Anticompetitive agreements in the mobile telephony market

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The *Conseil de la concurrence* imposes fines totalling 534 million Euros on Orange France, SFR and Bouygues Télécom.

The *Conseil* has fined the three mobile telephony operators, Orange France, SFR and Bouygues Télécom, for engaging in two kinds of anticompetitive agreements that distorted market competition. The practices were revealed as part of an investigation carried out following the *Conseil*'s decision to begin proceedings *ex officio* on 28th August 2001, and a referral handed down by the consumer association UFC Que Choisir on 22nd February 2002.

The fines amounted to a total of 534 million Euros:

- Orange France: 256 million Euros
- SFR: 220 million Euros
- Bouygues Télécom: 58 million Euros

Sharing strategic information on new subscriptions and cancellations

Every month between 1997 and 2003, the mobile operators exchanged detailed and confidential information on the numbers of new customers signed up the previous month, and the numbers of people who opted to cancel their subscriptions.

The *Conseil* considered that, although the operators' decision to share this information had no bearing on their future pricing strategies, it was nonetheless likely to reduce competition in the mobile phone market for several reasons:

- First, the operators could not have gained access to this type of data if they had not systematically shared it, in an arrangement which they were careful to keep secret. It should be noted that ARCEP (the French Telecommunications Regulator) has never published this information, merely a general overall indicator of total new acquisitions and cancellations, monthly until 2000, and subsequently only quarterly from April 2000.

- Second, it is clear from the minutes of the three operators' various executive committees, that the developments in these indicators were an extremely important source of information, and were taken into account when determining commercial strategies.

On a market which is difficult to penetrate and comprising only three operators, information sharing of this kind is likely to distort competition, by reducing uncertainties over competitors' strategies and diminishing each company's commercial independence, particularly where - as has been the case in the mobile telephony market since 2000 - growth in demand is slowing substantially.

In addition, the *Conseil* observed that from 2000 onwards, the operators' sharing of information enabled them to monitor the separate agreement they had reached on the development of their respective market shares.

Agreement between the three operators from 2000 to 2002 to

stabilize their market shares based on jointly-defined targets

It was also found that between 2000 and 2002, the three operators entered into an agreement aimed at stabilizing the development of their respective shares of the market.

The *Conseil* uncovered a number of pieces of serious, specific and corroborating evidence pointing to the existence of such an agreement. These included handwritten documents with explicit references to an "*agreement*" between the three operators, the "*pacification of the market*" and the "*Yalta of market share*". Certain similarities were also observed in the commercial policies implemented by the operators during this period, particularly in terms of acquisition costs and call rates. It was these similarities that led UFC - Que Choisir to hand down its referral, focusing on the operators' simultaneous decision at the beginning of 2001 to start charging for calls in 30-second increments, after the minimum first minute.

In the medium term, this collusion served to maintain the three operators' share of new subscription sales at relatively stable levels, and also paved the way for them to alter their strategy from 2000 onwards. Up until then, the mobile operators had relied on acquiring market share to ensure their growth, which required considerable investment.

From 2000 onwards, a period which coincided with the end of the race to acquire market share, the three operators simultaneously adopted strategies aimed at consolidating their existing customer bases. This led, among other things, to a hike in prices and the adoption of measures such as giving priority to contracts with commitments over pay-as-you-go cards, or the introduction of billing per 30-second increments after a minimum first minute.

These measures, which were against the interests of the consumer, could clearly have led to a drop in sales (and therefore market share) for any operator who took the step of introducing them unilaterally. The collusion was therefore intended to make it easier for the operators to introduce this strategy, by enabling them to ensure that they all adopted the same policy simultaneously,

and that their market shares would consequently remain stable.

Particularly serious practices and substantial damage to the economy

- Concerning the sharing of information

  The *Conseil* took into account the length of time over which the practices took place (from 1997 to 2003) and the very considerable size of the market in question. It emphasised that the damage caused to the economy by the artificial creation of anticompetitive transparency in the market varied with time, with greater damage caused in the post-millennium period than before 2000. Indeed, from 2000 onwards, the existing information sharing agreement allowed all three operators to monitor the progress of the "market pacification" policy they had adopted, to the detriment of consumers.

- Concerning the market share agreement

  Like other competition authorities, the *Conseil de la concurrence* regards market sharing agreements as unjustifiable, and therefore among the most serious of their kind.

  The damage to the economy must be assessed in the light of the three-year duration of the practices and the sheer size of the market concerned. It is also worth noting that the agreement took place in a market to which entry was highly restricted, since mobile telephony operators are required to obtain a licence and no MVNO was granted access to the operators' networks during the period in question.

  The *Conseil* took into account the fact that since the late 1990s, mobile telephones have come to represent a new expense for households, and now account for significant portion of their budgets. It also considered that by colluding, the operators were more easily able to introduce measures that were against the interests of consumers.

See the decision (05-D-65)