

28th October 2004 : Integration of Cofratel into France Télécom - In response to a request for opinion by the FICOME, the Conseil recommends unbundled accounts and information

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The FICOME's request

On 3rd March 2004, the *Conseil de la concurrence* received a request for opinion from the FICOME (*Federation Interprofessionnelle de la Communication d'Entreprise*, the French Interprofessional Business Communication Federation). The request for opinion concerned the conditions in which France Télécom exercises the two activities of access operator on the one hand, and installation-integration of telecommunications systems on the other hand.

Since 1st January 2004, France Télécom has vertically integrated its subsidiary Cofratel, which specialises in installation-integration activities. The Federation's members, who include independent installer-integrators, fear that France Télécom may be using its dominant position on the local loop and telephone services markets to compete with them in activities "downstream from network connection", namely installation-integration activities.

The *Conseil de la concurrence*'s analysis

The *Conseil* points out that a company is at liberty to adopt a vertical integration approach in order to improve its profitability and reduce its transaction costs. However, it does emphasise that any restructuring of this kind must not have the aim or effect of adversely affecting competition. In certain cases, by encouraging

firms to acquire, strengthen or exploit their market power, vertical integration can effectively debar competing companies operating in upstream and downstream markets.

In the specific case examined by the *Conseil* this risk is exacerbated, since installer-integrators often have a prescriptive role towards their customers, advising them to opt for a particular telecommunications solution and ultimately, a particular operator. An operator might therefore be tempted, by controlling the upstream market for telecommunications solutions, to orient the downstream services market to his own advantage.

The *Conseil*'s recommendations

In light of the above, the *Conseil* recommends the following:

- **the accounts pertaining to France Télécom's installation-integration activities** should be unbundled, so that any unlawful cross-subsidies between activities may be more easily identified. The *Conseil* believes that in the absence of any structural separation of the installation-maintenance activity, fair competition on the market can only be guaranteed by keeping separate accounts for installation-integration activities.
- **real functional separation of access to the connection file, containing the information sent by France Télécom when connection requests are made.** When each new installation is carried out, the installer-integrators must give France Télécom details of the client company's location, address and requirements. Only when it has received this information does France Télécom connect the installation to the network. This information is confidential, and should not be used by France Télécom in its activities as network operator or telecoms service provider (so-called "winback" practices).
- **France Télécom's various offers should make a clear distinction between what falls within the scope of its access operator activity** (price and conditions of connection to the network), **what is covered by its electronic communications activity** (price of any telecoms services associated with PABX) **and what is covered by its installation-integration activities** (price

of hardware and installation costs).

The *Conseil* reminds those concerned that, when it receives a request for opinion, it may only give its view of general competition issues and must refrain from making any assessment that might prejudge a ruling on litigation. However, as an indication, it has drawn up a list of behaviour that might be qualified as anticompetitive if proven during litigation proceedings. Such behaviour includes any improper refusal to grant connection requests made by competing installer-integrators, or marketing dual offers combining a service that is open to competition with a service that only France Télécom is able to provide.