

The Autorité de la concurrence has decided to start proceedings with a self-referral for an opinion on the issue of cross-usage of clientele databases (cross-selling)

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When the electronic communication sector was opened to competition, the fixed telephony, mobile telephony and high speed Internet access markets developed relatively independently. In recent years, however, the market actors seem to be focusing on convergence strategies between these various markets, whether through diversification, merger or partnership operations.

Current events in the sector have recently shown that this convergence is starting to make its way onto the commercial level. Some operators, simultaneously active in the high speed and mobile telephony markets, are implementing new marketing methods known under the name of "cross-selling", which involves soliciting their database of mobile users in order to offer high speed Internet access offers, or vice versa, which can, if relevant, take the shape of bundled offers at an attractive price.

"Cross-selling", a means for certain mobile operators to strengthen their position on the high speed market

These new practices seem to have benefited to the actors that have implemented them. This is particularly the case of the operators SFR and Bouygues Télécom, that, in the last three quarters, have recruited new subscribers for the high speed Internet access market at an unusually high rhythm.

Inversely, the operators France Telecom-Orange and Free have seen their results in this market deteriorate during the same period. However, the latter indicate that they do not use "cross-selling" practices: France Telecom – Orange because of uncertainty as to how these practices would be considered in view of competition law; Free because it does not currently have a database of mobile subscribers.

In this context, the Autorité de la concurrence intends to examine the matter of the cross-usage of clientele databases and, notably, to assess the effects that this could have on the high speed and mobile markets

Initially, the opinion will examine how this practice can, looking beyond the mere sector of electronic communications, be assessed in view of competition law. On the one hand, companies building on their own strengths is part of what drives competition and can therefore be a normal operating element for the markets. On the other hand, however, this same usage could, in certain cases, result in entry barriers on either one of the two markets in question.

Secondly, the opinion will consider the specific question of the response right of a company that has a dominant position on one of the markets in question, or on a related market.

Thirdly, the opinion will strive to set down principles that will have arisen from the convergence context that is characterizing the electronic communications sector. Notably in view of this last element and of the context in which the present decision will be issued, the Autorité will seek an opinion from the French Telecommunications and Posts Regulator (Autorité de régulation des communications électroniques et des postes - ARCEP) in order to obtain more information on the stakes specific to the electronic communications sector.

DECISION 09-SOA-02 OF 14 DECEMBER 2009

regarding the self referral for opinion on the issue
of cross-usage of clientele databases

[Access the decision](#)

OPINION 10-A-13 OF 14 JUNE 2010

regarding the cross-usage of clientele databases

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