Part 4

CHAPTER 7

Telecommunications in the overseas territories

Application of the CPCE in overseas markets

The legal and regulatory provisions laid out in the French Postal and electronic communications code, CPCE (*Code des postes et des communications électroniques*) apply fully to the French overseas départements (DOM) and overseas regions (ROM) – Guadeloupe, Guyana, Martinique, Reunion – and to certain overseas collectivities (COM) – Mayotte, Saint Pierre and Miquelon, Saint Barthélemy, Saint-Martin. In other collectivities, however, namely Polynesia and Wallis and Futuna – and in the *sui generis* collectivity of New Caledonia and the TAAF districts[1] – these provisions apply only through express stipulation of a text[2].

A. Market round-up

1. Broadband

1.1 Broadband retail markets: situation coming more in line with mainland France

Consumers in the overseas *départements* and territories have not always had access to the same level of broadband offers as consumers in Metropolitan France – with more expensive and a smaller selection of offers leading to lower penetration rates in those markets. This gap can be attributed to the added structural costs involved in carrying traffic from the overseas *départements* to Metropolitan France, but also to the state of competition that exists locally.

Although disparities still exist, they have been lessened over recent years thanks to:

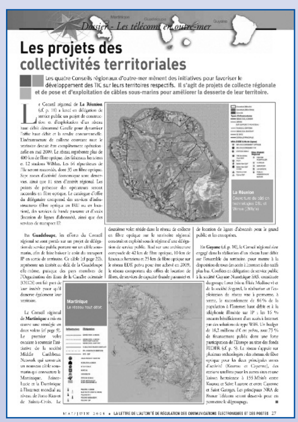
- the introduction of more varied offers;
- the arrival of new access providers;
- a higher broadband penetration rate.

Alternative operators' market share nevertheless remains small, and quality of service improvements are expected from France Telecom wholesale offers.

1 - The TAAF (French southern and Antarctic territories) are subject to the principle of legislative specialty rule, according to Article 1-1 of Law no. 55-1052 dated 6 August 1955. This means that the laws and regulations, including the CPCE provisions, are applicable in principle only when expressly stipulated.

2 - Except on Clipperton Island, which is part of the overseas lands belonging to France but does not fall into any of the aforementioned constitutional categories. It does have a status similar to that of direct administration, however. Article 9 of Law no. 55-1052 dated 6 August 1955 stipulates that "the laws and regulations are fully applicable on Clipperton Island".

In 2008, the Authority devoted an issue of its *Lettre* to telecoms in the overseas regions



3 - La Lettre no. 61 of May-June 2008 is available on the ARCEP website: http://www.arcep.fr/uploads/tx_gspublication/lettre61.pdf .

1.1.1 Greater selection but still expensive

The added costs created by the distance between the overseas territories and Metropolitan France are carried over to operators' retail prices. Even though the price of some more recent offers are closer to those charged in Metropolitan France, overseas customers still pay more for their broadband offers than they do on the mainland.

The triple play bundles which are available in unbundled zones are marketed for around 30 euros in Metropolitan France, compared to 55 euros just for unlimited Internet access in the overseas *départements*. The same flat rate, with unmetered local calls and calls to Metropolitan France, is priced at around 65 euros. This is why, to reduce their monthly bill, customers generally opt for more limited offers, in terms of both download volume and the range of services included.

Consumers in unbundled areas in the overseas *départements* have had access, since 2008, to triple play packages which include unlimited Internet access, unmetered voice over broadband calls and a TV offer, and to double play bundles in non LLU zones. These offers are not available in all of the overseas *départements*, however.

1.1.2 Increased broadband penetration rate

The rate of broadband penetration in households, in other words the number of DSL connections compared to the number of principal phone lines, has increased significantly in just over three years, going from 12% in July 2005 to 36% in October 2007, and up to 45% by December 2008. During that same time, broadband penetration in the whole of France rose from 24% to 52%.

Although they still exist, the disparities between the telecommunications markets in the overseas *départements* and in Metropolitan France have decreased considerably over the past several years.

1.1.3 An increasingly competitive market?

As of 31 December 2008, France Telecom had a 70% share of broadband retail connections in overseas markets, both residential and business, compared to 80% one year earlier – albeit with some variations depending on the overseas *département*. The incumbent carrier's market share is slightly higher in Guyana where, despite having always had higher penetration levels than the other overseas *départements*, alternative operators have a harder time increasing their share of the market.

Overall, France Telecom's market share in the overseas *départements* is the same as its market share for the whole of France in autumn 2002. It has decreased dramatically since then, levelling off at slightly under 50% in summer 2004. At the same time, the incumbent's share of the overseas markets has remained unchanged.

The rate at which competition is developing in the overseas *départements* could accelerate, as more and more of the broadband retail markets are becoming increasingly competitive. In addition to France Telecom and Outremer Télécom, a third player is now positioned in all four of the overseas *départements*: Loret group subsidiary Mediaserv which, via its own subsidiaries, notably MCN and Global Caribbean Network, is deploying undersea cables that enable it to serve the overseas *départements*.

1.2 Regulation focused on the wholesale market

Broadband regulation is concentrated on wholesale unbundled access markets and wholesale activated broadband access, delivered at the sub-national level.

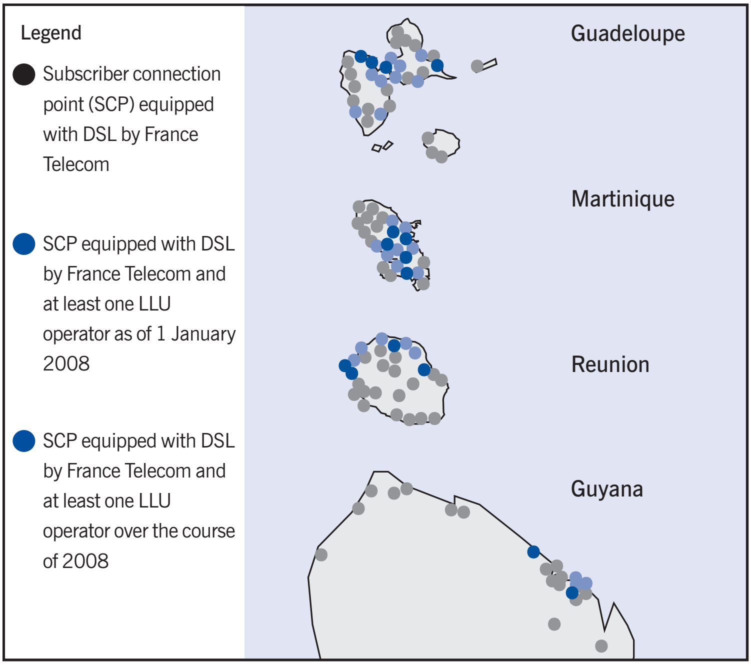
The Authority drafted this regulation based on its market analysis decisions of 2005 and 2008[4], setting the boundaries of a relevant national market in which France Telecom enjoys significant market power. Broadband regulation applies in the same manner to the overseas *départements* as it does to Metropolitan France. Wholesale offers are therefore identical, notably:

4 - *ARCEP Decisions no. 05-0275 and no. 05-0278 of 19 May 2005, and nos. 08-0835 and 08-0836 of 24 July 2008.*

- full unbundling;
- shared access;
- "DSL Access" offer (activated wholesale offer requiring a connection that includes a classic switched telephony service);
- "DSL Access only" (activated wholesale offer delivering an Internet connection without a classic switched telephony service)

In addition, as part of multilateral efforts and its operational regulation activities, the Authority has obtained France Telecom's assurance that all of the service resolution time guarantees will be available by the first quarter of 2008, to allow alternative operators to market DSL-based solutions to business customers.

As of 31 December 2008, the number of unbundled MDFs in the overseas départements enabled LLU coverage of 76% of the population. To help expand unbundling, France Telecom provides its "LFO" fibre optic link offer (Location Fibre Optique) for connecting remote MDFs with dark fibre. This offer is used chiefly in Guadeloupe due to the lack of a public collection network and of local authority-led projects.



Improving the quality of broadband services in the overseas départements

On 19 March 2009, France Telecom made commitments to the Authority aimed at improving the quality of the services provided to third-party operators in the overseas *départements*.

Operator Mediaserv had filed a complaint with the competition authority in 2008 concerning the "lack of services necessary to maintaining proper broadband operations in the overseas *départements*, notably due to the time difference between the Caribbean and Metropolitan France". To offer Internet access to their customers, operators in the overseas markets are forced to rely on the incumbent carrier's network.

The competition authority expressed the view that "poor quality wholesale broadband offers in the overseas *départements* could create a distortion in retail market competition which is detrimental to new entrants, particularly given that France Telecom has a roughly 75% market share in the overseas *départements*".

To remedy these quality of service issues, France Telecom agreed to create a special unit in charge of incidents, dedicated to operators in the Caribbean (Guadeloupe, Guyana and Martinique), and to appoint a representative in Reunion.

2. Mobile markets

2.1 Mobile operators' market share in the overseas *départements*

	Consumer market		Prepaid base		Post-paid base	
	Total customers	Market share	Total customers	Market share	Total customers	Market share
Antilles Guyana region						
Orange Caraïbe	509322	45.3 %	212 909	37 %	296 413	54.1 %
Digicel	417309	37.1 %	288469	50 %	128 840	23.5 %
Outremer Télécom	182271	16.2 %	61446	11 %	120 825	22.1 %
Dauphin Télécom	16 097	1.4 %	14 329	2 %	1768	0.3 %
Total	1 124 999	100 %	577153	100 %	547846	100 %
Mayotte Reunion region						
SRR	683 768	66 %	386 843	67.3 %	296 925	61 %
Orange Réunion	286 671	28 %	151 362	26.3 %	135 309	28 %
Dauphin Télécom	92389	6 %	36 576	6.4 %	55 813	11 %
Total	1062828	100%	574 581	100%	488 047	100%
Saint Pierre and Miquelon - data for Q3 2008						
SPM Télécom	3109	100 %	1074	100 %	2035	100 %

2.2 Consumption trends

A survey commissioned by ARCEP[5] revealed that mobile phone users' consumption patterns were largely the same in the overseas *départements* and in Metropolitan France.

Mobile operators have nonetheless developed specific offers for the overseas *départements*, notably preferential rates for calls to Metropolitan France, to adapt to the particular geographical situation of the population that maintains close ties with the mainland.

The other main difference between Metropolitan France and the overseas *départements* is the higher price paid for handsets, on average, in the DOM, due to lower operator subsidies and the high percentage of prepaid customers in the overseas *départements* (subsidies apply chiefly to phones associated with subscriptions).

The penetration rate for mobile telephony in the overseas *départements* had reached 99.2% in September 2008[6], compared to around 88% in Metropolitan France.

3. Fixed markets

The rules that apply to telecommunications markets in Metropolitan France apply in the same manner to the overseas *départements*.

The same is true of the decision[7] made by the Authority in 2008 to scale back retail market regulation to focus on regulating access and interconnection services that constitute a lasting bottleneck, namely call origination and call termination.

The ARCEP analysis revealed that operators now have functional and adapted wholesale offers that allow them to replicate France Telecom services in the overseas *départements*. As a result, over the past few years, operators in Metropolitan France and the overseas *départements* have developed voice over broadband services based on wholesale offers such as unbundling and bitstream.

At the same time, alternative operators have continued to develop their offers based on carrier selection which, in residential, business and corporate markets, still accounts for a substantial portion of the market which has gone to alternative carriers.

Lastly, the Authority notes that use of the wholesale line rental (*VGAST*) continues to increase at a steady pace, particularly overseas where Outremer Télécom was the first operator to employ it on a large scale in 2006.

B. GSM licence renewal in the overseas territories

The frequency licences awarded for the deployment of 2G (GSM) mobile networks are set to expire for all three overseas operators: Digicel (8 December 2009), la Société réunionnaise du radiotéléphone (23 February 2010) and Orange Caraïbe (14 June 2011).

In accordance with the legislative provisions[8], ARCEP must inform the holder of a spectrum licence of the terms of renewal or of the denial of renewal of their frequency usage licence before that licence has expired, under objective, transparent and non-discriminatory conditions.

5 - *The results of this survey are not publicly available.*

6 - *Source: SIM, mobile indicator monitoring (Suivi des Indicateurs Mobiles) for September 2008, published on the ARCEP website.*

7 - *ARCEP Decision no. 08-0896 of 29 July 2008.*

8 - *Cf. CPCE Article L. 42-1.*

Prior to notifying these three operators of the terms of renewal of their GSM licences, the Authority sought to obtain feedback from the sector concerning the renewal of these licences, in a fully transparent fashion.

It was to this end that a public consultation on the possible terms for renewing these operators' GSM licences was launched on 8 July 2008.

Drawing on the responses to this consultation, in its Decision of 20 November 2008[9], ARCEP approved the renewal of the three GSM licences, with the same frequency allocations. It nevertheless elected to reinforce certain obligations:

- coverage obligations have been increased (95% of the population must be covered in each of the *département* and collectivities where they are authorised to operate, within a year of their licence renewal, except in Guyana where this coverage obligation was increased to 85% of the population);
- the minimum service offering is expanded to include person-to-person messaging and packet mode data transfer services;
- quality of service obligations are reinforced and extended to new services;
- an obligation of transparency in providing the public with information on mobile coverage.

The Authority notified the three operators of the terms of renewal for their spectrum licences in the 900 MHz and 1 800 MHz frequency bands, in a letter dated 21 November 2008.

9 - *Decisions no. 08-1211, 08-1212 and 08-1213 setting the terms of renewal for spectrum licences in the 900 MHz and 1 800 MHz bands for Digicel AFG, la Société réunionnaise du radiotéléphone and Orange Caraïbe, respectively.*

C. 3G in overseas markets

Having noted that several players had expressed an interest in obtaining a 3G licence in the 2.1 GHz band for overseas markets, ARCEP began a process of awarding them on an ongoing basis. As it has in Metropolitan France, the introduction of 3G (UMTS) creates an opportunity for users in the overseas markets to access new and faster services than those delivered by 2G (GSM) networks.

Since the 2.1 GHz band became available, three mobile operators have been issued a licence in each of the overseas *départements* (Martinique, Guadeloupe, Guyana and Reunion), and two in the collectivities of Saint Martin and Saint Barthélemy. No licence request has been submitted yet in the collectivities of Mayotte or Saint Pierre and Miquelon.

3G operators in the overseas markets

Départements Collectivities	Operators
Guadeloupe	Guadeloupe Téléphone Mobile, Orange Caraïbe, Outremer Télécom
Guyana	Guyane Téléphone Mobile, Orange Caraïbe, Outremer Télécom
Martinique	Martinique Téléphone Mobile, Orange Caraïbe, Outremer Télécom
Reunion	Orange Réunion, Outremer Télécom, SRR
Saint-Martin Saint-Barthélemy	Orange Caraïbe, UTS Caraïbe

The first 3G services were rolled out during the third quarter of 2008 by SRR, Orange Réunion, Orange Caraïbe and Outremer Télécom.

Each of these operators, which hold a licence to employ 2.1 GHz-band spectrum for delivering 3G services, is required to deploy a network that covers at least 70% of the population in each of the zones where it its authorised to operate by 2013.

The procedure for awarding licences on an ongoing basis remains open to any player wanting to roll out a third generation mobile network in the overseas *départements* and territories. Indeed, because operators were only allocated a 5 MHz duplex carrier, there is still at least 2 x 45 MHz available in each of the overseas *départements* and territories. Operators that have already been issued a licence can also submit a request for additional spectrum if they consider it necessary.

D. Decrease in mobile call termination tariffs in overseas *départements*

Reminder

Following the market analysis that ARCEP performed on the overseas *départements* in 2007, the three mobile operators that were active in these regions were declared to enjoy significant market power in the wholesale market for voice call termination on their respective networks. As a result, they are also subject to regulatory obligations for the period running from 2008 to 2010 which are proportionate to their respective size. Orange Caraïbe and SRR, each of which has a very large market share in their area, must charge cost-oriented prices for call termination. The other operators must not charge excessive prices.

In 2007 the Authority imposed[10] a decrease in call termination tariffs, which remained high in overseas markets by European standards, and could not be justified by the operators' cost structures. ARCEP thus ordered them to decrease their wholesale prices by 30% to 50% in increments between 2007 and 2009, leading to wholesale tariffs ranging from 10.5 to around 27.2 eurocents a minute in 2008, depending on the operator. These decreases should benefit consumers, provided operators carry the reductions over to their retail prices – and especially to the price of fixed to mobile calls – and so allowing users in overseas market to enjoy more dynamic competition.

10 - *ARCEP Decision no. 07-0811 of 16 October 2007.*

The process of setting these ceiling tariffs requires knowledge of the cost structures of mobile operators in the overseas *départements*, which the Authority is working to increase. This is why, in tandem with the operators, ARCEP is developing a technical-economic model for assessing the costs incurred by a generic mobile operator operating in the overseas *départements*. This model will enable a more accurate assessment of the market properties specific to these geographical zones.

On 19 February 2009, following his meeting with the Chairman of the Authority, the Secretary of State for Overseas France announced that, *"the means for accentuating the positive impact of competition on prices and services in overseas markets have been reviewed"*.

Among the solutions identified for bringing down the price of telephony in overseas markets, the Authority will set new call termination ceiling tariffs for 2010 for overseas operators in summer 2009. From a concrete perspective, ARCEP will inform SRR and Orange Caraïbe of the terms of their obligation to charge cost-oriented prices, and will inform smaller operators of the terms of their obligation not to charge excessive pricing, which will apply in 2010.

Ceiling tariffs set by ARCEP to enforce an obligation of cost-oriented prices (eurocents/min. excl. VAT)

	April to December 2005	2006	2007	2008	2009
Orange Caraïbe	20.56	16.44	13.16	11	8.7
SRR	19.65	15.72	12.57	10.5	8.5

Ceiling tariffs set by ARCEP to enforce an obligation not to charge excessive prices (eurocents/min. excl. VAT)

		2008	2009
Dauphin Télécom		24.9	16.7
Digicel		16	12.2
Orange Réunion		13	11
Outremer Télécom	Reunion, Mayotte	27.2	17.5
Outremer Télécom	Martinique, Guadeloupe	22.9	15.7
Outremer Télécom	Guyane	19.2	13.7
UTS Caraïbe		25.9	17.7

Source: ARCEP, ceiling tariffs imposed over the course of the two market analysis periods.

ARCEP also plans on regulating SMS call termination in overseas markets, encouraging mobile operators to introduce offers of unlimited SMS to all networks, as is already the case in Metropolitan France.

E. Overseas market access to the global network: undersea cables

Crucial for bringing service to the overseas *départements*, undersea cables are subject to regulations drafted by ARCEP, which seeks to ensure that all operators can access these cables under satisfactory conditions.

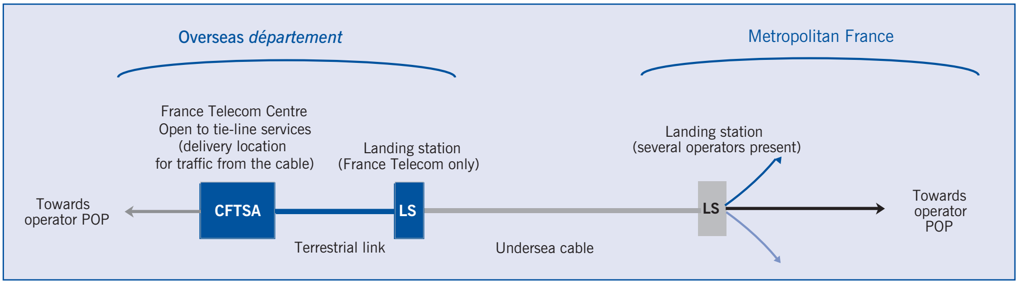
1. Regulation of the capacity services market and of undersea cable

To deliver broadband retail offers to consumers, alternative operators rely on France Telecom wholesale offers which they collect at the departmental or regional level, to route traffic to a hub located in Paris that serves as a point of interconnection with the main global networks and the Internet.

This means that operators in the overseas *départements* need to route traffic from all of their connections to Paris, via undersea cable. The added cost that this entails is one of the main reasons why service prices are higher in the overseas *départements* than they are in Metropolitan France. To connect one overseas *département* with Metropolitan France, or two overseas *départements* to one another, there are two wholesale solutions available: capacity services and IP transport.

A capacity service is generally composed of:

- an undersea cable transport service (leased line transport, or LLT offer) between two landing stations, purchased from an operator that owns a stake in the consortium that manages the cable or which has physical access to the cable head end;
- a complementary terrestrial service, between the landing station and its point of presence (POP), purchased from the client operator: here, the service provider will need to install its own equipment in the landing station.



The Metropolitan France-Reunion leased line transport offer departs from this architecture, being instead an end-to-end service that includes both the undersea segment and the terrestrial service.

2. ARCEP actions

Undersea cables, which are a crucial component in providing users in overseas markets with broadband services, are regulated by ARCEP which has intervened on several occasions, in a bid to improve the situation in the Metropolitan France-DOM or inter-DOM wholesale market. In May 2004, it adopted two dispute settlement decisions[11], following which leased line transport and IP transport offers were created in Reunion. The Authority then adopted, in September 2006[12], a capacity service market analysis decision that affects all of the overseas *départements*.

11 - ARCEP Decision nos. 04-375 and 04-376 of 4 May 2004.

12 - ARCEP Decision no. 06-0592 of 26 September 2006.

Through this decision, ARCEP defined six relevant inter-territorial markets for capacity services transiting over these routes:

- Metropolitan France-Martinique;
- Metropolitan France Guadeloupe;
- Metropolitan France-Guyana;
- Metropolitan France-Reunion;
- Martinique-Guyana;
- Martinique-Guadeloupe.

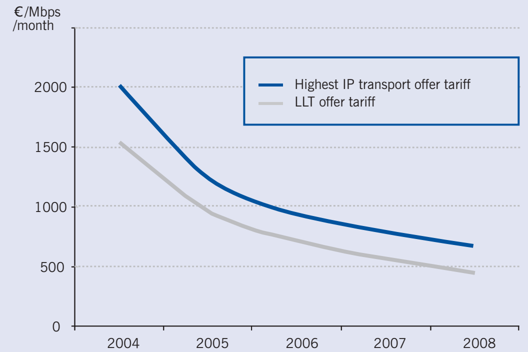
It deemed that France Telecom had significant power in these markets, which are characterised by infrastructure which is difficult to replicate, and that the incumbent carrier enjoyed considerable economies of scale and product range.

As a result, France Telecom is required to publish a reference offer at a regulated tariff, which includes cost-oriented collocation tariffs for equipment in the France Telecom premises, and for the terrestrial component, in addition to being subject to cost accounting and accounting separation obligations.

3. Decrease in wholesale tariffs in Reunion

Over the past four years, wholesale tariffs for capacity services, which were originally set at around 16 000 euros a month per Mbps for serving Reunion, have been cut by a factor more than 30. Because of the added costs incurred due to geographical distance and a lower volume of traffic, the tariff level reached is nevertheless still structurally higher than that of collection tariffs in Metropolitan France.

Change in France Telecom IP transport and LLT offers in Reunion

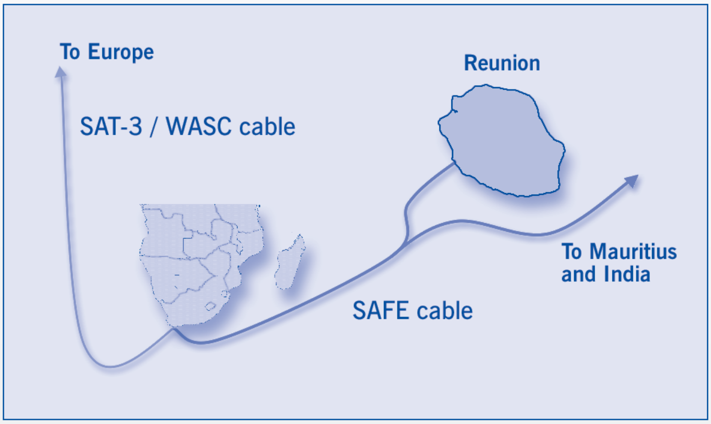


Overview of undersea cables connecting the overseas *départements*

Indian Ocean region

Reunion

Reunion has been connected since June 2002 by the SAT3/WASC/SAFE cable which measures 27 850 km. It is made up of two segments: the SAT3/WASC segment that connects Spain to South Africa, and the SAFE segment that connects South Africa to India, which were put into service in 2000 and 1999, respectively. The cable was financed by an initial investment of 600 million dollars by a consortium of 36 members.



Electronic communications 4

Mayotte

Mayotte will soon be connected by a new undersea cable: EASSY (*Eastern African Submarine Cable System*) which will service the countries of Eastern Africa. Measuring 10 500 km, the cable requires an investment of 248 million dollars. Managed by a consortium of private operators, in partnership with the World Bank, it is due to be in service by the first half of 2010.

The Caribbean region

The ECFS cable

Measuring 1 730 km, the ECFS (East Caribbean Fiber System) cable, which connects the British Virgin Islands to Trinidad, was put into service in 1995. It is the first optical fibre cable to land in Guadeloupe. Owned by a consortium that includes Cable & Wireless, France Telecom and AT&T, it is used to provide a link between Martinique and Guadeloupe, and between Guadeloupe and the north islands (via Saint Martin) and to connect them to Puerto Rico and Miami.

This cable could be nearing saturation. There is a degree of competition for selling bandwidth on the ECFS cable. Consortium member France Telecom nonetheless has a *de facto* monopoly over the landing stations located on French territory.

The Americas II cable

The Americas II cable, which connects Brazil to Florida by way of Guyana and Martinique (8 330 km), came into service in 2000.

Based on the information available to the Authority, there is apparently nothing to prevent alternative operators from eliciting competing offers from the different operators that are part of the Americas II consortium. Consortium member France Telecom does, however, have a *de facto* monopoly over the landing stations on French territory.

The GCN cable

The Guadeloupe Region decided to encourage the construction of a cable providing an alternative to the ECFS cable to connect the region to the global Internet in Puerto Rico, by way of Saint Martin and Saint Barthélemy. In November 2004, a public service delegation agreement was finalised with the Loret subsidiary, Global Caribbean Network, for the installation and operation of the cable. The scope of operation of this public service delegation agreement was expanded to bring service to the island of Sainte Croix, thereby creating an additional connection to the global Internet. The cable currently measures 890 km.

The *FEDER* development fund and the Guadeloupe Region put up 66% of the initial 25.3 million-euro investment required for this cable, which was inaugurated in October 2006. The cable has helped decrease IP transport tariffs to €375/Mbps, and to increase competition over the supply of wholesale data transport offers.

The MCN cable

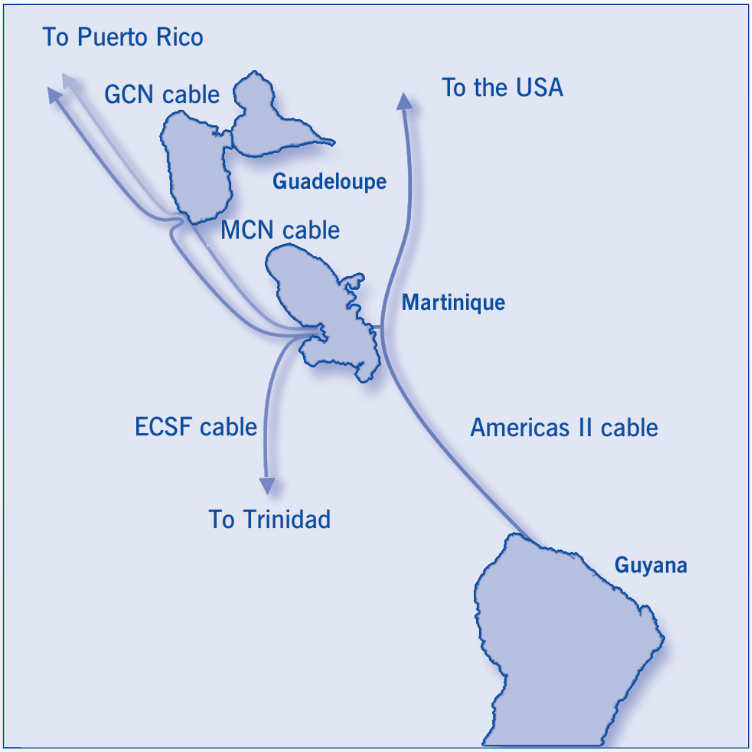
A third cable serving Martinique, measuring 240 km and built by Loret subsidiary, Middle Caribbean Network (MCN), has been in service since November 2007. It provides an extension to the GCN cable.

Costing 7.6 million euros, its construction received public funding from the *FEDER*.

development fund (2.8 million euros) and the Regions of Guadeloupe and Martinique, which each invested 460 000 euros. This cable helped reduce IP transport tariffs to €450/Mbps.

SCF cable project

A third Loret subsidiary, Southern Caribbean Fiber (SCF), is planning on building an extension of the MCN cable to Guyana. This project would be undertaken with partners that include the regional council of Guyana.



Legal structure of undersea cable and competition issues

Most of the existing undersea cables are governed by private legal agreements, referred to as construction and maintenance agreements, between several electronic communications companies. These agreements specify the path along which the cable is built, the technology used, the system's total capacity, the date when the cable comes into service and the contractual terms of membership in the consortium. The contracts are not only between electronic communications companies located at either end of the link, but also any international operator whose capacity needs justify their involvement. In virtually every case, no new members can join the consortium once the cable has been put into service.

The system's total capacity often belongs in an indivisible fashion to consortium members. It is broken down between the capacity to which the co-owners have subscribed to satisfy their own short and medium-term needs and the commonly owned reserve capacity. Each of the consortium members owns a certain number of investment units, which determines their voting rights. A member can increase its share by subscribing to new investment units taken from the reserve capacity. Operators from outside the consortium can access the cable by buying capacity or possibly indefeasible rights of use (IRU).

The agreements governing existing cables were drafted with the purpose of encouraging potential investors to contribute financially to the project before the cable was put into service. As a result, the agreements can contain provisions that make a clear distinction between co-owners and operators outside the consortium, notably with respect to their ability to access capacity and to tariffs. The legal structure of undersea cable is thus likely to act as an entry barrier by creating a dissymmetry between those companies that are already in place and potential newcomers. To respond to this issue, the Authority regulates undersea cable by ensuring that all operators can have access to them under satisfactory conditions.