Part 4

CHAPTER 4

Regulation of electronic communications market competition

A. Market analysis in France in 2008

In 2008, the Authority completed its analysis of the 18 markets contained in the European Commission Recommendation of 11 July 2003, and launched three new cycles of analysis for 2008-2010 (corresponding to the three markets in the new Commission Recommendation of 17 December 2007). It also performed an analysis of the SMS call termination market, which is not listed in the Recommendation.

The relevant markets defined by the new European recommendation

As provided for by the Framework Directive[1], the European Commission adopted a new recommendation on relevant markets, which came into force on 17 December 2007. This is a relaxed version of the Recommendation of 13 December 2003, which takes account of changes in the state of competition in telecommunications markets in the European Union.

Of the 18 markets listed in the Recommendation of 2003, seven continue to be relevant for analysis by national NRAs in view of potential *ex-ante* regulation:

1- access to the public telephone network at a fixed location for residential and non-residential customers (combination of former Markets 1 and 2);

1 - *The Framework Directive includes the provision that the European Commission will re-examine on a regular basis the list of electronic communication product and services markets likely to be subject to ex ante regulation.*

2- call origination on the public telephone network provided at a fixed location (former Market 8);

3- call termination on individual public telephone networks provided at a fixed location (former Market 9);

4- wholesale unbundled access to physical network infrastructure (including full unbundling and shared access) for the purpose of providing broadband and/or voice services at a fixed location (former Market 11 expanded);

5- wholesale broadband, or bitstream, access (former Market 12);

6- wholesale terminating segments of leased lines (former Market 13);

7- voice call termination on individual mobile networks (former Market 16).

In 2008, the Authority launched a second cycle of market analysis devoted to:

- broadband and ultra-fast broadband for the period running from 2008 to 2010;
- voice call termination on individual mobile networks in Metropolitan France and the French overseas markets for 2008 to 2010;
- wholesale fixed telephony markets (interconnection and access)[2].

The Authority also continued to relax the regulation imposed on France Telecom in residential calling retail markets, and concluded that the transit market was no longer a relevant candidate for *ex ante* regulation[3].

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

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

An adapted regulatory mechanism

The Law of 9 December 2004 – which transposes the "Telecom Package" Directives adopted in 2002 – enacted a shift in regulatory methods and concepts towards common competition law.

As a result, it is the regulator's responsibility to define the scope of a market and to verify whether sector-specific regulation is relevant, and to determine which player(s) enjoy significant market power (SMP) and to prove it. To achieve this, ARCEP performs a detailed analysis of the market which involves, in order, carrying out a public consultation, obtaining the opinion of the competition authority (*Autorité de la concurrence*), and then notifying the European Commission of its analysis. The Commission has the power to veto a market definition if it is not part of the predefined list, as well as SMP operator designation, notably for the purpose of achieving Europe-wide harmonisation. In addition, as part of its market analysis the regulator must specify remedies, in other words the obligations that it plans to impose on SMP players. Here, from among the obligations listed in the Law[4], the NRA must choose those that are the most appropriate to the competition issues revealed by the market analysis, and to ensure that they are proportionate to the regulatory objectives.

4 - *Cf. CPCE Article L.38.*

This logic involves a shift in the focus of regulation to wholesale markets. First, the NRA has powers that allow it to develop new regulatory mechanisms for wholesale markets. Then, once these mechanisms are in place and proven to be working effectively, retail market regulation becomes less justified and is relaxed, or even done away with altogether. Regulation therefore evolves: as competition increases, the list of remedies gets shorter. If the market becomes fully competitive, sector-specific regulation disappears and is replaced by common competition law whose application is the responsibility of the competition authority (*Autorité de la concurrence*). It is thus entirely natural that regulation imposed on a given market will change over time, according to national regulatory authorities' assessment of it.

The framework put into place in 2004 is flexible as it allows the regulator to adapt regulation to the actual state of competition in a given market and, when suitable, to lift it. The Commission confirmed the relevance of this framework by adopting a new recommendation in late 2007 which lists the markets that must be analysed. This new list is shorter than the previous one, taking into account the manner in which competition has developed in each of the markets that were identified in 2003.

1.1. The new market analysis cycles

1.1 Broadband and ultra-fast broadband

1.1.1 Background

The first cycle of market analysis resulted in the Authority's implementation of broadband regulation that was in effect until 1 May 2008.

In late 2007, the Authority thus launched a new cycle of analysis of both the broadband and ultra-fast broadband markets for 2008 to 2011. The principal change in this area is the implementation of regulation concerning France Telecom civil engineering infrastructure which, for alternative operators, constitutes infrastructure that is essential to the deployment of a fibre optic local loop that allows them to supply end users with ultra-fast broadband services.

As concerns the broadband market, the Authority proposed that the existing system be carried over by and large, with certain modifications to take account of past and future market developments, such as enhanced retail offers (notably the addition of audiovisual services), consumers' increasing quality of service demands, extensions made to collection networks and the migration to Ethernet.

In its public consultation of December 2007, the Authority thus proposed that analysis focus on wholesale offers for accessing physical infrastructure and wholesale bitstream offers, in accordance with the new European Commission Recommendation of 17 December 2007 (markets 4 and 5, respectively).

As concerns ultra-fast broadband, the Authority has indicated that a system should be put into place to ensure sharing of the last mile. This system would apply to all operators (symmetrical regulation) and not only those that have significant market power. This obligation to share infrastructure was enforced by the Law on modernising the economy[5] through the creation of a new article[6] in the code governing postal and electronic communications markets in France, CPCE.

1.1.2 Two new market analysis decisions

The Authority adopted two market analysis decisions on broadband and ultra-fast broadband[7] on 24 July 2008.

These decisions, which cover the period from 2008 to 2011, concern the two broadband markets included in the new European Commission recommendation on relevant markets which was published on 17 December 2007: wholesale unbundled access to physical network infrastructure (market 4) which includes unbundling and

5 - *Law no. 200-776 of 4 August 2008, JO of 5 August 2008.*

6 - *CPCE Article L 34-8-3 .*

7 - *ARCEP Decisions no. 08-0835 and no. 08-0836 of 24 July 2008.*

access to civil engineering infrastructure, and wholesale broadband, or bitstream, access (market 5).

As concerns ultra-fast broadband, France Telecom, as the SMP operator, is subject to an obligation to share its ducts and access chambers (i.e. manholes) under transparent and non-discriminatory conditions, and at cost-oriented prices. France Telecom published its reference offer on 15 September 2008, incorporating changes to operational procedures which had been discussed multilaterally, based on the results of a series of trials.

In accordance with these new market analysis decisions, new offers were published on the France Telecom website on 15 September 2008 :

- reference offer for accessing the France Telecom local loop;
- DSL access and collection reference offer;
- reference offer for accessing France Telecom civil engineering infrastructure for FTTx networks;
- France Telecom offer for bringing service to rural areas that are currently ineligible for broadband;
- France Telecom offer for supplying an optical fibre link between subscriber connection points, “NRA-NRA”, and between a subscriber connection point and a point of presence, “NRA-POP”.

1.2 Mobile call termination

All operators providing a telephone service must allow their customers to reach all French mobile numbers. To do so, operators must purchase “call termination” services from all other mobile operators which, in the absence of regulation, are decided unilaterally by the operator providing the service. Mobile voice call termination thus constitutes a structural bottleneck.

The resulting market power that this gives to operators led the Authority to develop a proactive policy for decreasing call termination charges. In its Decision of 4 October 2007[8], among other obligations it required the three mobile operators in Metropolitan France to submit to tariff supervision for wholesale market call termination services, based on a principle of cost-oriented prices. In this decision, ARCEP set the ceiling tariffs for mobile voice call termination up to 30 June 2009 – in other words for half of the second cycle of market analysis for mobile voice call termination which runs from 2008 to the end of 2010.

Through its Decision of 2 December 2008[9], the Authority set the ceiling tariffs for the period running from 1 July 2009 to 31 December 2010, with which the three mobile operators must comply.

8 - *ARCEP Decision no. 07-0810 of 4 October 2007.*

9 - *ARCEP Decision no. 08-1176 of 2 December 2008.*

Ceiling tariffs set by the Authority (€-cents/min, excl. VAT)

	2005	2006	2007	2008 - mid-2009	mid-2009 - mid-2010	mid-2010 - end of 2010
Orange / SFR	12.50	9.50	7.50	6.50	4.50	3.00
Bouygues Telecom	14.79	11.24	9.24	8.50	6.00	4.00

Source : ARCEP, ceiling tariffs imposed during the two cycles of market analysis.

The Authority had wanted to divide the cycle into two periods to allow for progress made in achieving harmonised principles governing call termination at the European level.

These efforts continued on through 2008 with the adoption of a common position by the European Regulators Group (ERG) and work by the Commission on a draft recommendation regulating fixed and mobile call termination, which was adopted on 7 May 2009.

1.2.1 Shift to long-run incremental cost-based tariffs

In light of the current state of market development – i.e. the maturity of cellular networks, convergence and growing competition with fixed network, strong development of high-volume offers (flat rates and unlimited offers), marked trend towards distinguishing mobile calling rates based on the destination network (on-net calls that transit over a single network vs. off-net calls that transit over two distinct networks) – and following its public consultation in September 2008, the Authority enacted a shift in regulation towards tariffs based on long-run incremental costs[10], so that the resulting economic signal for the markets be better adapted and more efficient.

10 - See Section D.1.1.2. of this Chapter.

It is the Authority's view that the optimal level for call termination prices in the medium term is one that reflects incremental costs. In practice, the incremental cost logic allows operators to recoup the costs incurred from providing the service through the call termination tariff. As a result, the tariff structure of the offers should better reflect the industry's cost structure in a way that is beneficial to consumers, and which enables the development of fair and healthy competition between mobile operators, and between mobile and fixed operators.

1.2.2 Progressive implementation

Because of the fundamental influence that voice call termination tariffs have on the sector, and the constraints involved in modifying retail offers, it was decided that a transitional period would be needed to give the market time to adapt.

Operators thus expressed the view that too swift a change in wholesale prices could destabilise the market in a counter-productive way, by creating opportunities to circumvent the process, for instance, or by upsetting the balance of certain offers.

As a result, ARCEP decided that although incremental costs constitute a suitable method for calculating relevant costs, that cost level should be reached gradually over the course of several years. This transitional period justified allowing Bouygues Telecom to charge different tariffs from the two other operators, due to a combination of an imbalance in off-net traffic between Bouygues Telecom and its competitors and the gap between call termination tariffs and underlying costs.

It was under these circumstances that the Authority pursued its policy of a gradual and pragmatic decrease in mobile call termination prices, by imposing a decrease in tariffs:

- starting on 1 July 2009, from 6.5 to 4.5 €-cents a minute for Orange France and SFR and from 8.5 to 6 €-cents a minute for Bouygues Telecom;
- starting on 1 July 2010, the tariff decreases from 4.5 to 3 €-cents a minute for Orange France and SFR and from 6 to 4 €-cents a minute for Bouygues Telecom.

These prices are to be compared with the corresponding cost estimates for an efficient operator which, in 2008, were between 1 and 2 €-cents when using the incremental cost method, and between 2.4 and 2.9 €-cents when using the full cost method that was employed previously.

1.3 Fixed telephony

1.3.1 Background

In the first cycle of market analysis, which began in 2005, the Authority regulated all fixed telephony markets.

France Telecom was required to offer its competitors carrier selection offers, then wholesale line rental (*VGAST*) solutions.

This intervention at the interconnection and access market level was completed by remedies that were applied directly to retail access and calling markets, such as a ban on predatory pricing, the obligation to be non-discriminatory and the obligation to provide prior information on France Telecom retail offers.

ARCEP decided to impose these different remedies as a reaction to the state of the market in 2005, and the outlook for fixed telephony markets. But the structure of competition in the markets and the way they operate have evolved a great deal since than and, in 2007, the Authority elected to relax regulation governing transit markets and retail markets.

1.3.2 New market analysis in 2008

After having launched a series of analyses of the sector in 2007, and performed several public consultations during the first half of 2008 – including one devoted to assessing the asymmetrical regulation in application since 2005 – the Authority adopted a new fixed telephony market analysis decision in July 2008[11].

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

In its new analysis of fixed telephony markets, the Authority concluded that carrier selection, wholesale line rental (*VGAST*), unbundling, bitstream and capacity service offers constituted a set of functional solutions that allowed operators to compete without the need for ex ante regulation and, in cases where they were victims of anti-trust practices, to enjoy the protection of common competition law to defend their interests.

In light of the developments that have occurred in fixed telephony markets, it was decided that there was no longer a justification for maintaining retail market regulation, and the process of retail market deregulation that began in the first cycle of market analysis was brought to completion. ARCEP will nevertheless continue to pay close attention to the quality of service associated with each France Telecom wholesale offering.

Asymmetrical regulation will therefore now be concentrated on interconnection and access markets and, more specifically, on call termination and call origination markets which constitute lasting bottlenecks.

The Authority concluded that intra- and inter-regional transit markets were no longer relevant for *ex ante* regulation.

Telephone network access, call origination and call termination services are, however, essential to the development of competition and require that sector-specific regulation be maintained over the long term. In its Decision of 29 July 2008, the Authority imposed on France Telecom an obligation to charge cost-oriented call termination prices and, on alternative operators, an obligation not to charge excessive call termination prices. ARCEP also specified the terms of its multi-annual tariff supervision, on the one hand to allow the incumbent carrier to meet its obligation to charge cost-oriented prices and, on the other, to provide a benchmark for what constitutes non-excessive prices.

As concerns the cost-oriented pricing obligation, the recurring tariffs in France Telecom call termination services are subject to multi-annual tariff supervision such that:

- starting on 1 October 2008, the average price of fixed call termination does not exceed 0.45 €-cents a minute;
- starting on 1 October 2009, the average price of fixed call termination does not exceed 0.425 €-cents a minute;
- starting on 1 October 2010, the average price of fixed call termination does not exceed 0.4 €-cents a minute.

As to the ban on practicing excessive prices to which alternative operators are subject, the Authority considers the following tariffs to be “non-excessive” for fixed network operators other than France Telecom:

- starting on 1 October 2008, the average price of fixed call termination is below 0.9 €-cents a minute;
- starting on 1 October 2009, the average price of fixed call termination is below 0.7 €-cents a minute;
- starting on 1 October 2010, the average price of fixed call termination is below 0.5 €-cents a minute.

B. Broadband markets

1. The retail market

Although the retail market is not regulated, its momentum is affected by wholesale market regulation, and particularly the Authority’s implementation of unbundling in 2002.

In 2008, the broadband retail market sustained a healthy momentum, reporting a 14% increase in subscribers over the course of the year (+2.175 million subscribers). As of 31 December 2008, there were roughly 17.725 million broadband connections in France, of which 16.825 million over DSL and close to 900,000 over cable. DSL thus continues to dominate the market, accounting for 95% of all broadband connections.

The success of DSL can be attributed to an exceptional rate of national coverage – over 98% of the population at the end of 2008, compared to around 40% for cable – and to the dynamic development of DSL market competition, fuelled by local loop unbundling. The state of competition that exists in this market is the direct result of the state of upstream wholesale markets, and particularly of wholesale LLU and broadband access delivered at the regional level, a.k.a. bitstream offers.

1.1 Sector consolidation

The profile of the players involved in the broadband value chain has evolved over the past few years.

Since 2005 the broadband Internet sector has been undergoing a massive consolidation, characterised by takeovers and merger-acquisitions between France Telecom's competitors[12].

12 - After the merger of Tiscali and Telecom Italia France, then of Neuf Telecom and Cegetel in 2005, the market consolidation trend continued on through 2006, with Neuf Cegetel acquiring AOL France and Club-Internet's (T-Online France) Internet access businesses, and into 2007 when Altice took control of Completel with a view to merging with Numericable operations, of which it is a shareholder.

This trend continued on through 2008 with Iliad's (Free) acquisition of Alice. In addition, SFR absorbed Neuf Cegetel and all of the group's residential broadband offers. Neuf Cegetel, SFR and Tele2 France services are now marketed under the SFR brand.

A similar trend has taken hold in the cable market: since July 2006, the Ypso holding company (owned by Cinven, Altice and Carlyle) has controlled virtually all cable networks in France (ex-UPC, ex-Noos, ex-France Telecom Cable, ex-NC Numericable), consolidated under the Numericable brand.

At the same time, mobile operators continued their entry into the high-speed access market. The European Commission's approval of SFR's takeover of the Tele2 France fixed telephony and Internet access businesses allowed the operator to roll out convergence offers. In addition, Bouygues Telecom negotiated the purchase of a portion of the T-Online France infrastructure from Neuf Cegetel, combined with a commercial wholesale offer. The country's third largest mobile operator thus began marketing fixed-mobile convergence offers for consumers in October 2008 which, for the first time ever, include fixed-to-mobile calls in the telephone flat rate that is bundled with the broadband access subscription.

1.2 Success of bundled offers

1.2.1 Evolving offers

Over the past few years, triple play bundles have become standard fare in the broadband access market. Virtually all ISPs now market a selection of service bundles which include:

- the highest available speed of Internet access, thanks in large part to the growing use of ADSL2+ (25 Mbps);
- IP telephony, or VoIP which allows customers to do away with their phone subscription with France Telecom and enjoy free calls to over 80 international destinations;
- access to television services (TV channels and video on-demand, or VoD).

Around 50% of French households currently have access to TV over IP services, primarily over an ADSL connection. The length of the copper pair allows two thirds of households to receive TV over ADSL, although the offer still remains confined to unbundled areas only.

The television services marketed by ISPs generally include:

- access to a basic package distributed by the ISP that includes several dozen channels. It is generally included in subscribers' monthly subscriptions, at no additional charge;
- access to optional pay-TV channels (either individually or in packages), distributed directly by the ISP;
- access to one or several pay-TV packages distributed by third parties (e.g. Canal+ or AB);
- video on demand (VoD) offers.

For each of these television services, ISPs may also offer customers high-definition programmes, in other words with a picture quality that is three to four times that of DVD quality. Some ISPs also offer customers the ability to watch certain channels on both their computer and TV screens ("multi-set" service).

New services have been added to *triple play* bundles since 2007:

- unlimited legal music downloads. Examples include the offer from Neuf Cegetel which has an agreement with Universal to market a selection of titles, and the Alice offer, in partnership with EMI;
- the first fixed-mobile convergence offers, generally combining a mobile and a broadband subscription, with cases in point that include the Unik offer from Orange, the Twin offer from Neuf Cegetel and SFR's Home Zone service.
- other operators – Free, Numericable and Bouygues Telecom – have announced plans to introduce similar offers.

1.2.2 Growing interest in receiving content over ADSL

The number of consumers subscribing to a TV over ADSL service continues to rise. ADSL is now the chief driving force behind the growth in pay-TV distribution, and the ability to have a broadband access offer that includes an IPTV service is one of the main incentives for eligible customers to subscribe.

It was in this context that France Telecom launched a satellite TV offer that allowed it to market a triple play bundle nationwide, with the television service being delivered either via the DSL broadband network or via satellite.

Subscriptions to a TV over DSL service

Source : ARCEP.

Video on-demand (VOD) has also made considerable strides, offering viewers the ability to watch television programmes directly through an "IP box".

There is, however, still room for improvement in the relationship between operators, distributors and copyright holders:

- the most popular specialty channels are not included in the offers that are distributed directly by DSL operators;
- the average revenue per user (ARPU) generated by content is below €3 a month for DSL operators, whereas total household spending on multimedia services is ten times that (€30 a month, on average, for a subscription to a triple play bundle);
- ISPs' VOD catalogues are limited to several hundred titles, and prices are often higher than the cost of renting a DVD.

Reworking the current models that govern relations between content suppliers and network operators appears a necessary step to furthering the development of ultra-fast broadband, and one that will benefit all parties, particularly consumers.

2. Regulation of broadband wholesale markets

In France, broadband regulation concerns only wholesale markets, as the retail market – which is sufficiently competitive – is not regulated.

2.1 Wholesale broadband offers

France Telecom offers alternative operators and ISPs several wholesale solutions based on xDSL technologies that allow them to access the incumbent's network at different levels, and to design their own offers.

Alternative operators can therefore:

- access the local loop directly via unbundling;
- subscribe to a bitstream offering (i.e. a wholesale offering activated and delivered at either the, regional or departmental level);
- subscribe to a wholesale broadband access service at the national level, delivering broadband traffic to a single point nationwide.

2.2 Local loop unbundling

Unbundled access is a France Telecom wholesale offer that allows alternative operators to gain direct access to the copper pair. To benefit, alternative operators must install their own equipment in the incumbent carrier's premises, at the MDF level and, naturally, must remunerate France Telecom for use of its local network.

There are two types of unbundling:

- full unbundling, or fully unbundled access to the local loop, which involves making all of the copper pair frequencies available to third parties. The end user is thus no longer connected to the France Telecom network, but rather to the new entrant operator's;
- shared access, or partially unbundled access to the local loop, which consists of making the "high" frequency bands of the copper pair available to the alternative operator, on which the latter can then build an ADSL service, for instance. The low frequency band (the one used traditionally for telephony) continues to be managed by France Telecom, which continues to supply subscribers with its telephone services, without any effect on the service being caused by the unbundling.

2.3 Bitstream offers, delivered at the sub-national level

Bitstream can be delivered in Ethernet, IP or ATM mode, and allows alternative operators to collect Internet traffic at various regional points on the France Telecom network (17 IP & Ethernet points and 40 to 95 ATM points) and then use their own complementary transport infrastructure.

Alternative operators can use bitstream offerings to serve subscribers on any France Telecom exchange equipped with DSL. In practice, this means that the population covered by regional offerings is identical to the population covered by France Telecom's retail DSL offerings, which has been over 98% since the second half of 2006 – the point at which France Telecom finished equipping all of its exchanges with DSL.

Even though other alternative operators market offers based on unbundled access that compete with France Telecom's wholesale bitstream offerings, only France Telecom is subject to regulation in this market as it enjoys SMP (significant market power).

From a regulatory standpoint, the provisions applied are similar to those that govern unbundling, in particular the obligation for France Telecom to publish a reference offer.

The bitstream offers that France Telecom supplies are broken down into:

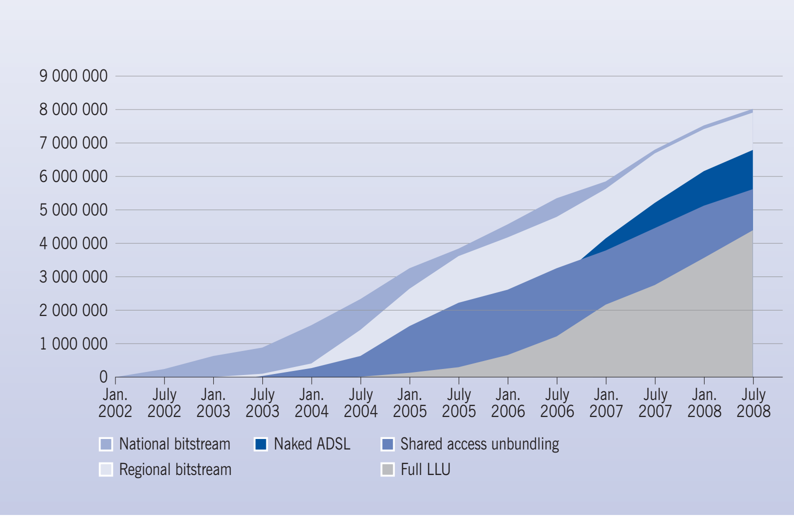
- *DSL Access:* an access offering for the residential market, which allows users with a PSTN subscription to be connected to a France Telecom DSLAM by means of DSL technologies;
- *DSL Access Only:* also a residential market access offering that allows users who do not have a PSTN subscription to connect to a France Telecom DSLAM by means of DSL technologies (this offer has been available in the wholesale market since 17 July 2006);

- *DSL Collect ATM*: a collection offering for the residential market which allows the client operator to take delivery of ATM broadband streams at the regional level, and DSL Collect IP, a residential market collection offering which allows the client operator to take delivery of IP broadband streams at the regional level;
- *DSL Entreprises:* an access and collection offering for the business market, which allows delivery of ATM broadband streams to be taken at the regional level. This offering is used by operators to serve the business market and, thanks to SDSL technology, allows them to offer their customers guaranteed and symmetrical bitrates.

2.4 Status of wholesale offers

For more than two years, full unbundling has been the main source of increase in the use of wholesale offers acquired from France Telecom – and is now being relayed by naked DSL in areas that have not been unbundled.

Growth of the base of wholesale offers purchased from France Telecom



Source : ARCEP.

These figures reveal the growing propensity among households to choose a single operator for all of their fixed services (including phone subscription). Thanks to the availability of wholesale line-creation offers, this option is now open to residential users as soon as they move into a new residence.

2.4.1 The challenge of expanding unbundling nationwide

As of 31 December 2008, France Telecom had equipped all 12,915 subscriber connection points (*NRA*) in France with DSL: 100% of phone lines are now connected to the incumbent carrier's broadband network. Some lines cannot deliver high-speed DSL services, however, as the length of the line causes excessive signal attenuation. This means that, currently, the actual rate of coverage of France Telecom broadband offers is slightly over 98%.

To expand the geographical coverage of broadband, France Telecom has built new subscriber connection points:

- broadband subscriber connection points (CP), referred to as NRA-HD *(Nœud de raccordement d'abonnés au haut debit)*, which make it possible to deliver higher speeds, particularly in residential neighbourhoods and outlying business centres;
- dead zone subscriber connection points, referred to as NRA-ZO *(Nœud de raccordement d'abonnés zone d'ombre)*, which make it possible to cover broadband dead zones by bringing DSL equipment closer to end users[13].

13 - See Part 4, Chapter 7, B.2.1.

At the end of 2008, 3,877 exchanges were unbundled, thus allowing alternative operators to connect 75% of the population. During the year, 921 more exchanges were "unbundled", which corresponds to coverage for an additional 1.9 million households and enterprises.

For several years now, extending broadband coverage across the country has been central to furthering the development of competition. Local authority involvement – via public-initiative collection networks – has contributed to this expansion, as has the France Telecom optical fibre link (LFO) offer.

2.4.2 Impact of unbundling on broadband development

In the account of the work performed by the public-initiative networks committee, CRIP[14], (*Comité des réseaux d'initiative publique*) published on 19 March 2007, the Authority presented an analysis of the economic impact that unbundling has on broadband penetration. It consisted of measuring the correlation between LLU and the penetration rate in the zone in question, then of correcting the data based on a set of variables (e.g. average household income, the presence of waterways, etc.).

14 - See Part 4, Chapter 7, B.2.

This analysis reveals that unbundling has contributed directly to the increase in broadband penetration in France, and so proving that competition stimulates investment and market development.

2.4.3 Naked ADSL to complete full unbundling

Two France Telecom wholesale offers now enable alternative operators to offer their customers the option of doing away with their subscription to the classic PSTN:

- full unbundling in zones unbundled by France Telecom;
- the *"Access Only"* DSL offer, also called naked ASDL, which has been available in non-unbundled zones since the second half of 2006.

These offers are currently sustaining market growth, and gradually replacing the wholesale offers that require customers to keep a distinct telephone subscription with France Telecom (shared access and the *"DSL Access"* offer). They now account for over 72% of wholesale market connections, or a total 6.125 million connections, of which 4.939 million are full unbundling and 1.186 million DSL Access only.

2.5 Guiding principles of broadband regulation

Generally speaking, an alternative operator has access to several levels of wholesale offering. For an alternative operator, the cost of deploying its own network is increased by having to connect to the last mile of the France Telecom network.

In the case of unbundling in particular, even though it provides greater independence from France Telecom, it still requires significant investments on the part of alternative carriers. This means that unbundling can only be a profitable venture on MDFs to which the largest number of potential customers are connected, or which provide the greatest economies of scale. Extending unbundling geographically therefore has its economic limitations, and a complementary solution is needed in the rest of the country where operators generally prefer to employ bitstream offers.

Unbundling is the wholesale offer that enables the most lasting development of competition, and which provides client operators with the greatest degree of technical and economic independence from France Telecom. Over time, the development of competition via unbundling helps bring down prices in a lasting fashion and stimulates an innovation momentum that is beneficial to consumers.

In terms of the obligations to which France Telecom is subject, this objective translates into greater regulation of the upper portion of the broadband market value chain (i.e. in the unbundling market) and more relaxed regulation as we move towards the retail end of the market which, itself, is not regulated.

In 2005, the Authority adopted four market analysis decisions, setting the framework for *ex ante* regulation of broadband markets. This market analysis remained in effect until May 2008.

It defined the relevant broadband markets as follows:

- the unbundling market is independent of the type of unbundling used (shared access or full unbundling, at the local loop or sub-loop level);
- the bitstream market is independent of the type of end customer being targeted (residential or business) and of the delivery interface used (notably ATM or IP).

These two markets were defined throughout the national territory (with the exception of Saint-Pierre and Miquelon) and solely for DSL access technologies (cable is thus excluded).

The ARCEP market analysis also concluded that France Telecom enjoys significant power in both of these markets, notably in terms of market share and because of the nature of its infrastructure which is difficult to duplicate.

As the SMP operator, the incumbent carrier is subject to several obligations, which include the obligation to:

- grant reasonable requests for access under non-discriminatory conditions;
- publish a set of indicators (QoS indicators, etc.) and other information, including a reference offer that the Authority has the power to modify;
- comply with transparency and accounting separation obligations.

As concerns France Telecom tariffs for wholesale offers, unbundling tariffs must reflect the cost of providing the service.

Pursuant to bitstream market regulation, tariff obligations incumbent on France Telecom aim to provide a geographical complement to unbundling without competing with it directly.

More specifically, bitstream tariffs must be:

- sufficiently low to guarantee dynamic competition in the retail market;
- but sufficiently high so that it is not economically appealing for an alternative operator to subscribe to a wholesale bitstream offer in a zone where unbundling is due to expand.

As the decisions governing broadband market regulation expired in May 2008, the Authority launched a new cycle of analysis in December 2007 which concluded on 24 July 2008 with the adoption of two market analysis decisions[15], based on the new European Commission recommendation on relevant markets of 17 December 2007.

15 - *ARCEP Decisions no. 08-0835 and no. 08-0836 of 24 July 2008.*

The adopted decisions cover the period from 2008 to 2011 and concern the two broadband markets listed by the Commission: wholesale unbundled access to physical network infrastructure (market 4) which includes unbundling and access to civil engineering infrastructure, and wholesale broadband, or bitstream, access (market 5).

As concerns the broadband market, the decisions adopted by ARCEP renew existing provisions by and large, with certain modifications to take account of past and future market developments: enhanced retail offers, consumers' increasing quality of service demands, extensions made to collection networks, migration to Ethernet, etc.

In accordance with these new market analysis decisions, new offers were published on the France Telecom website on 15 September 2008:

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- DSL access and collection reference offer;
- reference offer for accessing France Telecom civil engineering infrastructure for FTTx networks;
- France Telecom offer for bringing service to rural areas that are currently ineligible for broadband;
- France Telecom offer for supplying an optical fibre link between subscriber connection points, "NRA-NRA", and between a subscriber connection point and a point of presence, *"NRA-POP"*.

2.5.1 Optical fibre link (*LFO*) offer

On 15 September 2008, France Telecom published on its website the optical fibre link (*LFO*) commercial offer for connecting distant exchanges. The published offer corresponds to the one that operators had been using for 18 months and takes account of the latest price changes, which brings the per-metre price of fibre for exchanges with fewer than 10,000 lines to €1.5 a year, for a 10-year contract. Moreover, France Telecom stipulated in this offer that the ordered links could be shared between several operators.

2.5.2 Wholesale local loop reconfiguration offer in areas with low eligibility levels

On 15 September 2008, France Telecom published a wholesale DSL dead-zone elimination offer. The purpose of the offer is to enable third-party operators, such as public service contractors, to provide local authorities with an offer equivalent to the NRA-ZO solution marketed by France Telecom.

This wholesale offer incorporates the changes brought in June 2008 based on the results of a series of trials. Further developments are also underway to enable contractors to satisfy local authorities' needs under the same conditions as France Telecom, in terms of both order volume and order and delivery turnaround times.

2.5.3 The business market

As concerns the business market, the market analysis requires that France Telecom implement a guarantee of restoration of service by the end of the next day for "DSL access" and "DSL access only" offers. This guaranteed repair time was the subject of multilateral talks in Q4 2008, and will lead to the introduction of a concrete offer which is available six days a week, by the end of the first half of 2009.

3. Unbundling

3.1 Operational and technical regulation of wholesale broadband offers

3.1.1 Multilateral working groups

Multilateral talks between alternative operators, France Telecom and ARCEP have been taking place since 2007 within two working groups:

- the Order-processing and residential bitstream group *(Processus de commande dégroupage and « bitstream » residential)* which focuses on all of the issues pertaining to unbundling and residential bitstream;
- the Enterprise DSL and capacity services group *(DSL professionnel et Services de capacité)*, which is responsible for examining the issues pertaining to wholesale offers aimed at the enterprise market – *"DSL Entreprises"*, wholesale Ethernet *(CE2O)* and leased capacity *(LA/LPT)* – as well as business market unbundling issues.

The scope of the work performed by these groups includes operational and technical implementation issues as well as the new features of the reference offers.

These groups are discussion forums devoted to finding consensual and pragmatic solutions to the problems identified by alternative operators. They also provide France Telecom with the opportunity to present the changes and improvements made to its reference offers.

In 2008, these groups devoted their efforts to the following topics in particular:

- operational monitoring of line-creation offers and setting appointments with end users;
- adapting processes to new outstanding issues (implementation of dead zone connection points (*NRA-ZO*), MDF saturation, local authority involvement);

- revising after-sales service processes in the wholesale unbundling market to improve the quality of the service provided to end users, as part of trials which ran from March to September;
- in the enterprise market, improving service-failure detection processes;
- more generally, achieving increased uniformity of the France Telecom DSL access and collection *(Accès et collecte DSL)* and unbundling offers.

3.1.2 Line creation

Wholesale line creation offers allow alternative operators to market, as does France Telecom, services to customers who do not have a telephone line – because they have just moved into a new home, for instance. This can include any wholesale offer that involves the whole of the copper pair, full unbundling, naked DSL or wholesale line rental *(VGAST)*.

In 2008, the Order-processing and residential bitstream group *(Processus de commande dégroupage et « bitstream » résidentiel)* continued its work on implementing efficient line creation processes. This work included developing the necessary tools in France Telecom information systems that allow alternative operators to make appointments between their customers and a France Telecom technician in as short a time as possible. This new "e-appointment" tool was rolled out in the first quarter of 2009 to allow alternative operators to access France Telecom technician appointment schedules.

3.2 Pricing changes

3.2.1 Changes to miscellaneous unbundling tariffs *(petits tarifs)*

During the first half of 2008, the Authority reviewed the tariffs charged for miscellaneous services associated with unbundling *(referred to as petits tarifs)* and access cancellation fees. These services generate additional costs for alternative operators when they unbundle a copper pair. They correspond to hosting in the France Telecom exchange, to tie cables that allow operators to connect their DSLAM to the lines they have unbundled, to building-to-building transmission links connecting their DSLAM to their transmission equipment located outside the France Telecom local exchange where the DSLAM is housed, and to badges for accessing both the switches and power plants.

This review led to changes in the tariffs listed in the reference offer for accessing the local loop (unbundling) as of 1 July (except for the optical fibre link, or LFO, offer). These decreases concern the tariffs charged for:

- tie cables;
- building-to-building links;
- cancellations: decrease in the cancellation fee for full unbundling from €30 to €15;
- optical fibre line: €1.50 per linear metre, per month, for the smaller exchanges.

These pricing changes, added to the decrease in the price of badges which was introduced in late 2007, led to an overall decrease in alternative operators' costs of around €0.30 per unbundled access, per month. This decrease concerned chiefly small exchanges (around €1.50 per unbundled access, per month, in an exchange of 2,100 lines), which helped improve economic conditions and makes it possible to plan on expanding unbundling geographically in the coming months.

In addition, France Telecom has plans for a new hosting solution that allows operators to bring in their power supply on new sites, independently from the incumbent carrier.

3.2.2 Establishment and application of cost models and decrease of bitstream tariffs

The Authority implements the tariff obligations imposed on France Telecom for its bitstream offers based on cost models that it publishes to provide the players with a certain degree of visibility on the decisions that it is expected to make.

The cost model for unbundled access was developed by the Authority in 2004, in concert with France Telecom and unbundling operators. It makes it possible to calculate the monthly cost of an unbundled access for an alternative operator, according to the size of the exchange. It therefore provides a synthetic view of the prices of the main services that make up France Telecom's unbundling reference offer.

Moreover, in early 2007 the Authority developed a regulatory cost model for collection networks that enables calculation of the monthly cost of collection per unbundled subscriber for an alternative operator.

These regulatory models also make it possible to estimate the economic leeway that operators have between unbundling and France Telecom bitstream offer tariffs. ARCEP can thus refer to this to ensure that the incumbent carrier is not charging predatory prices for its bitstream offers, compared to unbundling.

Based on these models, a first decrease in the price of the France Telecom bitstream access offer was applied in 2008, as a result of market developments. It was implemented on 1 July 2008 and equals €1.5 per subscriber, per month for the classic access tariff (DSL access), bringing the price of the service down from €12.9 to €11.4, and the price of naked DSL (DSL access only) from €20 to €18.5 per subscriber, per month.

16 - ARCEP Decision no. 08-0836.

And, finally, in accordance with the market analysis Decision of 24 July 2008[16], the new France Telecom bitstream reference offer includes the stipulation that, starting on 1 November 2008, costs tied to switching fees will be factored into the recurring costs for bitstream, and will no longer be billed separately as had been the case up until then.

A second series of price decreases was applied on 1 January 2009, following a public consultation on the two access and collection models:

- the price of classic access (DSL Access) decreased by €1, from €11.4 to €10.4 a month;
- the price of naked DSL (DSL Access Only) decreased by €1, from €18.5 to €17.5 a month;

- the IP collection tariff decreased by €3.5 plus €75 euros per Mbps consumed to €3.8 plus €45 per Mbps consumed;
- the price of Ethernet collection decreased by €5 plus €35 per Mbps consumed to €3.8 plus €34 per Mbps consumed.

Furthermore, starting on 1 March 2009, the price of ATM collection increased by €57 per Mbps guaranteed for local access and 137 euros per guaranteed Mbps for access within the designated service area, to €70 and €150 euros per guaranteed Mbps.

Overall, these pricing changes led to significantly lower bitstream invoices for alternative operators.

C. Ultra-fast broadband

1. Access to ducts

After France Telecom communicated the first version of the offer for accessing its civil engineering infrastructure in January 2008, trials were conducted by several other operators during the first half of the year on the processes and engineering rules put in place by the incumbent carrier. Multilateral talks conducted under the aegis of ARCEP made it possible for gradual adjustments to be made to the offer – enabling the other operators to plan for an optical fibre rollout phase in the spring of 2008 as part of their trials.

With the implementation of market analysis, following the market analysis Decision of 24 July 2008, France Telecom is subject, as the SMP operator, to an obligation to share its ducts and civil engineering access chambers (i.e. manholes) under transparent and non-discriminatory conditions, and at cost-oriented prices. France Telecom published its reference offer on 15 September 2008, incorporating changes to operational procedures that had been discussed multilaterally as a result of the trials.

Following the publication of the reference offer, the work performed in tandem with France Telecom and alternative operators sought to industrialise the processes in the offer to allow all operators to perform large-scale rollouts. This involves the use of shared geographical knowledge bases to facilitate the prior exchange of information and orders.

In addition, the multilateral talks hosted by ARCEP addressed the topic of changes in engineering rules geared to optimising the space available in France Telecom's ducts to enable parallel deployments by several operators.

The Authority is also monitoring the situation to ensure that France Telecom meets its obligation to be non discriminatory in the application of these processes, particularly between those it applies itself and those used by other operators. In accordance with the market analysis decision, France Telecom formalised its internal processes in early 2009.

2. Infrastructure sharing

To prevent local monopolies from forming in each building, operators need to share the last drop of their optical fibre networks – in other words, the first operator to install optical fibre in the building must provide access to other operators under conditions that enable effective competition – to allow competing operators to serve the building's residents. Gaining access to buildings is currently the chief deployment obstacle, and one that concerns all operators.

17 - Law no. 2008-776 of 4 August 2008, JO of 5 August 2008.

The Law on modernising the economy[17] obliges the operator that installs fibre in the building (i.e. the building operator) to share its installation so that competing operators can provide the building's residents with ultra-fast broadband services under non-discriminatory conditions.

18 - CPCE Article L. 34-8-3.

On this last point, the code governing French postal and electronic communications markets, CPCE[18] stipulates that: *"Any entity that has established or that is operating an optical fibre ultra-fast broadband electronic communications line, which makes it possible to deliver services to an end user in an existing building, must grant all reasonable requests from operators for access to that line, with a view to providing electronic communications services to that end user"*.

In October 2008, the Authority published its first recommendations on the implementation of infrastructure sharing. It encouraged stakeholders to establish agreements that included all of the market operators so that they could begin their optical fibre rollouts. The goal was to test different technical solutions on a large enough scale to be able to draw certain conclusions, without prejudice to future developments.

In the recommendations that it adopted, the Authority recommends that the building operator should offer third-party operators the possibility of installing additional fibre on their behalf. Given the limited additional cost that this solution involves, and its compatibility with the technical solutions used by the various operators, the Authority considered this to be a sound and future-proof practice.

Finally, as concerns the location of the shared access point, the Authority noted that local circumstances have a substantial effect on the economics of optical fibre network deployments, and could lead to disparate regulation in different parts of the country. On the whole, however, because installing fibre inside buildings constitutes a major cost item, it would not be economically reasonable, and even impossible in practice given the scarcity of solutions for bringing cable into buildings, to have as many installations as there are operators. The Authority stated that *"having the shared access point at the entrance to the building would thus not be viable, except in the special case of large buildings with several dozen units, in a very densely populated area. In all other cases, the location of the shared access point will depend on the population density and the type of housing".*

In the absence of an overall agreement that includes all of the operators, notably Free, the Secretary of State in charge of the development of the digital economy brought together the main operators involved in optical fibre rollouts in France (France Telecom, SFR, Free, Numericable, and two PSD operators, Sequalum and Axione) to form a steering committee whose first meeting was held on 16 December 2008.

At this first meeting, the parties committed to taking part in trials conducted under the aegis of ARCEP, and working groups were formed to assess the costs of single fibre and multi-fibre architectures, as well as their feasibility and their technical and operational viability.

The work overseen by the Authority was performed by several groups:

- the steering committee was in charge of assessing the two main models, i.e. single fibre and multi-fibre. Among other things, it assessed the business model (fibre and cost-sharing processes) and regulatory issues. It drew on the work performed by the three technical sub-groups which met on a weekly basis;
- the “costs” sub-group, in which operators established the list of cost items (installation and operation) for each architecture;
- the “architecture/operational” sub-group, which compared the technical and operational feasibility and viability of the different solutions;
- the “technical specifications” sub-group, which drafted the list of the equipment to be specified and its features (colour of fibres, type of connectors, sockets, etc.).

A briefing on this work was held on 7 April 2009, which also included an interim report containing initial figures on optical fibre rollouts in France, and work began on defining the regulatory framework for infrastructure sharing by the end of summer 2009.

Status of ultra-fast broadband as of 31 December 2008

ARCEP estimates that a total 3 to 4.5 million households were located in the vicinity of an optical fibre network as of 31 December 2008.

Buildings are starting to be equipped with optical fibre

There were 20,500 buildings equipped with optical fibre and connected to at least one operator’s network as of 31 December 2008.

550,000 households are located inside these buildings and are eligible to receive a fibre-to-the-home access service.

Ultra-fast broadband subscriber numbers still low

As of 31 December 2008, there were more than 170,000 ultra-fast broadband subscriptions in France, all operators and all technologies combined, including:

- around 40,000 subscribers to an FTTH solution;
- around 130,000 subscribers to a hybrid fibre-coaxial cable solution.

Infrastructure sharing confined primarily to equipped buildings located in the trial areas

The trials and feasibility studies on infrastructure sharing solutions that were performed by operators under the aegis of ARCEP over the past three months now involve some 20 sites and around 2,000 households.

As of 31 December 2008, there were fewer than 25 subscriptions to an ultra-fast broadband service being delivered as a result of an infrastructure sharing agreement, out of some 100 hundred households located in buildings equipped with optical fibre and connected to at least two operators.

D. Mobiles

1. Regulation of wholesale mobile voice call termination markets

Mobile voice call termination

Mobile voice call termination refers to wholesale call routing services provided by a mobile number operator to another network operator with which it is interconnected. This allows calling parties on the interconnected operator's network to reach mobile numbers on the other operator's network (currently all numbers starting with 06).

This process is performed in accordance with an interconnection contract between the two operators of the public networks in question. Because of the direction of the routed calls, the operator concerned is said to "terminate" calls to the destination network.

2008 marked the start of the second cycle of market analysis for mobile voice call termination[19]. In 2007, ARCEP had renewed its analysis of the market for a period of three years (2008-2010) by qualifying as relevant the wholesale market for voice call termination on each individual mobile operator's network in each of these markets, which are segmented geographically by licence area (Metropolitan France, Antilles-Guyana, Mayotte, Reunion, and Saint-Pierre and Miquelon).

1.1 Mobile voice call termination regulation in Metropolitan France

1.1.1 Obligations imposed on operators

It its Decision of 4 October 2007[20], which corresponds to the second cycle of market analysis for Metropolitan France, ARCEP designated all three mobile operators in mainland France (Orange France, SFR and Bouygues Telecom) as having significant market power in the mobile voice call termination market on their respective networks, for the period running from 2008 to 2010.

As a result, these mobile operators are subject to the following obligations:

- to grant all reasonable requests for access and interconnection services relating to voice call termination on their respective networks;
- to provide voice call termination services under transparent and non-discriminatory conditions;
- to publish a reference offer;
- to maintain accounting separation and perform cost accounting;
- to charge cost-oriented prices for mobile voice call termination services and for access to sites connected with mobile voice call termination.

19 - Former market 16, now market 7 pursuant to the European Commission Recommendation of December 2007 concerning relevant electronic communications product and services markets likely to be subject to ex ante regulation.

20 - ARCEP Decision no. 07-0810 of 4 October 2007 pertaining to relevant voice call termination markets on French mobile networks in Metropolitan France, the designation of SMP operators in these markets and the obligations to which they are subject as a result, for the period running from 2008 to 2010.

1.1.2 Cost benchmarks

• Regulatory accounting

The decision currently in effect[21] requires that the operators concerned submit three separate accounts:

- a specific account for voice services, comprising the historic cost of voice services, including the cost of mobile voice call termination;
- a specific account for SMS services, comprising the historic cost of SMS services, including the cost of SMS call termination;
- a specific account called "compte de bouclage", comprising the historic cost of services other than voice, which enables ARCEP to evaluate the completeness of the costs.

21 - ARCEP Decision no. 07-0128 of 5 April 2007 on accounting and accounts submission obligations, notably the accounting separation obligation imposed on operators Orange France, SFR and Bouygues Telecom.

Following the regulatory account audits for fiscal year 2007 which were performed in September 2008, the Authority published attestations of conformity for the statements of accounts and income from each of the three mobile operators in Metropolitan France, delivered by the accounting firm appointed by ARCEP[22]. The goal of these audits is to obtain reliable accounting information which is consistent across the three operators, so that it may be taken into account when setting call termination tariffs. The reliability of this accounting information is further ensured by ARCEP's appointment of a single auditor for all three mobile operators.

22 - ARCEP Decisions no. 08-1157, no. 08-1158 and no. 08-1159 applying to Orange France, SFR and Bouygues Telecom, respectively.

Orange France, SFR and Bouygues Telecom will submit their non-audited statements of cost and revenue for fiscal year 2008 by 1 July 2009. These statements will be audited in view of delivering, when applicable, evidence of conformity (with the audit report) by 30 September 2009.

• The technical-economic model

In 2007, in concert with mobile operators in Metropolitan France, the Authority developed a bottom-up technical-economic cost model for a mobile operator.

This model makes it possible to determine the mobile call termination costs (voice and SMS) for an efficient, generic operator, and for operators possessing the market characteristics of mobile operators in mainland France. The model was updated in 2008 and was once again subject to public consultation on 4 September 2008, on the relevant references and concepts for setting ceiling tariffs for mobile voice call termination. The updated model helped shed some additional light on the differences between the cost levels observed in the regulatory accounts submissions and on the specific features of the French market, compared to other European countries – all of which helped the Authority when setting the voice call termination tariffs for the period running from mid-2009 to the end of 2010.

Public consultation of 4 September 2008

On 4 September 2008, ARCEP launched a public consultation on the relevant concepts and cost bases for setting ceiling tariffs for mobile voice call termination. In particular, this public consultation concerned benchmark costs for a mobile operator in 2008 (regulatory accounts, updated technical-economic model).

It also presented the updated European benchmarks for mobile call termination tariffs published by the European Regulators Group (ERG) on 1 January 2008.

In the second part, the Authority submitted to public consultation a proposal to alter the concepts of relevant costs used for setting mobile voice call termination prices, to better respond to the new competition issues that had arisen and to better harmonise these principles with those governing fixed call termination.

In particular, the Authority proposed an analysis of the limitations of fully distributed costs when regulating mobile voice call termination, and a shift towards regulation based on the concept of long-run incremental costs.

• Long-run average incremental cost method

In its Decision of 2 December 2008[23], the Authority set the range of tariffs with which the three operators in Metropolitan France must comply during the period running from 1 July 2009 to 31 December 2010.

It also brought changes to cost bases in such a way that the economic signal it establishes for the market is better adapted and more efficient. It is the Authority's view that, given the current state of market development, the optimal level for call termination tariffs in the medium term is one that reflects incremental costs.

The additional costs incurred by an operator for terminating off-net calls (i.e. calls to its network coming from another operator), compared to a situation where it was not providing this call termination service, correspond for instance to the cost of increasing the number of base stations required to provide the capacity needed to route this additional traffic.

To limit possible distortions in the state of competition between operators, the calling operator must pay the costs associated with its calls, while the other network costs that would be incurred regardless by the recipient operator, i.e. as the normal cost of conducting its business, are to be recovered in retail markets from the customer receiving the call – to be associated, for instance, with the price of being able to be reached by telephone. This leads to efficient cost signals for operators:

◆ the calling operator must pay the additional costs generated by its outbound traffic, and must therefore incorporate the proper cost signal when designing its retail offers;

◆ the recipient operator, which recovers all its costs from retail customers in markets where it is the sole player, recovers from the calling operator the additional costs which that operator generates by sending traffic to the recipient operator's network.

This approach corresponds to the method referred to as the long-run incremental cost method, taking as the "increment" all of an operator's incoming traffic. The cost base therefore corresponds to the (efficient) costs incurred by providing wholesale call termination, and which would not be incurred if the service were not provided, or the difference between the total (efficient) long-run costs incurred by an operator providing

23 - *ARCEP Decision no. 08-1176 of 2 December 2008 defining the terms of tariff supervision for mobile voice call termination for operators Orange France, SFR and Bouygues Telecom for the period running from 1 July 2009 to 31 December 2010.*

its full line of services and the total long-run costs for this operator when providing its full line of services, minus the wholesale call termination service provided to other operators. To bring this total incremental cost to a per-minute base cost, it is divided by all of the traffic corresponding to this incremental call termination traffic, i.e. the operator's total inbound traffic.

The incremental cost approach by no means undermines operators' ability to recover all of their costs, but simply limits the proportion of their joint costs that can be recovered through the call termination price they charge their competitors, and increases the proportion to be recovered on other services where they are not in a position of monopoly but rather subject to competitive pressure from other operators and from their customers. In practice, this approach factors in exactly the costs generated by the supply of this additional service: it takes account of all of these costs and only these costs. In particular, with this method the supposition is that all assets are replaced over the long term. In other words, all costs are variable and all are taken into account, including relevant investment costs.

This approach differs from the full cost method in that it does not allocate all costs uniformly, notably network costs, to all of the technical services provided by the mobile operator.

When calculating call termination costs, for instance, an incremental cost approach takes into account only the capacity requirements needed to route traffic coming from other operators, but no longer factors in the coverage requirements needed to provide retail services to its own customers independently from inbound traffic from third-party operators. Although they are not factored into the cost of call termination, coverage costs are taken fully into account when calculating network access and outbound calling costs which form the basis of the retail prices that operators charge their customers.

1.1.3 Tariff supervision

In its market analysis in 2007[24], the Authority set the ceiling tariffs for call termination for operators in Metropolitan France for the period running from 1 January 2008 to 30 June 2009, and announced that it would set the ceiling tariffs from 1 July 2009 to 31 December 2010 in due time.

In 2008, the Authority pursued its policy of decreasing mobile voice call termination tariffs by setting the maximum tariff that could be charged from 1 July 2009 to 31 December 2010[25]. It ordered a more than 50% decrease in the price (excluding VAT) of mobile call termination over this 18-month period, namely:

- starting on 1 July 2009, a decrease from 6.5 to 4.5 €-cents a minute for Orange France and SFR and from 8.5 to 6 €-cents a minute for Bouygues Telecom;
- starting on 1 July 2010, a second decrease from 4.5 to 3 €-cents a minute for Orange France and SFR and from 6 to 4 €-cents a minute for Bouygues Telecom.

These prices are to be compared to the corresponding estimates for an efficient operator's costs which, in 2008, range from 1 to 2 €-cents when applying the incremental cost method, and from 2.4 to 2.9 €-cents when calculated using the former full cost method.

24 - *ARCEP Decision no. 07-0810 of 4 October 2007 on determining relevant voice call termination markets on French mobile networks in mainland France, the designation of SMP operators in these markets and the obligations incumbent on them as a result, for 2008 to 2010.*

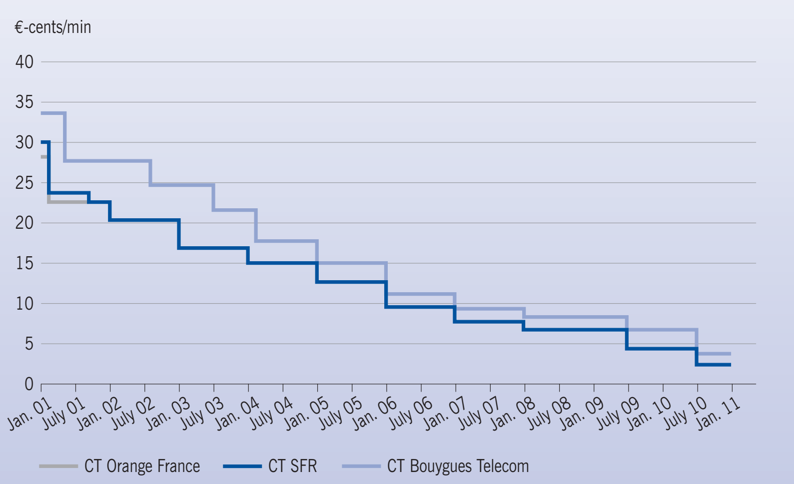
25 - *ARCEP Decision no. 08-1176 of 2 December 2008.*

Ceiling tariffs applied by the ARCEP since 2005 (in €-cents/min, excl. VAT)

Units	2005	2006	2007	mid-2008 - mid-2009	mid-2009 - mid-2010	mid-2010 - end of 2010
Orange / SFR	12.50	9.50	7.50	6.50	4.50	3.00
Bouygues Telecom	14.79	11.24	9.24	8.50	6.00	4.00

Source : ARCEP, ceiling tariffs applied over two periods of market analysis.

Average price of a mobile call termination minute in Metropolitan France



Source : ARCEP, change in the price of a mobile call termination minute, in Metropolitan France.

1.1.4 Outlook

In its Decision of 5 April 2007[26], the Authority defined the methods for valuating assets along with the cost accounting rules to be used by mobile operators for the regulatory accounts they are required to submit to the Authority. This accounts submission model was designed chiefly to assess mobile operators based on the fully distributed costs method. Adapting the model to one based on incremental costs will allow the Authority to obtain a more precise assessment of each operator's incremental costs.

In the same vein, the Authority's technical-economic model for the network costs of a generic, efficient mobile operator in Metropolitan France was also initially designed based on the fully distributed costs method. Adapting the model to one based on incremental costs will allow the Authority to obtain a more precise assessment of the incremental cost of the call termination service provided by a generic, efficient mobile operator in Metropolitan France.

1.2 Mobile voice call termination regulation in the overseas markets

1.2.1 Obligations imposed on operators

In its Decision of 16 October 2007[27] , ARCEP designated each of the mobile operators in the overseas départements and territories (SRR, Orange Caraïbe, Orange Réunion, Digicel, Dauphin Telecom, UTS Caraïbe, Outremer Telecom, SPM Telecom) as having significant market power in the voice call termination market on their respective networks for the period running from 2008 to 2010.

26 - ARCEP Decision no. 07-0128 of 5 April 2007.

27 - ARCEP Decision no. 07-0811 of 16 October 2007 on determining relevant voice call termination markets on French mobile networks in overseas markets, the designation of SMP operators in these markets and the obligations incumbent on them as a result.

As a result of this designation, these mobile operators are obligated to satisfy all reasonable access and interconnection requests associated with mobile voice call termination on their respective networks, and to provide these access and interconnection services under non-discriminatory conditions, along with an obligation of transparency. They are also subject to supervision of the tariffs that they can charge for these call termination services in the wholesale market.

This last obligation is implemented according to two different systems:

- for the two main mobile operators (SRR and Orange Caraïbe), the obligation to charge cost-oriented prices for their call termination service, combined with an obligation to perform accounting separation and cost accounting;
- all the other operators affected by this analysis are obligated to charge non-excessive prices.

1.2.2 Cost bases

The decision that is currently in effect concerning accounting and cost accounting, notably accounting separation obligations[28], requires that the operators concerned submit two separate accounts:

- a specific account for voice services, comprising the historic cost of voice services, including the cost of mobile voice call termination;
- a specific account called *"compte de bouclage"*, comprising the historic cost of services other than voice, which enables ARCEP to evaluate the completeness of the costs.

The Authority has received regulatory accounts from SRR and Orange Caraïbe. Accounts for fiscal year 2007 were audited in September 2008 and an attestation of conformity was issued by the auditor and published by ARCEP[29].

On 1 July 2009, Orange France, SFR, Bouygues Telecom, Orange Caraïbe and SRR will submit to the Authority their non-audited statements of cost and revenue for fiscal year 2008. They will be audited in view of delivering, when applicable, evidence of conformity (with the audit report) by 30 September 2009.

To increase its knowledge of operator cost structures and the specifics of the overseas markets, in 2008 the Authority developed a technical-economic cost model for an efficient mobile operator operating in the Reunion-Mayotte zone and for an efficient mobile operator operating in the Antilles-Guyana zone. These two models are based on the model developed in 2007 for Metropolitan France. They will be finalised in early 2009 and will help shed additional light on the cost levels found in the regulatory accounts that the two incumbent carriers in the overseas markets are required to submit. They will also help in estimating the costs of the other mobile operators that do not enjoy the same economies of scale.

1.2.3 Tariff supervision

The Authority set[30] a ceiling tariff for call termination for the period running from 1 January 2008 to 31 December 2009 for SRR and Orange Caraïbe, and specified its assessment of what constitutes non-excessive prices, to be applied by the other operators during that same period.

28 - *ARCEP Decision no. 07-0129 of 5April 2007 on the specification of accounting and accounts submission obligations, notably accounting separation, imposed on Orange Caraïbe and Société réunionnaise du radiotéléphone (SRR), as a result of their enjoying significant power in the wholesale voice call termination market on their respective networks.*

29 - *ARCEP Decisions no. 08-1160 and no. 08-1161 respectively for SRR and Orange Caraïbe.*

30 - *ARCEP Decision no. 07-0811 of 16 October 2007 concerning the second cycle of market analysis.*

Ceiling tariffs set by the Authority pursuant to the obligation to charge cost-oriented prices (€-cents/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 the Authority pursuant to the obligation not to charge excessive prices (€-cents/min excl. VAT)			
		2008	2009
Dauphin Telecom		24.9	16.7
Digicel		16	12.2
Orange Réunion		13	11
Outremer Telecom	Réunion, Mayotte	27.2	17.5
Outremer Telecom	Martinique, Guadeloupe	22.9	15.7
Outremer Telecom	Guyana	19.2	13.7
UTS Caraïbe		25.9	17.7

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

1.2.4 Outlook

On 18 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.

2. SMS call termination

2.1 SMS call termination market analysis

The Authority performed its analysis of wholesale SMS call termination on mobile networks in Metropolitan France, which is valid for a period of three years[31] (2006-2009).

31 - ARCEP Decision no. 06-0593 of 27 July 2006 on determining relevant SMS call termination markets on French mobile networks in mainland France, the designation of SMP operators in these markets and the obligations incumbent on them as a result.

It qualified as relevant the SMS call termination markets on each of the three individual mobile networks in Metropolitan France, and designated the three mobile network operators (Orange France, SFR and Bouygues Telecom) as having significant power in the SMS call termination market on their respective networks.

To resolve the various competition issues identified in the SMS call termination market, the Authority imposed several obligations on Metropolitan France's three mobile operators:

- grant all reasonable requests for access and interconnection services relating to SMS call termination;

- provide SMS call termination services under non-discriminatory conditions;
- provide SMS call termination services under transparent conditions;
- perform accounting separation and cost accounting;
- submit to tariff supervision measures in the form of cost-oriented pricing.

As concerns the last remedy, ARCEP has set the maximum tariff for SMS call termination in Metropolitan France:

- at 3 €-cents per SMS for Orange France and SFR;
- at 3.5 €-cents per SMS for Bouygues Telecom.

2.2 Regulatory cost accounting

Having completed its analysis of the SMS call termination market, and as indicated earlier, the Authority specified[32] the means for applying the obligation that mobile operators in Metropolitan France have to perform accounting separation and cost accounting for mobile call termination, including SMS call termination.

32 - ARCEP Decisions no. 07-0128 and no. 07-0129 of 5 April 2007.

Following the audits of the regulatory accounts for fiscal year 2007, performed in September 2008, the Authority published attestations of conformity for the statements of accounts and income from each of the three mobile operators in Metropolitan France, delivered by the accounting firm appointed by ARCEP[33].

33 - ARCEP Decisions no. 08-1157, no. 08-1158 and no. 08-1159 respectively for Orange France, SFR and Bouygues Telecom.

The purpose of these audits is to obtain reliable accounting information which is consistent across the three operators, so that it may be taken into account when setting call termination tariffs. The reliability of this accounting information is further ensured by ARCEP's appointment of a single auditor for all three mobile operators.

Orange France, SFR and Bouygues Telecom will submit to the Authority their non-audited statements of cost and revenue for fiscal year 2008 by 1 July 2009. They will be audited in view of delivering, when applicable, evidence of conformity (with the audit report) by 30 September 2009

2.3 Outlook

As the Decision of 27 July 2006[34] is valid for a period of three years, the Authority will review this decision in 2009 and will issue a new analysis decision on these markets.

34 - ARCEP Decision no. 06-0593 of 27 July 2006

Moreover, the Authority plans on regulating SMS call termination in the French overseas markets, thus encouraging mobile operators there to introduce offers that include unlimited text messaging to all other networks, as is already the case in Metropolitan France.

3. The market for access and call origination on mobile networks and mobile virtual network operators (MVNO)

MVNOs in France

Unlike mobile network operators (Bouygues Telecom, Orange and SFR), MVNOs have no spectrum resources of their own. To provide end customers with a mobile service, they use the radio network owned by a mobile network operator (MNO), referred to as the "host" operator.

As of 31 December 2008, there were 12 independent MVNOs (i.e. which are not owned or operated by their host operator) in the French market: Afone, Altitude Telecom, A-Mobile, Breizh Mobile, Carrefour Mobile, Coriolis Mobile, Mobisud, Noos-Numericable, NRJ Mobile, Tele2 Mobile, Transatel and Virgin Mobile.

Their market share, in terms of both value and customer numbers, is still very small: 5.19% of customers at the end of December 2008.

Growth of MVNO market share since 2005

	31/12/2005	31/12/2006	31/12/2007	31/12/2008
Total MVNO base	0.60 %	2.79 %	4.88 %	5.19 %

Source : ARCEP.

On 23 November 2006[35], the Authority postponed its analysis of the "mobile call access and origination" market which supplies mobile virtual network operators (MVNO). In exchange, the Authority committed to monitor this market actively.

The mobile call access and origination market raised a number of questions in 2008, notably on the matter of competition.

3.1 Shrinking MVNO market

In 2008, three MVNOs operating under the brands Ten, Debitel and Neuf mobile were taken over by their respective host operators – the first because of commercial difficulties, and the other two as a result of mergers.

Because these MVNOs are now owned by their host operators, ARCEP no longer considers them as independent players in the national mobile telephony retail market, which means that they have been removed from the various systems tracking the state of competition in this market.

3.2 ARCEP opinion to the competition authority concerning competition issues surrounding the terms of hosting MVNOs

On 7 May 2008, the general directorate for fair trade, consumer affairs and fraud control, DGCCRF (*Direction générale de la concurrence, de la consommation et de la répression des fraudes*), called on the French competition authority (*Conseil de la concurrence*) to investigate practices that could impede the development of mobile virtual operators. In particular, the competition authority was asked to examine the clauses in the contracts signed between MVNOs and their host network operator to assess whether the development of MVNOs could be more substantial if they were not impeded by some of the provisions contained in these agreements, notably exclusivity and pre-emption clauses.

On 28 May 2008, the competition authority requested that ARCEP issue an opinion on this matter. In its Opinion[36], the Authority stated that the contractual provisions

35 - Taking account of the responses to the two public consultations launched on 5 October of last year – the first on the reuse by 3G systems of the 900 and 1800 MHz bands which are currently being used for 2G, and the remaining licence to the 2.1 GHz for a third generation mobile network (i.e. the fourth 3G licence), and the second on the renewal of Bouygues Telecom's 2G licence.

36 - ARCEP Opinion no. 2008-0702 of 24 June 2008, concerning the competition authority's request for an opinion on the factors impeding virtual operators' development in the mobile telephony retail market.

implemented by network operators in this wholesale market did raise real competition law issues, which demanded broader exploration by the competition authority, namely the creation of a possible state of economic dependence due to MVNOs' lack of technical, commercial and economic independence from their host operators.

In light of the cost to the economy of an imperfectly functioning wholesale market, and as part of this investigation, the competition authority was asked to assess the compliance of these contractual clauses with competition law.

The competition authority is also questioning contractual relations between network operators and virtual operators in the wholesale market, which the authority believes is contributing largely to MVNOs' poor performance. In particular, these relationships make it very difficult for MVNO's to obtain competing offers from host operators and to renegotiate the initial terms for accessing their host operator's network, which in turn restricts the amount of freedom they have in designing their offer. From a pricing standpoint, the competition authority notes that the negotiated rate of decrease allows host operators to target which customers they send to MVNOs and so to confine virtual operators to a role of supporting partner.

In light of these conclusions, the competition authority has stated that new competition-related incentives need to be created to improve the conditions under which MVNOs are hosted, in such a way that they contribute to stimulating competition in the mobile telephony retail market.

Beyond the developments that could come from the market itself, the competition authority underscored the fact that the award of a fourth mobile licence could create a momentum that is positive for MVNOs, provided that it is accompanied by a relaxation of the technical, pricing and contractual terms to which virtual operators are subject.

E. Fixed telephony

1. Wholesale markets

In accordance with its obligation to charge cost-oriented prices, France Telecom's recurring tariffs for call termination services are subject to a multi-annual tariff supervision, such that:

- starting on 1 October 2008, the average price of fixed call termination will not exceed 0.45 €-cents a minute;
- starting on 1 October 2009, the average price of fixed call termination will not exceed 0.425 €-cents a minute;
- starting on 1 October 2010, the average price of fixed call termination will not exceed 0.4 €-cents a minute.

Concerning alternative operators' obligation not to charge excessive prices, the Authority considers the following benchmark prices as being non-excessive for call termination performed by fixed network operators other than France Telecom:

- starting on 1 October 2008, an average price for fixed call termination of less than 0.9 €-cents a minute;
- starting on 1 October 2009, an average price for fixed call termination of less than 0.7 €-cents a minute;

- starting on 1 October 2010, an average price for fixed call termination of less than 0.5 €-cents a minute.

1.1 Interconnection and access market regulation concentrated on bottlenecks

In its new market analysis Decision concerning fixed telephony of 29 July 2008[37], and in accordance with the European Commission recommendation on relevant markets[38], the Authority distinguished two wholesale markets that were relevant for ex ante regulation: call origination and call termination.

On the matter of call termination, the Authority defined a call termination market on each local loop network, i.e. as many markets as there are local loop operators.

These interconnection services constitute lasting bottlenecks that require sector regulation to be maintained for some time.

1.2 Regulation and tariff supervision for bottlenecks essential to the development of competition

Having completed its analyses, the Authority concluded that France Telecom enjoyed significant power in the call origination and termination markets on its own networks, and imposed an obligation on the operator to charge cost-oriented prices.

This means that, for call termination services, France Telecom is subject to multi-annual tariff supervision whose details are specified in the decision, and which takes the costs incurred by an efficient operator as the basis for its calculations.

The Authority also designated each local loop operator as enjoying significant power in the call termination market on its own network, and imposed on them an obligation not to charge excessive prices.

In addition, in the appendix to its decision, ARCEP included a multi-annual tariff schedule meant to serve as a guideline for complying with this obligation.

1.3 Implementation of multi-annual tariff supervision for call termination helped achieve several key objectives

It was the Authority's view that fixed call termination regulation should satisfy the following objectives:

- not disrupt the general market trend of shifting from retail offers based on per-minute billing to balanced, flat rate and/or innovative offers;
- accompany the technological transition already begun by fixed operators, and allow them to make their technological choices and perform their rollouts within a stable regulatory environment;
- not encourage or enable unfair competitive practices;
- encourage the efficient supply of services.

To achieve these objectives, the Authority defined four fundamental principles for the regulation governing fixed call termination tariffs:

- the sector needs to have a three-year view of call termination tariffs to provide operators with a stable regulatory environment in which to undertake or continue their technological transition;

37 - ARCEP Decision no. 08-0896 of 29 July 2008.

38 - Commission Recommendation of 13 November 2007, concerning relevant electronic communication product and services markets likely to be subject to ex ante regulation, in accordance with the European Parliament and Council Directive 2002/21/EC on the common regulatory framework for electronic communications networks and services.

- asymmetry between fixed call termination prices that cannot last indefinitely, particularly when the goal is to prevent distortions in the state of competition;
- call termination charges must only pay for the service that consists of terminating a call on a fixed network, according to a standardised set of costs (i.e. excluding access charges in particular);
- significant negative externalities caused by technical changes made by the vendor operator must be avoided.

The application of these principles led the Authority to set the relevant price level for fixed call termination based on the costs incurred by an efficient operator, and to apply multi-annual tariff supervision to control the changes to France Telecom tariffs which are subject to a cost-oriented pricing obligation, and to specify the obligation not to charge excessive prices to which alternative operators are subject.

The Authority drew on several sources for its estimate of the costs incurred by an efficient operator when providing a call termination service:

- France Telecom provisional costs;
- costs incurred by France Telecom in the past;
- technical-economic modelling of an operator;
- European benchmarks.

Furthermore, and in accordance with the positions taken by the ERG[39] and the European Commission, the Authority expressed the view that the call termination tariffs charged by the different operators must converge as exogenous factors that justified asymmetries in the past had disappeared. In particular, ARCEP stated that lasting disparities between call termination charges would constitute a distorted state of competition between the operators.

39 - Common position on the symmetry of fixed call termination and mobile call termination of 28 February 2008.

Thanks to the system of tariff supervision that has been put into place, asymmetries in call termination charges are gradually being erased.

1.4 The transit market is no longer relevant for *ex ante* regulation

On the matter of transit services, in the market analysis that it performed in 2005, ARCEP had distinguished two types of transit market: the intra-regional transit market and inter-regional transit markets.

The Authority has gradually relaxed the obligations imposed on France Telecom in these various markets.

In its Decision of 29 July 2008[40], the Authority stated that transit services did not constitute a lasting bottleneck and concluded that the transit market was no longer a relevant candidate for *ex ante* regulation.

40 - ARCEP Decision no. 08-0896 of 29 July 2008.

In the intra-regional transit market, the Authority indicated that, at the end of 2008, there would be very few instances where France Telecom would be the only operator capable of routing traffic and that interconnection with alternative operators would be very easy to achieve, if necessary.

As concerns inter-regional transit markets, the Authority concluded that, in most cases, the existence of regulated capacity offers underlying transit solutions enabled effective competition between operators.

2. Relaxing retail market regulation

2.1 The first cycle of market analysis began a process of relaxing retail market regulation

During the first cycle of market analysis, ARCEP had deemed it necessary to regulate retail access and calling markets in order to implement conditions for efficient, fair and lasting competition that would enable the development of alternative operators[41]. To this end, obligations were imposed on the operator that enjoyed significant power in these markets, namely France Telecom – including a ban on predatory pricing along with an obligation to be non-discriminatory and provide prior information on retail offers.

41 - ARCEP Decision no. 05-0571 of 27 September 2005.

With the development of voice over broadband and wholesale line rental (*VGAST*) solutions, competition in fixed telephony retail markets increased further still.

At the end of 2006, alternative operators had a 41% share of all residential and non-residential calls – a market share that increased to 46% in 2007: 20% via voice over broadband and 26% via carrier selection (call-by-call, preselection and wholesale line rental). By the end of 2008, the wholesale line rental base represented more than 900,000 connections.

While these figures offer proof of the healthy competition momentum in residential fixed telephony retail markets, the transition to IP-based offers in the enterprise market has been much slower.

Having concluded that the conditions required for effective competition were in place, and notably that alternative operators had access to wholesale solutions that enabled them to replicate France Telecom retail offers, ARCEP began a process of deregulating retail markets in 2006[42] and 2007[43].

42 - ARCEP Decision no. 06-0840 of 28 September 2006.

43 - ARCEP Decision no. 07-0636 of 26 July 2007.

2.2 Deregulation of retail fixed telephony markets

Following through on past deregulation efforts, in the first half of 2008 the Authority conducted two public consultations before issuing its Decision on 29 July 2008 to lift all obligations attached to fixed telephony retail markets – i.e. residential and non-residential retail access markets and residential and non-residential retail calling markets.

44 - ARCEP Decision no. 08-0896 of 29 July 2008.

Without prejudice to the pricing obligations to which the universal service provider is subject, the Authority concluded that imposing ex ante regulation on fixed telephony retail markets was no longer a proportionate measure, in particular given the availability of the wholesale solutions that form the basis of France Telecom retail offers (carrier selection, wholesale line rental, unbundling and bitstream).

The Authority will thus remain vigilant in ensuring the proper operation of underlying wholesale offers, and continue to monitor the state of competition in fixed telephony retail markets.

ARCEP continues to pay particular attention to the quality of service associated with each France Telecom wholesale offer. The VGAST wholesale line rental offer especially, which enables other operators to replicate France Telecom offers that combine access and PSTN calling, is being monitored on a regular basis with the various stakeholders.

And, finally, the Authority continues to monitor retail markets to prevent any anti-trust behaviour which could, if necessary, be brought to the attention of the competition authority.

F. Other market analyses

1. Capacity services

Capacity services, once referred to as leased lines, consist of an operator providing telecommunications capacity between several network points to a business, a corporation or another operator.

There are two types of capacity service: “conventional” leased lines based on ETSI (analogue and digital) standards, and capacity services that use alternative interfaces (Ethernet, ATM, etc.).

1.1 New cycle of market analysis

In 2006 ARCEP adopted a market analysis decision concerning capacity services, whose provisions include:

- easing the retail market regulation for leased lines, with removal of the tariff approval mechanism;
- modalities for supervising the fairness of wholesale and retail market operators’ competition practices, particularly in terms of the ability to replicate offers;
- the publication by France Telecom of a reference offer describing the products sold in the intermediate terminal segment market, the trunk circuit market and the market for undersea cables between the overseas départements and Metropolitan France;
- the implementation of a framework that provides incentives for the incumbent carrier and alternative operators to invest in ultra-fast broadband networks (fibre to the premises).

The current market cycle, i.e. 2006–2009, ends on 1 September 2009.

Up until 2007, capacity service markets included regulation of three markets selected by the Commission in its first recommendation on relevant markets:

- the retail market;
- wholesale trunk circuit segment, in which the Authority regulates access to undersea cables;
- the wholesale terminating segment market.

The new European Commission Recommendation published on 17 November 2007 includes only the wholesale terminating segment at this stage.

The Authority has begun the preliminary work on its review of these market analyses.

The first public consultation was held in the first quarter of 2009 – the results of which were published on the ARCEP website on 28 April 2009[45].

45 - http://www.arcep.fr/uploads/tx_gspublication/consult-adm-sva-280409.pdf.

1.2 Operational implementation of regulation

Since 2007, capacity services (partial leased line terminating segments and tie lines (LA/LPT) and optical Ethernet collection services (CE2O)) have been addressed by the Enterprise DSL and capacity services *(DSL professionnel et services de capacité)* working group, along with all DSL wholesale offers aimed at the business market.

The working group's discussions in 2008 focused on technical and pricing developments and the availability of the CE2O offer, as well as solutions for delivering secured optical connection, the ability to obtain access to information on fibre installations in buildings, and the implementation of quality of service indicators for wholesale offers.

1.3 Changes to tariffs

France Telecom has applied changes to the tariffs charged for its capacity services reference offer on several occasions since the adoption of the market analysis decision in September 2006.

In 2008, these changes primarily concerned:

- partial leased line terminating segments and tie lines operating at a speed of 2 Mbps or less;
- leased lines for transport between Metropolitan France and Reunion.

2. Wholesale market for audiovisual broadcasting services

2.1 Reminder of the regulatory framework to emerge from the first cycle of market analysis

On 6 April 2006, the Authority completed its analysis of the wholesale market for audiovisual broadcasting services (Market 18), after having gone through the process of consulting the sector, the audiovisual authority, CSA *(Conseil supérieur de l'audiovisuel)*, the competition authority *(Conseil de la concurrence)*, the European Commission and NRAs from the other European Union Member States.

This resulted in the adoption of the two decisions concerning:

- the definition of the relevant wholesale market for terrestrial television broadcasting services and the designation of an SMP operator in this market [46];
- the obligations imposed on TDF as the SMP operator in this relevant wholesale market for terrestrial television broadcasting services[47].

46 - ARCEP Decision no. 06-0160 of 6 April 2006.

47 - ARCEP Decision no. 06-0161 of 6 April 2006.

Based on the outcome of Decision no. 06-0160, the Authority deemed it necessary to implement an *ex ante* regulation mechanism for the upstream wholesale market that supplies terrestrial broadcasting services, both analogue and digital. All of the suppliers and customers in this market are broadcasters (TDF, Towercast, OneCast and multiplex operator, CNH, which performs some of its own broadcasting).

The Authority has also designated TDF, the enterprise that owns virtually all of the terrestrial broadcasting infrastructure, as the SMP operator in this market.

In accordance with the provisions contained in Decision no. 06-0161, in the entire relevant wholesale market TDF is subject to cost accounting and accounting separation obligations, as well as several obligations concerning the market segment of wholesale digital terrestrial broadcasting offers. The obligations are as follows:

- the obligation to grant reasonable requests for access;
- the obligation to provide access under non-discriminatory conditions;
- the obligation for transparency (publication of a reference offer);
- the obligation to comply with tariff controls (proscription against excessive and predatory pricing);
- the obligation to formalise, in the form of agreements, the terms and tariffs applicable to internal TDF services, while awaiting the application of accounting separation obligations.

2.2 Implementation of TDF cost accounting and accounting separation obligations

In its market analysis decision of 6 April 2006[48], ARCEP noted that any possible anti-competitive behaviour on the part of TDF could be monitored thanks to cost accounting and accounting separation obligations.

48 - ARCEP Decision no. 06-0161 of 6 April 2006.

The chief goal of these obligations is to make it possible to check that accounting and non-discrimination obligations are being satisfied, and to ensure the absence of abusive cross-subsidisation.

Upon completion of the work performed in 2006, ARCEP launched a public consultation from 30 November 2007 to 7 January 2008 on the draft decision that specifies the cost accounting and accounting separation obligations imposed on TDF[49].

49 - Available on the ARCEP website: http://www.arcep.fr/uploads/tx_gspublication/consult-compta-tdf-301107.pdf.

After receiving feedback from the players, the draft decision was amended by the Authority which then notified it to the European Commission and the national regulatory authorities in other European Union Member States on 28 February 2008.

At the same time, the Authority launched a second public consultation concerning the mechanisms for implementing these accounting obligations, in accordance with Article 6 of the Framework Directive.

At the outcome of this consultation, the Authority adopted a Decision on 8 April 2008[50] which requires TDF to submit several accounting files to the Authority in the first quarter of 2009. A regulatory audit will be performed on these files, which will make it possible to verify the effectiveness of the system put into place which includes ARCEP's stipulations.

50 - ARCEP Decision no. 08-0409 of 8 April 2008 concerning the implementation of cost accounting and accounting separation obligations imposed on TDF.

In particular, these account submissions make it possible to present the results of the cost and revenue allocation system for regulated services, and to verify the way in which TDF employs these services to build its own retail market offers. They also enable the Authority to obtain precise accounting information for each of the main network sites and by category of size for sites on the secondary network.

2.3 Timetable for the second cycle of market analysis

The first cycle of market analysis on audiovisual broadcasting came to an end on 1 April 2009. The Authority therefore began a new cycle of analysis, taking account of changes in the state of market competition and in the regulatory framework.

A public consultation was held from 18 November 2008 to 9 January 2009, based on a document that invited respondents to identify the outstanding issues and the outlook for changes to *ex ante* regulation in this market.

Based on the 15 responses received, on 25 February 2009 the Authority solicited an opinion on draft measures from the competition authority (*Autorité de la concurrence*) and the audiovisual authority, CSA (*Conseil supérieur de l'audiovisuel*). This document was published on the ARCEP website, along with a summary of the responses to the public consultation from among those not protected by business secrecy, along with an updated DTT broadcasting status report.

After having received the opinion of the competition authority and the audiovisual authority, on 7 May 2009 the Authority notified the European Commission of a draft decision in which it plans on maintaining a system of ex ante regulation in the wholesale market for the terrestrial broadcasting of television programmes in digital mode.

After taking account of the European Commission's observations, the Authority is due to adopt its market analysis decision in summer 2009.

G. France Telecom accounting separation

In 2008, France Telecom performed its regulatory accounting for the second year, in accordance with the accounting separation obligation to which it is subject in most of the fixed telephony and broadband market analyses, and whose modalities have been specified by ARCEP[51].

51 - *ARCEP Decision no. 06-1007 of 7 December 2006..*

These accounts were audited, submitted to ARCEP and published on the France Telecom website on 31 December 2008.

The implementation of the accounting separation obligation and application of its results are currently in effect.

1. Reminder of the economic and regulatory founding principles of accounting separation

1.1 Electronic communications market structure

When the telecommunications sector was opened up to competition, the former France Telecom monopoly gave way to a set of wholesale and retail markets where the intensity of competition varied.

In access and interconnection wholesale markets, France Telecom enjoys a dominant position in most cases – owning infrastructure that is more or less replicable, if not essential, such as the local copper loop.

In retail markets, France Telecom faces a greater degree of competitive pressure from alternative operators, but the latter's retail business is based, at least partially, on the offers for accessing infrastructure that are supplied by the incumbent carrier in the wholesale market.

1.2 Preventing discrimination and abusive cross-subsidies

The underlying economic rationale for imposing an accounting separation obligation derives from the natural and logical impulses of an enterprise with an integrated vertical structure to exploit the advantages of such a structure, particularly as a substantial portion of the value chain depends on the ownership of essential infrastructure.

Such an enterprise benefits from market power that it can leverage, notably to maintain a strong position in the market segments where competitive pressure is at its greatest.

Cross-subsidisation allows an integrated enterprise to allocate a portion of the cost from those business areas where it faces the greatest competition to those areas where it enjoys a substantial market share. This practice allows it to charge low prices in highly competitive markets, which naturally undermines the profitability outlook of rival companies in these markets, and may even prevent competition from existing (e.g. by discouraging new players from entering the market.

Furthermore, in the matter of wholesale offer tariffs, discriminating between the retail operations of a vertically integrated enterprise and the rival operations of alternative companies is likely to allow the integrated operator to charge lower retail market prices than its competitors. In a sector where the regulator is authorised to intervene (with the goal of stimulating effective competition), these practices can be forbidden[52].

52 - *In a non ex-ante regulated environment, such practices can also be called into question by applying the rules of competition law (ex-post regulation) when they constitute an abuse of dominant position.*

1.3 Mechanism provided for by the regulatory framework

Accounting separation is one of the obligations provided for by the European regulatory framework. The NRA can impose it on an operator deemed to have significant power in a relevant market, to avoid abusive cross-subsidisation and to prevent discrimination against third-party operators.

This remedy cannot be defined in an isolated fashion. It is based on regulatory accounting data and must thus correlate and be consistent with the operator's cost accounting obligation which, at the very least, requires that a system of regulatory cost accounting be established. It is also tied to the non-discrimination obligation as it helps to ensure that it has been properly implemented, in addition to guaranteeing a degree of transparency.

Accounting separation is also a remedy that crosses horizontally and vertically through all concerned markets, via non-discrimination obligations and in the prevention of abusive cross-subsidisation. As a result, the scope of its impact is not confined to the markets where it has been imposed, but rather extends to related downstream markets where a certain visibility needs to be achieved to ensure that these obligations are being met, in those areas where they have been imposed.

1.4 Simulation of several distinct entities from an accounting perspective

Accounting separation makes it possible to avoid having the development of competition distorted by France Telecom's vertical structure by creating several entities that are distinct from an accounting perspective, for wholesale and retail business areas.

This means that, from an accounting standpoint, it simulates the existence of an incumbent carrier which is comprised of several internal operators: those operating in regulated wholesale markets and those operating in regulated retail markets.

It also makes it possible to ensure that the incumbent's downstream retail operations are not benefiting from preferential treatment in their use of wholesale offers, when compared to the provision restrictions to which alternative operators are subject, and that costs are fairly distributed and collected between those business areas where the operator still enjoys significant market power, and those where competition is more lively.

2. Concrete application of accounting separation

To comply with its accounting separation obligation, France Telecom must submit its accounts to ARCEP, in accordance with the modalities and formats specified by the regulator[53].

53 - *ARCEP Decision No. 06-1007 of 7 December 2006.*

The accounting separation provision that applies to France Telecom is based on two sets of submissions in particular: internal sales agreements and accounts separated by market.

2.1 Internal sales agreements

Internal sales agreements are the documents in which France Telecom commits to using its own wholesale offers – for building its retail offers – under terms equivalent to those offered to competing operators.

In these agreements (which are not published in their entirety for reasons of professional secrecy), France Telecom specifies the "terms and conditions" – in other words the modalities and quantities – of its wholesale purchases, at the tariffs charged for its wholesale offers. To give an example: to produce residential analogue connections, France Telecom relies on its own telephone subscription wholesale reference offer, which includes service access fees and subscriptions to the associated services, under the same conditions as an alternative operator that wants to offer its customers both an access and a telephone service.

Internal sales agreements are not implemented systematically. They result from the application of the obligation to perform accounting separation imposed by the regulator's market analysis decisions. An internal sales agreement is required only when a retail offer is based on a regulated wholesale offering to which accounting separation and non-discrimination obligations apply. As a result, an agreement can pertain to retail offers in markets that are non-relevant from a regulatory perspective, such as broadband retail market services.

Flexibility and adjustments are allowed, particularly when positioning France Telecom's downstream operations under terms equivalent to those offered alternative operators.

Those operators that have deployed their own infrastructure no longer rely on certain France Telecom offers to operate in downstream retail markets. Such is the case with transit services, for instance, for which the market is becoming an increasingly competitive: most alternative operators, which are former clients of France Telecom transit offers, now use their own network infrastructure and may even themselves market wholesale transit offers. In this case, like its competitors, France Telecom is authorised not to use its own wholesale offers, and is thus not obligated to formalise its internal sales agreements. This means that it can access its internal services directly, in the same manner as an integrated operator that is not subject to the accounting separation obligation.

2.2 Separate market accounts

Most accounts that are separated by market correspond to the scope of the relevant markets considered in the analyses of regulated wholesale and retail markets. Others correspond to unregulated markets for which an ad hoc definition is adopted – one example being the broadband retail market – for the purposes of verifying compliance with obligations in upstream markets (unbundling and bitstream).

In the complete version of these accounts, costs and income are retraced for each type of offer in each market. In the case of a separated wholesale account, the costs for constructing the wholesale offer – assessed if necessary based on existing methods for calculating regulatory costs – correspond to outgoings, and the income corresponds to the revenue earned from competing operators and from France Telecom retail operations, in accordance with the commitments made in the internal sales agreements. This income thus derives directly from France Telecom wholesale tariffs.

In the case of a separated retail account, costs refers to wholesale supply costs as well as the additional costs specific to the construction of retail offers, while the revenue earned in retail markets corresponds to the products.

On the whole, there are limits to the granularity of the information that is transmitted and published, in accordance with the principle of applying proportionate remedies to observed competition issues, and depending on the scope of the Authority's power to intervene. The incumbent carrier thus publishes the list of agreements that specify on which wholesale offer each France Telecom retail offer is based, and the balance of the separated accounts in cases where they correspond to a market where France Telecom is regulated.

3. Results of the accounting separation exercises for 2007

3.1 Internal sales agreements

In accordance with the decision concerning its obligation to perform accounting separation, France Telecom submitted its agreements concerning the wholesale supply of its retail operations to ARCEP in December 2007, and posted the list of these agreements online[54].

Each creation or modification of an agreement is communicated to ARCEP. The list of agreements is published and updated in real time.

54 - The agreements are available on the France Telecom website: http://www.orange.com/fr_FR/groupe/reseau/documentation/att00001745/Liste_des_protocoles.pdf.

Sample agreement

Agreement 2: Agreement for the supply of residential analogue access

1 – Summary description of the offer:
Residential customer subscription for accessing the France Telecom PSTN and associated services.

2 – Wholesale supply:

Telephone subscription wholesale reference offer
- Wholesale subscription
- Analogue service access fees
- Line rental service access fees (per single line or set of lines)
- Subscriptions to associated services

3.2 Separated accounts, by market

In December 2008, France Telecom published the balance of the separated wholesale accounts to which the accounting separation obligations applies.

For the second year in a row, this document revealed positive balances in wholesale markets, as defined by the market analyses performed by the Authority, and particularly in the markets for call origination and call termination on fixed networks (Markets 8 and 9, as listed in the European Commission Recommendation on relevant markets from 2002) and in the regional bitstream market (Market 12).

	Costs*	Income	Balance	Margin
Market 8 “Fixed call origination”	328	468	139	30 %
Market 9 “Fixed call termination”	369	482	113	23 %
Market 10 “Intra-regional transit”	187	276	88	32 %
Market 11 “Unbundling”	991	1 127	137	37 %
Market 12 “Regional bitstream”	565	832	267	12 %
Market 12, extended “National bitstream“	623	986	363	37 %
Market 13 “Capacity services terminating segments”	110	125	15	12 %
Market 14 “Intra-regional trunk segments”	15	21	6	27 %
Market 14, extended “Inter-regional trunk segments”	13	7	- 6	- 81 %
VGAST (wholesale line rental)	3 821	4 212	391	9 %
		Average margin		16,6 %

** In € million.*

Certain considerations must nevertheless be factored in when looking at these margins.

The margins presented are calculated after remuneration of fixed capital. Among the cost items in separated wholesale accounts are the costs incurred by France Telecom for the construction and supply of its wholesale products and services. These costs are assessed in accordance with ARCEP decisions specifying the calculation methods (current economic costs, for instance, for local copper loop assets). They include a normal rate of return on capital, in accordance with the French postal and electronic communications code, CPCE.

The regulatory rate of return for 2007 was 10.7% [55].

55 - ARCEP Decision no. 08-1258 of 20 November 2008.

Not all of the wholesale offers included in wholesale markets are subject to cost-oriented pricing obligations. The published accounts are aggregated at the market level: the figures they contain are thus the sum of the balances that correspond to the different France Telecom offers.

Moreover, the different France Telecom offers are themselves subject to different tariff obligations. As a reminder, and notably as concerns 2007, the products and services of the call origination market (8), the call termination market (9) are subject to a cost-oriented pricing obligation. The same is true for the products and services of the unbundling wholesale market (11) which, for the accounting separation exercise, includes miscellaneous products referred to as *petits tariffs*.

Given the development of core network infrastructure by alternative operators, and the increasingly competitive situation in this market, the Authority has been steadily deregulating transit products (markets 10 and 10 extended) on the fixed network. Most of the obligations imposed on France Telecom in the inter-regional transit markets have been lifted, and its obligations in the intra-regional market began being relaxed in 2007.

In its Decision dated 29 July 2008[56], the Authority states that transit services no longer constitute a lasting bottleneck, and concludes that the transit market is no longer a relevant candidate for *ex ante* regulation.

56 - ARCEP Decision no. 08-0896.

The other broadband markets are subject to cost-oriented pricing obligations for the bitstream products and services market (12 and 12 extended), provided that the corresponding tariffs do not constitute predatory pricing, in which case only the obligation not to charge excessive prices applies.

As to the products and services of capacity services markets (13 and 14), most are subject to a ban on excessive and predatory pricing, with an obligation to charge cost-oriented tariffs – provided they do not lead to predatory pricing – being imposed on all services running at less than 10 Mbps and on trunk circuit, inter- and intra-regional services between Metropolitan France and Réunion.

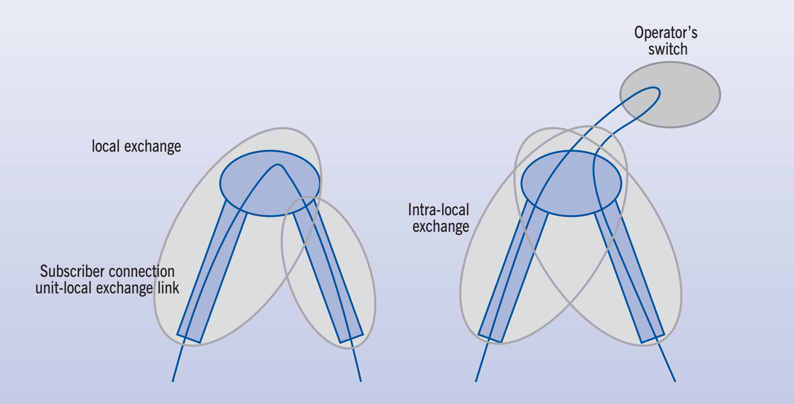
In each wholesale market, the margin presented is in fact the average of the margins generated on internal sales (to France Telecom retail operations) and on external sales (to third-party operators).

The accounting separation mechanism requires France Telecom to use its own wholesale offers, but there are cases where this obligation reveals cost disparities arising from differences at the engineering level between France Telecom and its competitors. For instance, to route a local phone call, integrated operator France Telecom physically employs two subscriber connection unit - to local exchange (*URA-CA*) links and one local exchange transit (*CA*).

In its separate accounting, France Telecom will simulate the costs it would have to bear if it were not an integrated operator, and would thus employ the services that all alternative operators must employ: a local call is executed based on two intra-local exchange interconnection services. This is therefore what the France Telecom retail branch must pay for, and what its wholesale branch charges for.

Combining the reality of an integrated France Telecom and the typical engineering constraints to which alternative operators are subject translates into a positive balance in the wholesale account: the wholesale division receives payment from France

Telecom retail (for two intra-local exchange interconnection services), but its expenditures are only for an intra-local exchange and a subscriber connection unit-local exchange link.



4. Audit of France Telecom accounting obligations

In accordance with the obligations imposed by the Authority, the regulatory cost accounting system and the accounting separation mechanism implemented by France Telecom are subject to an annual audit[57].

In accordance with the regulatory framework[58], the Authority demands that this audit be performed each year and requests verification of all of the elements that affect the application of these obligations. The Authority thus issued France Telecom with the specifications of the audit procedure in July 2008, and particularly the specificities of the regulatory cost accounting system and the accounting separation exercise for 2007 and 2008.

57 - *ARCEP Decision no. 06-1007 of 7 December 2006.*

58 - *Cf. CPCE Articles L.38 I, para. 5, L.38-1 I, para. 3 and D.312.*

The results of the audit for this fiscal year were submitted in late December 2008 to ARCEP, which published a summary of it in early 2009.

From a general perspective, the implementation of the accounting separation mechanism complies with the principles decreed by ARCEP.

4.1 Principal results of the audit of France Telecom's cost accounting system

The establishment of a regulatory accounts submission, derived from a cost accounting system, is based on:

- a dedicated France Telecom division, DRG/PCCR (Regulation department/ Regulatory cost calculation unit), composed of teams that are specialised in key elements of the model (cost calculation engine maintenance and monitoring, tracking changes to analytical organisation, network, sales and support function modelling, etc.) and which have a good understanding of France Telecom's organisation as well as direct access to certain operational and accounting information systems;
- a cost calculation model and a dedicated information system designed to guarantee the quality of the data processing, and which is progressively expanded and refined to improve the production of the regulatory accounts submissions;

- substantial efforts on collecting a range of input data for the cost calculation model. This data collection is based on the knowledge of the DRG/PCCR teams, each of which, in its own area of expertise, selects, extracts and adapts data from multiple operational information systems for this model. It is also based on several dedicated studies which refine the allocation when the data from operational information systems are too aggregated or poorly adapted to the purpose. Developments to the organisation and the information systems, along with the desire to improve the accuracy of the data year after year, requires substantial ongoing efforts.

The work performed by the auditor focused on the implementation of a system of production cost calculation (*système de calcul des coûts de revient*: France Telecom terminology for its cost accounting system) in 2007, used to produce operating accounts per product (*CEP*) for that same year. Efforts were also devoted to the relevance of the cost allocation applied to cost calculation figures and the rules[59] used to establish them. Auditing these figures consisted notably of assessing the reasonable nature, economic justification and compliance – with respect to the provisions contained in the different legislative and regulatory texts listed in the audit specifications – of the options for allocating costs to the products and services, which had previously been identified by the accounting, system, as well as the allocation of the restated costs in France Telecom's financial accounting.

Based on this work, the auditor:

- concluded that France Telecom's cost accounting system meets the objectives set by the different legislative and regulatory texts[60];
- confirmed the completeness of the costs derived from the production cost calculation system that was used to produce separated accounts for 2007, and compliance with the functional specifications;
- concluded that the separated accounts for 2007 comply with the different legislative and regulatory texts[61].

Without undermining the conclusions expressed above, the auditor nevertheless drew attention to the following points:

- the upstream portion of the chain of analysis has been streamlined in a relevant fashion, but the number of parameters being managed is still very high: analyses could be performed to determine which parameters are truly discriminating, to then integrate an analysis of the sensitivity and inherent limitations to the model's hypotheses into the control process;
- benchmark studies used to determine the factors used in the model could be updated regularly – at a rate to be defined, in theory, according to the nature of the information, its obsolescence and the significance of these studies with respect to the model. Here, it should be noted that a certain number of studies have been updated recently.

Concerning the scope of France Telecom's separate accounts for 2007:

- certain offers (audiotel, VAS numbers and public payphones) which are currently posted to the residual account, should in future be the subject of agreements and be classified as *retail products derived from wholesale products*;

59 - *The CEP are the principal outputs of the cost accounting system; most of them are submitted to ARCEP in accordance with France Telecom's obligation to perform cost accounting, and used in particular for the purposes of tariff supervision.*

60 - *See ARCEP Decision no. 06-1007 of 7 December 2006 concerning the cost accounting and accounting separation obligations to which France Telecom is subject.*

61 - *See ARCEP Decision no. 06-1007 of 7 December 2006 concerning the cost accounting and accounting separation obligations to which France Telecom is subject.*

- the assignment of certain offers to the residual account rather than to a relevant market should be documented. Such is also the case for certain retail products from relevant markets which are not covered by internal sales agreements;
- operator connection link offers (origination and termination) were posted to the residual account. They should have been classified as part of their respective wholesale markets, i.e. *call origination services and call termination services*;
- certain offers, which are derived from wholesale products, were posted to the residual account based on the reasoning that, because these products were at the end of their lifecycle, they were no longer a source of competition with other operators.

As concerns the process for identifying joint costs, additional studies could help streamline some of the flat-rate cost allocation rules which are used to identify the joint portion of commercial activity costs.

4.2 AFORS Telecom's request for a penalty to be levied on France Telecom

In late 2008, AFORS Telecom submitted a request for a penalty to be imposed on France Telecom, based on Article L.36-11 of the French postal and electronic communications code, CPCE.

AFORS Telecom referred in particular to the regulatory accounting elements published, in this case, on the balances of separated accounts corresponding to regulated wholesale markets and subject to a separate accounting obligation, to accuse France Telecom of not meeting its pricing obligations for wholesale offers, namely the obligation to charge cost-oriented prices, and not to engage in excessive or predatory pricing. The matter is currently under investigation.

5. Towards a possible review of Decision no. 06-1007

Also in late 2008, ARCEP launched a process that would make it possible to determine, in tandem with the market players, whether a review of Decision no. 06-1007 was needed. While there is no legal need to do so, several reasons could justify launching a process for reviewing and updating the decision.

This update seems pertinent in light of market developments, taking account of changes made to the list of markets deemed relevant for ex ante regulation and of the results of the second cycle of market analyses performed by ARCEP over the course of 2007 and 2008.

In 2006, the decision marked a departure from the accounting obligations stipulated in the previous regulatory framework, which no doubt require certain adjustments to be made following the first years of application. In addition to these adjustments, the experience acquired over these two years provides an opportunity to verify whether the specification of accounting obligations satisfies the needs that were anticipated when the decision was issued, and the needs that have arisen since then.

Moreover, since 2006 the sector has had a chance to take stock of the stakes and issues tied to this regulatory mechanism that is the accounting obligations incumbent on France Telecom.

Work on this topic began with all market players in late 2008, and will continue on through 2009.