

17th February 2005 : In an opinion issued to the ART, the Conseil de la concurrence draws the Authority's attention to the development of Voice over Broadband (VoB) offers and the potential distortion of competition caused by unbalanced application of regu

Published on April 13, 2005

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In accordance with the market analysis procedure introduced by the French code of postal and electronic communications law (*code des postes et communications électroniques*), the *Conseil de la concurrence* has just issued an opinion to the *Autorité de régulation des télécommunications* (ART, the Telecommunications Regulation Authority) regarding the fixed telephony market. This is the third opinion issued by the *Conseil* under this procedure (see [04-A-17](#) and [05-A-03](#)).

The ART's request for opinion concerned nine markets, including six retail markets and three wholesale markets. The *Conseil* has no comment to make regarding the majority of the decisions made by the ART, in terms of delimiting markets and designating France Télécom as a powerful operator in these markets. However, the *Conseil* does have reservations on the segmentation of the retail markets, which it considers to be too fine, and recommends dealing with the issue of communications services intended for service providers (special numbers).

The development of VoB offers must be taken into account in any analysis of the fixed telephony markets

The *Conseil*'s analysis focused on the impact of the recent proliferation of unlimited telephony offers via ADSL access or VoB, or *Voice on Broadband* access using IP technology, from the point of view of market competition and the need for regulation. The ART took the view that these offers are not in competition with standard fixed telephony offers, which combine a subscription to the switched network with communications, on the grounds that the operators propose them as a complement to ADSL Internet access offers, or as part of "multiple play" offers combining Internet access, unlimited telephone communications and television.

However, the *Conseil* has invited the ART to re-examine this issue, since it considers that, for various reasons and given the prospective nature of the analysis, VoB services cannot be purely and simply excluded from the analysis of the retail fixed telephony markets.

The Conseil analyses whether the services concerned are substitutable

The *Conseil* observes that, for both users and operators, VoB services could very rapidly come to be a credible substitute for traditional fixed telephony services :

- the quality of the communications carried via broadband access is similar to that of telephony over a switched network ;
- access to broadband services was until now offered as a supplement to a standard telephone subscription. From this viewpoint, VoB services were offered to users as an additional telephony service. Yet France Télécom's announced intention to market ADSL access without a subscription ("bare ADSL"), should mean that "ADSL access + VoB" offers can be proposed as an alternative to "telephone subscription + standard voice communications" offers ;
- whilst ADSL access was initially made available to users only for Internet access, and then also for television or telephony services, there is no technical reason why VoB services should not be offered alone, with ADSL access. IP technology and the extension of ADSL coverage across the country have led to a substantial reduction in the cost of carrying these communications, which could in turn create favourable economic conditions for developing these offers, independently of Internet access.

- whilst a modem will still be required in addition to the telephone terminal for standard fixed communications, the considerable drop in the cost of this type of equipment means that in the short-term, it cannot be considered as an obstacle to subscribers migrating to VoB offers.

The dangers to competition : distortion in the retail market for fixed communications

The *Conseil* emphasizes the importance of ascertaining whether VoB offers are likely to enter into competition with standard telephony services. This is because the ART proposes to renew the ex ante regulatory provisions applied to the relevant retail fixed telephony markets as it has delimited them, whereas for retail offers on the broadband markets, the Authority shared the view of the Conseil in its previous opinion of 31st January 2005, that *ex ante* regulation was not necessary.

The *Conseil* acknowledges that, in the fixed telephony markets, ex ante regulation of retail offers may prove to be a more appropriate transitional measure for dealing with the competition problems that persist in these markets. However, it draws the ART's attention to the fact that obligations under ex ante regulations must not themselves serve to distort competition, by treating similar situations differently without justification.

The existence of different regulatory systems between narrow band telephony offers and VoB offers could encourage France Télécom to engage in practices aimed at winning back customers. For example, FT might be induced to approach pre-selection customers in zones which are covered by its broadband offers but are not yet unbundled, proposing "bare" ADSL offers enabling them to swap their telephone subscription for a VoB offer.