complex market entry

conditions, and the apparent delaying tactics of the incumbent, the development of unbundling in France has been quite disappointing.

On 16 April 2002, the ART took the latest in a series of decisions requiring the incumbent to modify its RUO, and reducing all the main tariffs. It introduced sub-loop unbundling, and modified a number of technical issues concerning collocation. At the same time, the ART blocked tariff proposals by the incumbent in regard to ADSL access, showing its awareness of the interplay between the two service markets.

The Decision appears to set the conditions for proper competition in local access, as the tariff for full unbundling is very competitive compared to other EU countries (€10.5) and the tariff for shared access is now one of the lowest in the EU (€2.6 or €2.9 with the necessary filter). The incumbent has formally appealed the tariff aspects of the decision to the Conseil d'Etat, but the decision stands in the meantime and on 14 June the incumbent published its modified Reference Unbundling Offer in conformity with the ART's decisions. Nevertheless, even with this decision, OLOs feel that the ART has not exercised all its available powers in relation to the deliberately complex price structures applied by the incumbent for bitstream access.

The original RUO from the incumbent did not contain an offer for the elements necessary for sub-loop unbundling. As part of the horizontal approach to infringement proceedings, the Commission opened a case against France for this omission. The ART decision in April required the incumbent inter alia to introduce sub-loop unbundling into the RUO, which it has done. The prices are very similar to those for unbundling at the local switch and appear to be dissuasive, but one of the largest new entrants is now developing a VDSL product.

2.3.2. Collocation conditions and effective implementation

Until the end of last year, new entrants made it clear that the technical and tariff conditions for collocation were an effective barrier to any real opening of competition in local access.

The revised RUO published by the incumbent in June contains a series of changes to the collocation and access conditions for unbundling. The ART's decision in April to modify the RUO was actually timed to coincide with a parallel decision in the context of a dispute resolution procedure on technical and tariff conditions for collocation. The most important element of this decision was the introduction of cageless collocation and unescorted access where previously operators were forced to pay for the creation of a separate room with independent access.

However this solution does not resolve the problem of the 'legacy' collocation rooms that have been ordered and built and which are, not surprisingly, located in the most important or popular switches in high density urban areas. These rooms are being maintained and those operators who have taken space must continue to pay. In reality, four of the five operators who are actually testing or operating unbundled lines have paid half or less of the costs for which they are liable under the RUO, and this situation has gone unchallenged by the incumbent until recently. The question arises as to what happens if an operator, who had not ordered bays at a particular switch where separate collocation space has been constructed, makes a request subsequent to the new collocation offer and is forced to install his equipment in the collocation room.

While there are clear positive developments with regard to collocation, new entrants complain about continuing problems, particularly the fact that the incumbent will not allow

them to run a cable from their equipment in the collocation site directly to that of another operator or to the termination point of a leased line, for example. The ART may be called on to arbitrate on this point in the coming months, but showed itself to be unsympathetic to the arguments put forward by operators before the dispute resolution decision in April.

2.4. Bitstream access

2.4.1. Non-discriminatory access

The new conditions for unbundling will have only limited success if the French authorities cannot also deal successfully with the alleged price squeezes and predatory pricing that appears to exist in the market of DSL access, as this will directly affect the business case for operators contemplating unbundling. This issue of competition in bitstream access was the key concern expressed by new entrants – ISPs and operators alike – in the course of the preparatory meetings in June.

While the authorities have slowly come to terms with the complex interplay between at least four different wholesale and operator tariffs, the incumbent has continued the development of its own products and customer base (mainly through Wanadoo). The latest figures supplied by the incumbent to the ART show that the incumbent and its ISP have 482 000 DSL lines and 44 000 DSL lines provided by other ISPs using their resale product, while there are no bitstream access lines and only the 576 unbundled lines on which other operators are providing a competing ADSL service. The incumbent also announced in July new products (i.e. improved data rates and service parameters) that will be introduced at the same time as the new tariffs and that will present a new challenge to new entrants on the retail market.

In response to an administrative letter sent to all Member States on this subject, the French authorities responded that apart from the clear legal obligation placed on the incumbent in French law, the application of the principle by the incumbent was guaranteed by the intervention of the Competition authority (in February 2000) and the ART (in March 2001) in response to specific complaints. However, this indicates that there is no method whereby non-discrimination can be systematically checked. And although the incumbent's offer has been subject to periodic checks (particularly by the intervention of the ART in the price 'homologation' (prior approval) in April 2002) the fact that the incumbent's offer is constantly evolving means that intervention is often ex-post. One particular example is the fact that in the new offer for operators, the incumbent have removed the possibility of access/connection at the regional ATM switch, which disadvantages certain operators and not others.

The range of wholesale offers available from the incumbent include ATM access, in a product that new entrants accept as being technically complete and attractive.

2.4.2. Tariffs

On 11 April, in anticipation of the ART's decision on unbundling, the incumbent announced a series of wholesale and retail tariff reductions for DSL that would effectively have cut the ground from under competing operators in local access. Operators and ISPs made it clear that they found the package anti-competitive, although it actually provided some breathing room for pure ISPs. The incumbent's offer included a 45% price reduction for ISPs ("option 5"), and a 20% reduction of the consumer price for the retail ADSL product ("Netissimo"). It included only a 30% reduction of wholesale offers for alternative

operators with the result that they would have been unable to match the incumbent's price reductions for wholesale ISP customers.

As different tariffs are regulated differently (the regulated tariffs are subject to approval by the Ministry subject to an Opinion by the ART) there was a delay in the response of the authorities. The ART issued a conditional opinion on the retail tariff, but issued a negative opinion on the main tariff for ISPs while making it clear that this was because of the effect it would have on other operators, and called on the incumbent to revise its proposal for the main wholesale operator tariff (referred to as 'Option 3'). While the incumbent insisted that this tariff was not subject to prior approval and that therefore the ART could not impose changes, the Ministry effectively decided the matter by suspending its decision on prior approval of the ISP and retail tariff until the incumbent eventually brought forward a revised offer for other operators in July. The ART then gave a favourable opinion on the revised package of ISP tariffs for ADSL, and these will come into effect on 15 October. Meanwhile, the incumbent was to put in place the revised technical and tariff conditions for Option 3 by 15 September in order to allow competing operators the time to prepare their own offers to ISPs.

When making their new tariff proposals in April, which were subsequently approved in modified form as described above, France Télécom also introduced some new retail products, including ADSL at 128 K/bps through its subsidiary Wanadoo at a price of €30 per month. This could become a very crucial market segment as it could effect the development of FRIACO in France because it is similar in price but superior in quality, and where several new entrant ISPs are beginning to compete at the moment.

2.5. Situation of the (broadband) local access market

2.5.1. Status of DSL market, position of incumbent

At the same time, the incumbent has continued to use its market position to roll out retail high speed Internet services (especially DSL products). This makes it more and more difficult for new entrants to develop a business case for competing on the broadband access market, either through unbundling or through competing DSL products ("bitstream access"). There appear to be a serious problem in ensuring the non-discriminatory provision of wholesale access and special access on the DSL market (such as ATM access at the regional switch) that would allow other operators and ISPs - to compete.

The ART has been active in seeking to address this double lock on the local access market and to develop competition in the market for broadband access, the high-speed data market for Internet to the home and to small businesses.

2.5.2. Development of alternative means of access

The roll-out of wireless local loop (WLL) has run into serious difficulties, with one of the two national licence holders going out of business, and at least two of the multi-regional licence holders having their authorisations suspended for failure to comply with their scheduled roll-out. In fact only 7 of the original twelve operators licensed for WLL services are left in the market and, in practice, WLL is limited to a number of small areas in the larger cities and some other experimental sites, with 870 access lines in place on 31 December 2001. In October 2002, the ART launched a new consultation on the use of the

frequency blocks that are unused or have been released (in the 3.5 and 26 GHz bands) as well as frequency in the 28 and 32 GHz ranges.

Cable tv networks are quite well developed in France. The upgrading of this network to allow cable modem access has been quite successful in certain areas in France. But the overall situation is disappointing because of the considerable barriers to development due to the heavier regulatory burden facing cable network operators and the limitations on individual operators' network size, in contrast to telecom network and satellite operators. Nevertheless there are some 208 500 cable modem lines in France, of which 161 000 are in the hands of new entrants.

The French NRA has been quite active in clarifying the specific rules and conditions for the use of Radio Local Area Networks (RLANs) in France. Following a public consultation and an action plan for the opening up of regulatory conditions for the use of WiFi technology on the 2.4 and 5 GHz frequencies, on 7 November 2002 the ART published decisions allowing they use of RLAN networks for high speed internet services to the public in public hotspots. It also issued guidelines for experimentation in the more general use of RLAN in areas poorly served by high-speed networks.

2.6. Leased Lines

2.6.1. Pricing

The most significant development in pricing have come about as a result of the ART's decisions on interconnection leased lines (see above). Tariffs for most retail leased lines have remained unchanged from last year with the result that France remains above the EU average for most types and lengths of leased line, with the exception of short distance high capacity lines (140/155 Mbits/s).

2.6.2. Delivery periods and quality of service; non-discrimination

While there are some delays in regard to the supply of international leased lines, France compares well with the EU average in terms of the supply times for most categories of leased line. However, operators are not satisfied with the unilateral modifications made by the incumbent to its supply conditions and contracts, and they contest the accuracy of the data concerning repair times. In particular there is a dispute with regard to the 'premium' service that the incumbent offers to its own clients covering repair times and guarantees on downtime, and which is not available for other operators.

2.7. Numbering

2.7.1. Carrier selection and preselection

CPS for local calls was finally introduced in January 2002. Given the methodology for conversion, where existing users of CPS for long-distance calls were informed of the change and were subsequently preselected for the other operator unless they objected, there was an immediate impact on market share for local calls, and the system was deemed a success. There are still some technical problems due to delays in replacing some older generation switches that cannot support the preselection process.

However, there have been complaints by both the incumbent and new entrants about certain underhand or illegal practices by other parties in regard to new or potential CPS customers,

and some of these complaints have now been brought before the French courts. Two operators are reported to have instituted proceedings against the incumbent for an alleged “win-back” commercial strategy, including the possible use of interconnection data by the incumbent’s commercial arm. The incumbent is reported to have instituted proceedings against another operator for the alleged improper use of marketing tactics, including the possible use of falsely procured requests for carrier preselection.

2.7.2. Number portability

An ongoing problem has been the implementation of the portability of fixed non-geographic numbers. While there appears to have been a genuine attempt to implement this requirement it was apparently technically unworkable, and work started over a year ago on an alternative approach. A system is now in place for toll-free numbers and shared costs numbers, but France is extremely late for shared revenues numbers (value-added numbers). The date for effective implementation is still uncertain for some operators, but for others the ART now state that the target date is December 2002. These value-added numbers represent a significant volume of traffic and turnover.

2.8. Cost-accounting and accounting separation

2.8.1. Cost accounting systems in place, statement of compliance

The ART have developed with the incumbent a relatively sophisticated system of current cost accounting based on the LRIC model. The system is well structured and takes into account the main requirements for transparent and coherent identification of costs. The incumbent has full accounting separation, the cost accounting audit is carried out by independent auditors chosen by the ART and then appointed by the incumbent and who are not responsible for the company accounts.

While certain improvements have been made, a rectification of the interconnection accounts for 2000 is being prepared and this has given rise to a lengthy delay in the certification of the 2000 accounts, despite the fact that they have been ready for some time. The system has required relatively little adjustment subsequently but the audit for the 2001 accounts only began in July 2002. The cost accounting model developed for interconnection is a LRIC current-cost approach which was, for the 2002 RIO, based on reconciling the results of two different models – a top-down model designed by the incumbent and a bottom-up model which was designed by the ART in co-operation with the sector.

3. AUTHORISATIONS

3.1. Licence conditions

While previously a source of some contention, there have been no complaints about the procedures for awarding or modifying licences over the last year, reflecting no doubt the fact that very few new operators have entered the market or extended their business activities over the last year. In fact, compared to last year, there are 11 fewer voice telephony licences and 4 fewer licences to provide public networks and network services.

3.2. Rights of way - role of local authorities in infrastructure development

Before the legislative elections in France, the previous government announced separate initiatives to support the completion of mobile coverage of the national territory, and to support the roll-out of broadband infrastructure to the regions and less densely populated areas. Both initiatives were to involve the local authorities, both in part financing the projects but also in playing a direct role in, at least, the construction of the infrastructure.

The French authorities had previously prepared a study and report on the extent of mobile coverage in France. It showed that approximately 8.4% of the national territory was not covered, most of it mountain and forest, but including 1500 communes that did not have effective coverage of the village centre by at least one GSM network. This amounted to 0.7% of the French population without effective mobile coverage.

It appears that the new government maintains the same priorities in terms of the development of communications infrastructure. There have been several announcements, including a declaration by the three mobile operators and subsequently confirmed by the Ministry, of an agreement on the modalities for extending mobile coverage to the “white zones” where no mobile operator currently has coverage. This appears to involve a mixture of passive infrastructure sharing and the introduction of local roaming on a common network infrastructure. Very recently the Senate adopted a draft law, which must now be debated in the Assemblée, and which would allow local authorities to oblige the three mobile operators to cover all zones of temporary or occasional residence with the necessary infrastructure for the installation of local roaming in these areas.

For these initiatives, as well as the suggestion of state financing for the development of high speed networks in the regions, the question arises of how to reconcile local authorities’ role in relation to rights of way, and any conflict of interest relating to their financing or part ownership of high speed networks, particularly where these may be in competition with other networks.

At the same time there have been independent initiatives in the French Senate to oblige mobile operators to construct and pay for the necessary infrastructure themselves to ensure coverage of these white zones, which would go beyond the coverage obligations established in their licences.

As the date of application of the new regulatory framework approached, cable operators claim that they suffer from discriminatory treatment compared to other providers of electronic communications services. Cable operators require the prior approval of local authorities for the construction of their networks, and are sometimes subject to much higher fees for rights of way than telecommunications network operators, but they do also enjoy priority access to households.

4. UNIVERSAL SERVICE / CONSUMERS

4.1. Retail tariffs

In the Court ruling on the universal service financing mechanism (see below) there is an implicit suggestion that tariff re-balancing has not been achieved in France, despite claims to the contrary, and it is not clear how the relatively small increases in the subscription charge since 1998 have caught up with the costs related to maintaining the local connection.

However, in July 2002 the subscription tariff was raised slightly (to €13; €10.87 excl. VAT) which corresponds to an increase for inflation.

Above and beyond this increase, there appears to be little appetite for a more detailed analysis of the real cost of the subscription, because of the political implications of a further increase and because new entrants may not consider it to be to their advantage. In theory, given the recent introduction of bundled tariffs (“forfaits”), further increases in the subscription paid to the incumbent should clear the way for greater competition in local calls and make unbundling more attractive to other operators, as well of course as reducing the total cost of the universal service to be paid by other operators. For its part, the ART has conducted detailed analyses of the average cost of a line but does not consider this to be relevant as the subscription rate should be in line with costs in high density areas where average costs are lower.

Following court cases taken by one of the main consumers’ group, the three mobile operators were condemned separately for breaches of consumer law regarding misleading publicity and lack of transparency of tariffs. These cases concerned particularly the conditions applying to ‘forfaits’ and the billing method for the first minute of calls or billing for set unit of time. All three operators have recently moved to per-second charging for most of their products.

In the course of this transition, however, Orange has introduced a higher charge for calls off-net (to other mobile networks) compared to on-net calls. Following a complaint to the competition authority by another operator, and a separate complaint from the same consumers’ organisation for breach of dominant position, Orange removed this surcharge.

4.2. Funding – implementation of the ruling of the Court of Justice

On 6 December 2001 the Court of Justice ruled on the Commission case against France (C-146/00) concerning the financing of the universal service and the method of calculating the costs to be paid from the universal service Fund by new entrants. The Court found in favour of the Commission on all six grievances and ruled that France was in breach of the Liberalisation Directive and the Interconnection Directive, particularly on the grounds of transparency and non-discrimination.

Following the Court ruling, the French authorities decided to repay the amounts charged for 1997 and to reduce the amounts for 1998 and 1999. These repayments have been made in the form of a reduction of the provisional payments for 2002 which were confirmed by an Arrêté in July 2002. These repayments and provisional contributions were based on a revised method of calculation in the light of the Court ruling, but this has yet to be notified to the Commission. The alternative operators, represented by AFORST, have quickly made known that they are extremely unhappy with the new amounts and the basis of the revised calculations, and it has been announced that they have appealed to the Conseil d’Etat. In the meantime, the government has adopted an arrêté settling the definitive amount to be paid for the year 2000, based on the ART’s revised calculations.

4.3. Universal directory

Despite the obligation of the Voice Telephony Directive, a universal directory containing information of all numbers irrespective of operator does not exist in France,. This is because no system for making available the relevant databases has been developed due to disputes between operators. The French authorities have indicated that a decree (promised

last year) will soon be implemented to set up the necessary database. The directory will not be available before the end of 2002 at least, and the Commission has already instituted infringement proceedings against France for this failure to respect the existing framework.

4.4. Dispute resolution

Another clear implementation failure in France is the lack of a conciliation body for disputes between users and operators. While the ART technically has the power to settle disputes this is not used, and the authorities were tempted for a long time to rely on a mechanism set up and financed by the operators. But various plans have always run into the problem of how to ensure that the dispute is effectively resolved, and the relevant implementing Decree has yet to be published.

5. DATA PROTECTION

5.1. Implementation / Traffic data retention

Following the adoption of the Ordonnance to resolve a series of transposition problems last year, the French government introduced a Decree to complete the implementation of Directive 97/66 on data protection, following a ruling of the Court of Justice condemning France for its failure to transpose the Directive fully. However, the measures to implement Art. 6 on data retention were dealt with in a separate Law on Security, and both measures were notified in March 2002. While this law appears to fulfil the requirements of Article 6 of the Directive to limit the time during which data may be retained and processed, it in turn requires a further Decree to complete its provisions, and to specify the data that may be retained in accordance with the annex of the Directive. At the same time the Law on Security deals with the issue of data retention. The law aligns the period during which traffic data must be retained, one year, with that applying to the retention of data for customer billing purposes and the deadline for contesting a bill.

5.2. Unsolicited calls and faxes

The Ordonnance brought French law into conformity as regards unsolicited calls and faxes. The system for rejecting calls is an opt-out one, while that for faxes is an opt-in system, with active (or express) written consent required.

6. MOBILE ISSUES

6.1. UMTS

In December 2001 the French authorities published a new call for applications for the allocation of the two 3G licences not issued in the first round. As expected, the price of the licences was altered to a once-off charge of €19m as well as an annual charge levied on the basis of 1% of turnover arising from 3G mobile activities. The duration of the licence was also extended from 15 to 20 years. Nevertheless, only the third existing 2G operator, which had not applied for the first round, applied and in September 2002 the ART recommended that their candidature be accepted and the licence has now been issued.

The only change to the licence conditions was the addition of an accounting requirement to allow the annual levy on turnover to be calculated. All the above modifications apply retrospectively to the two existing licence holders.

There have been no changes to the theoretical requirements for geographical coverage, but these will take effect later than those applying to the two existing operators given that the third licensee received its licence 14 months later than the first two. In reality there is considerable slippage in the probable date of effective roll-out of services by any of the operators. The *cahier des charges* of licence holders accepts the possibility of slippage when equipment is not available, and the original two licensees have already announced delays from their original starting dates.

6.2. Infrastructure sharing

As part of the work carried out to alleviate the problems being experienced by the 3G license holders, but also in conjunction with the regular studies carried out by the ART on mobile coverage, the issue of mobile infrastructure sharing has become more and more pertinent. The ART issued a statement clarifying its position in December 2001, ostensibly in relation to the 3G authorisations, but closely related to the discussion of possible solutions to problems of incomplete coverage.

7. PREPARATION FOR THE TRANSPOSITION OF THE NEW FRAMEWORK

France has been slow to transpose the current framework, but the authorities have stated their intention to transpose the new framework on time. The Industry Ministry launched a public consultation on the economic and legal implications of implementation of the new framework on 30 April, which closed on 15 July, and the ART also published a detailed analysis on the passage from the existing to the new framework. There was then a second consultation launched at the end of July, in co-operation between the Industry Ministry and the Culture and Media Ministry who have responsibility for audiovisual law and cable television networks.

This second consultation ended on 20 September, the French authorities hope to draw up implementing legislation that would be presented to the French parliament by the end of the year. In October 2002, the ART produced the results of enquiries into the competitive situation in three key markets: interconnection (voice and internet traffic), internet transport, and high speed fibre optic access. The results of these enquiries will serve in drawing up the relevant market analyses that need to be in place when the new framework is applied.

