# 12 January 2010: End of the iPhone marketing exclusivity in France

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**The Autorité de la concurrence accepts the commitments of Apple and Orange and makes them compulsory**

**> Version française**

In early November 2009, the *Autorité de la concurrence* had received commitment proposals from Apple and France Telecom, and had published them on its website in order to gather the observations of interested third parties (for more information, see the market test and press release published on 3 November 2009).

After examining them, the *Autorité de la concurrence* has decided to accept these commitments subject to several adjustments, that it obtained during the hearing, in order to clarify and improve the submitted proposals. As such, it is now issuing a decision that renders them compulsory and that closes the litigation procedure that had been launched against Apple and France Telecom.

As a reminder, on 17 December 2008 (1) , pending a decision on the merits, interim measures had been imposed so as to ensure that iPhone products would no longer be marketed and sold solely by Orange, but rather by any other operator that wished to put together an offer using this handset (decision confirmed by the Paris Court of Appeal on 4 February 2009).

**The commitments of Apple and Orange**

The commitments proposed by Apple and Orange aim at answering to the competition concerns that had been brought to light by the Case Officer during his preliminary assessment. These concerns revolved around the exclusivity granted by Apple to Orange for the marketing and sale of the iPhone on French territory, and did not relate to the other aspects of the contracts signed between Apple and mobile telephone operators, on which the *Autorité* made no comment.

With regard to the issue of exclusivity, the proposed commitments confirm the situation that resulted from the application of the injunctions that had been imposed as interim measures.

These commitments firstly allowed SFR and Bouygues Télécom to sign contracts with Apple relative to the distribution of the 3G, and now 3GS iPhone, and secondly they suspended the wholesaler exclusivity of Orange.

• Apple undertakes, "*for a period of three years as of the publication of the future decision on the website of the Autorité de la concurrence, not to conclude and/or implement, with mobile telephone operators, any operator exclusivity or wholesaler agreement relative to the distribution, throughout all or part of French territory, of current or future models of the iPhone, with the exception of exclusivity agreements relating to future models of the iPhone, the non-renewable duration of which cannot be greater than three months for each new model*."

• For its part, Orange undertakes :

- "*for a period of three years as of the publication of the future decision on the website of the Autorité de la concurrence, not to implement with Apple, on French territory or any part thereof, any operator exclusivity or wholesale agreement relating to the distribution of the current iPhone models.*"

- "*for a period of three years as of the publication of the future decision on the website of the Autorité de la concurrence, not to conclude and/or implement, with Apple, any operator exclusivity or wholesaler agreement relative to the distribution, throughout all or part of French territory, of future models of the iPhone, with the exception of non-renewable exclusivity agreements, the duration of which cannot be greater than three months for each new model.*"

- "*to bring the iPhone distribution contracts of its distributors into line with decision n°*

*08-MC-01, and to do so within two months of the publication of the future decision on the website of the Autorité de la concurrence, so as to confirm the deletion of the clauses that had been suspended on a temporary basis pursuant to article 3 of this decision. This modification will require the distributors to be informed of the inapplicability and deletion of the said clauses. Orange will keep the Autorité de la concurrence informed regarding the implementation of this commitment, within three months of the publication date of the future decision on the website of the Autorité de la concurrence, by providing the Autorité with copies of its notification letters*."

To consult the full text of decision 10-D-01 of 11 January 2010, relative to the practices implemented in the distribution of iPhones, please visit the Internet site of the Autorité de la concurrence: www.autoritedelaconcurrence.fr

(1) Decision 08-MC-01 of 17 December 2008 from the Conseil de la concurrence. As part of the reform brought about by the LME law of 4 August 2008, the Autorité de la concurrence, the fields of competence and powers of which have been broadened, took over from the Conseil de la concurrence as of 2 March 2009.