14 June 2010: Convergence between fixed-line and mobile telecoms

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The crossed usage of client databases is possible, including by Orange.

In view of the competition-related risks, the marketing of convergence offers by the latter operator merits case-by-case attention.

The Autorité issues recommendations in order to improve the market fluidity.

> *Version française*

On its own initiative, the *Autorité de la concurrence* has decided to issue an opinion on the question of the crossed usage of client databases (known as "cross-selling"), and more specifically on the possible effects of such practices within the telecommunication sector. It combined this self-referral with the older one from the Minister for the economy "*on the competitive situation and on the operating status of the electronic communication markets in view of the profound changes that they are currently undergoing".*

The convergence movement between fixed-lines and mobiles is leading to the appearance of a "universal" operator model, resulting in the emergence of new commercial practices.

When the electronic communications sector first opened to competition, the fixed-line telephone, mobile telephone and high speed Internet access markets initially developed in a relatively independent manner. In recent years, operators have focused on "convergence" strategies between these various markets, through diversification, merger or partnership operations. The market is now heading towards a "universal operator" model, i.e. an operator able to meet all the needs of consumers.

This evolution is logically prompting operators to firstly make crossed usage of their client databases - i.e. using the commercial data already obtained in one market (for example, mobile telephones) in order to develop in another market (for example, high speed Internet) - and also to propose “all in one” bundled offers, referred to as convergence offers. This can include commercial convergence of the “triple play” type (fixed-line, Internet, television) and more recently of the “quadruple play” type (fixed-line and mobile telephone, Internet and television), or technical convergence.

In October 2008, Bouygues Télécom launched a quadruple play offer (Idéo), and SFR is preparing to do likewise. Moreover, these two operators are using their client files and agency networks relative to their mobile telephone activity in order to promote their high speed Internet access offers. Faced with the apparent success of these commercial practices, France Telecom - Orange has questions about its ability to adopt this model without violating competition law. It very recently announced its intention to “counterattack” by launching its own quadruple play offer.

Orange’s crossed usage of client databases would not appear to cause, in and of itself, any foreclosure effect.

In general, the crossed usage of client databases and bundling offers are beneficial for consumers: they can result in cost savings that are likely to be passed on to consumers through lower prices, while increasing the competition intensity by lowering entry barriers. However, they can result in anticompetitive effects when they are used by a company in a dominant position that is using leverage in order to oust its competitors.

In the telecommunication sector, Orange’s crossed usage of its client databases between the mobile and high speed markets would not, at first glance, appear to distort competition in and of itself. Indeed, these data do not constitute inside information that cannot be reproduced by competitors: they have been acquired through merit-based competition. Moreover, even though it is currently difficult to assess the impact of these practices already being used by Bouygues Télécom and SFR, it would seem that the recent evolution of market shares in favour of the latter two companies is tied more to the attractive prices of the new bundling offers proposed to consumers, or to other factors such as service quality, than to the crossed usage of client databases.

On the other hand, Orange's marketing of convergence offers entails competition risks, notably as long as the situation remains blocked in the mobile market: it deserves case-by-case attention.

• Firstly, the generalization of convergence offers could further increase the cost for a consumer to change operators.
In the mobile telephone market, the long commitment terms and the increase of proposed added value services (applications, audio downloads, video or games, storage space…) serve to hinder change on the part of the consumer. On the high speed Internet access market, the barriers for changing operators are more of a technical nature: Internet access is interrupted until the new operator has made the connection. Moreover, difficulties persist with regard to the portability of telephone numbers. The risk is that convergence offers will lead to change costs piling up, thereby limiting the competition intensity.

• Secondly,convergence offers bring to light a risk of foreclosure, no longer only of customers, but also of households: when a household has a high speed Internet subscription and several mobile subscriptions, the technical or pricing benefits of bundling and convergence offers prompt members of the household to migrate towards a single operator for all of their needs. However, there are strong chances that this movement will mechanically benefit operators that have the best market shares ("club effect").

• Thirdly, in view of the entry barriers in the mobile market, the generalization of convergence offers could distort competition for the benefit of the three existing mobile operators, and to the detriment of other operators. Indeed, in a sector that is moving towards a model of a universal operator that can provide consumers with "all in one" offers, an operator, however efficient, that experiences difficulties penetrating one of the markets in question could find itself severely penalized in the exercise of competition, thereby running the risk of being excluded. This risk could be mitigated if the fourth mobile operator, Free, were to quickly benefit from domestic roaming services on one of the existing networks, not only for 2G but also for 3G, in view of the very considerable success of smartphones and of “3G keys”. However, the Autorité has noted that negotiations have now ground to a halt on this point.

The Autorité recommends the adoption of measures in order to improve the market fluidity and to prevent foreclosure risks.

Even though not directly relating to competition law, the *Autorité* takes note that certain measures that are favourable to consumers, and that tend to facilitate changing operators, could also improve the market fluidity and prevent the risk of households being foreclosed with a single operator.

For example, these measures could relate to the commitment terms, the re-commitment conditions for customers subscribing for a bundling offer, synchronizing of the terms of the subscriptions for the high speed and mobile services, the standardisation of certain functionalities in order to ensure interoperability, as well as the portability of the current and future convergent services (unique numbers or remote applications, for example), intended for consumers who have multiple subscriptions with a single supplier and who wish to change their supplier.

Some of these measures could be implemented on the initiative of operators, while others may require the adoption of legislative or regulatory texts. In this regard, the Autorité takes note that, in the summer, the ARCEP (French telecommunications and post regulator) is to deliver a report to the government on the implementation of the law of 3 January 2008 for the development of competition for the benefit of consumers.

> For more details, please consult the full text of the opinion 10-A-13 of 14 June 2010 relative to the crossed usage of client databases