15 October 2007: Market for high-speed Internet access

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After a negotiated settlement with the company, the Conseil de la concurrence imposes €45m fine on France Telecom for having hindered the development of internet access providers competing with its Wanadoo subsidiary

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Following the referrals by T-Online and Liberty Surf companies, respectively in November 2001 and February 2002, who subsequently withdrew their complaint, and following a referral ex-officio by the Conseil de la concurrence, the latter has just published its decision. The decision penalizes France Telecom for abusing its dominant position on the local loop market in favouring marketing of internet access services by its Wanadoo subsidiary to the detriment of the competing Internet access providers.

This decision has just closed a series of injunctions, ordered as interim measures, and a series of decisions on the merits in which the Conseil and the European Commission penalized the incumbent operator for practices aimed at pre-empting the high-speed internet access market via ADSL[1] , emerging at that time, for the benefit of its Wanadoo subsidiary.
Notably due to the action of the competition authority and the regulator, the high-speed Internet market in France is now among the most competitive in Europe, as shown by the number of operators on the market and the intense competition which exists between them on the prices and the services offered to the consumer.

The practices charged against France Telecom

From January 2001 to the end of the first half of the year 2002, France Telecom implemented discriminatory practices against the rivals of its Wanadoo subsidiary:

· it put at the disposal of alternative Internet access providers, information relative to the eligibility of ADSL lines, which is less updated and less detailed than the one at the disposal of France Telecom representatives for marketing Wanadoo packs. It also failed to set up an ADSL online order system as direct and as quick as the one at the disposal of France Telecom for marketing Wanadoo packs.

Moreover, certain elements of the case show that France Télécom also :

· invited its sales representatives to ignore the Internet access providers in competition with its Wanadoo subsidiary.
· used the data, which it was the only one to possess, as local loop owner and manager, with the aim to facilitate the marketing of its Wanadoo subsidiary's Internet access services.

The taking into account of repeated infringements led the Conseil de la concurrence to raise by 50% the amount of the fine incurred

The law of 15 May 2001 expressly made repeated infringements a determining factor in the fines imposed by the Conseil. In this respect, the Conseil underlined a certain number of decisions, which penalized - prior to the facts mentioned above - similar competition infringements implemented by France Telecom with a rather peculiar regularity: 1994 (94-D-21), 1997 (97-D-53), 1999- Ruling by the Court of Appeal of 29 July) and 2001 (01-D-46).
With regard to the deterrent objective of the Conseil's sanction policy, the authority considered that it was justified to raise the incurred fine by 50% for repeated infringements.

France Telecom wished to take advantage of the negotiated settlement procedure provided for by the New Regulation Act (15 May 2001). The company did not contest the facts charged against it and took commitments for the future ; the fine was reduced by 25%

France Telecom did not contest the facts nor their qualification as abuse of dominant position.

Moreover, the company committed itself to set up a monitoring system enabling to identify within the consumers' complaints management system, the complaints specifically linked to competition based contentious acts or practices. The company also committed itself to implement corrective measures, on the individual level (maintenance, training, sanction) as well as on the collective level (diffusion of instructions, reminder of rules). This system will be completed and strengthened by competition law training and information programmes designed for sale networks and the integration of a unit designed to give the basics of competition rules into sale representatives' school programmes.

In the light of all these elements, the Conseil de la concurrence reduced the incurred fine by 25%.

Let's hope that this case, which involved facts, which now belong to the past, is the last of a whole series. This case shows that France Telecom changed its behaviour and will have to explain it to its employees.

[1] Decision 02-MC-03 (Conseil de la concurrence 27 February 2002), relative to a request for interim measures by T-Online France and 00-MC-01 (Conseil de la concurrence 18 February 2000), relative to a request for interim measures by 9 Telecom; Decision 05-D-59 (Conseil de la concurrence 7 November 2005), imposing a €80M fine on FT; Decision 04-D-18 (Conseil de la concurrence 13 May 2004) imposing a €20M (raised to €40M by the Paris Court of Appeal) for breach of injunction ordered by the Conseil in Decision 00-MC-01 of 18 February 2000; Decision by the EU Commission of 16 July 2003 imposing a €10.35M fine on Wanadoo company for the predatory nature of eXtense packs prices.