13 March 2006: the wholesale market for SMS call termination on mobile networks

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The Conseil de la concurrence is favourable to an intervention by the regulator to ensure greater competitive pressure on the retail prices paid by consumers

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Following a request filed by ARCEP , the French Telecommunications Regulator, on 23rd January 2006, the Conseil de la concurrence has issued an opinion on the wholesale market for SMS call termination on mobile networks. The opinion, which was requested under the market analysis procedure introduced by the French code of postal and electronic communications law (Code des postes et communications électroniques), is the seventh to be issued by the Conseil in this way (see 04-A-17, 05-A-03, 05-A-05, 05-A-09, 05-A-01).

The major influence of Orange France, SFR and Bouygues Télécom on the wholesale market for SMS messages terminating on their networks

The markets analysed by ARCEP are those for the termination of SMS communications sold by mobile operators to other mobile operators and other telecoms operators or service providers. Each operator has a monopoly for the termination of SMS messages on its own network, irrespective of the development of competitive pressure, which could weigh on the retail market, between SMS and other modes of communication (mobile e-mail, MMS, etc.).

The operators are the only sellers and the main purchasers of SMS terminations, since 85% of SMS messages are sent between mobile phones. Currently, the three mobile operators have fixed their SMS termination charges at an identical level. Consequently, the amount they pay is almost equal to that which they

receive. It is relatively difficult for consumers to identify differences in the prices of SMS messaging depending on the network of the receiver. As a result, there is no incentive for any of the mobile operators to lower their prices unilaterally.

Customers are thus unable to exert any competitive pressure on the mobile operators, who hold a monopoly position for terminating their customers' SMS communications on their own networks. Nor are there any other competitive levers capable of reducing the mobile operators' power in this market. In view of this, the Conseil believes that Orange France, SFR and Bouygues Télécom have a significant influence on their respective market for wholesale SMS termination on their network.

The Conseil de la concurrence favours ex ante regulation, given the special structure of the market

Looking at the state of competition on the wholesale market concerned, the Conseil has observed a lack of competitive pressure on the level of prices charged for terminating SMS communications. This explains why the prices have remained stable for almost six years, only falling (from 5.3 to 4.3 centimes) in November 2005 following an intervention by ARCEP, which settled a dispute referred to it by Bouygues Télécom.

Lastly, in the eyes of competition law, the termination of SMS communications by mobile telephony operators could be seen as a charge for access to an essential infrastructure - which must therefore satisfy certain requirements in terms of transparency, objectivity and non-discrimination, and must allow effective competition on the retail markets, without any price scissoring effects. In view of the monopoly position occupied by the three operators in the markets concerned, and the different role played by the corresponding resources in the financial situation of each operator, there may be some justification for more stringent regulation of these prices. However, it should not lead to a weakening in the position of any one operator, for example the third largest operator in the French market.

In light of these observations, the Conseil believes that the wholesale market for

terminating SMS communications should be included on the list of markets which could be subject to regulation.

The state of competition on the retail SMS market is closely linked to that of the market for wholesale call origination and access on the mobile networks

Whilst a drop in the prices charged for terminating SMS communications appears necessary, this alone will not be enough to force down the retail prices of SMS messages sent from mobile phones. This is because there is no guarantee that the three mobile operators, who are the main suppliers on the retail market, will pass this drop on to consumers via their retail tariffs. At any rate, they have not done so since the decision of November 2005, referred to above. Other instruments must therefore be considered for encouraging competition on the retail market.

In particular, the Conseil recommends that ARCEP should ensure the mobile operators pass on the drop in SMS termination prices in the wholesale SMS prices they charge MVNOs (virtual operators). Even more crucially, giving the current virtual operators (whose emergence the Conseil is watching closely) access to Full MVNO status, which involves fewer commercial and technical restrictions, would enable them to fix their own SMS termination charges and would open up the retail market to greater competition.