24 January 2012: Mobile telephony in La Réunion and Mayotte

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The Autorité de la concurrence fines SRR (a subsidiary of SFR) for not having fully complied with the Autorité's decision enjoining it to put an end to the excessive differences in prices it charged depending on the network called by its customers

> Version française

The Autorité de la concurrence fines SRR (an SFR subsidiary in La Réunion and Mayotte) 2 million euros for not having fully complied with its injunction pronounced against it in September 2009 (see **decision 09-MC-02** and the **press release**).

The interim measure taken by the Autorité de la concurrence in 2009[1]

Referred to by Orange (Orange Réunion, Orange Mayotte) and Outremer Télécom, two of the three main mobile phone operators in La Réunion and Mayotte, the Autorité noted in September 2009 that SRR, the market leader, had put in place potentially unfair pricing differences between "on net" calls (made by its customers on its network) and "off net" calls (to another network)[2]. This pricing policy meant that calls made within its network were more attractive and gave other operators an image of operators that were "expensive to call". It therefore automatically tended to favour the SRR network, the largest in number of customers, by creating an artificial "club effect", with consumers favouring the operator offering the possibility be calling and being called by the greatest possible number of people at a lower cost.

Noting that the mobile telephony market in the Réunion-Mayotte area at the time was at a turning point (deployment of 3G networks, the advent of smartphones, the approach of Christmas and New Year, traditionally conducive to telephone sales), the Autorité de la concurrence had ordered an interim measure to put an end to this situation likely to favour SRR, and asked the operator to do away with these differences in pricing (for text messages and voice calls), which could not be justified by the differences in costs borne by the operator. The injunction, applicable from 1st December 2009 in La Réunion and 1st February 2010 in Mayotte, applied to the operator's prepaid offers, blocked accounts and its Maxxi and Intégral packages.

Notwithstanding the Autorité's decision, SRR maintained the difference in pricing between "on net" and "off net" calls (which was greater than the cost difference) throughout 2010 in La Réunion

After starting ex officio proceedings, the Autorité noted that its injunction had been complied with for text messages but not for voice calls. For four commercial offers marketed in La Réunion[3], two prepaid offers and two fixed-rate packages, SRR maintained a 3-cent difference in price per minute throughout 2010 between the price of calls made on its network and that of calls made to competitors' networks, a difference that exceeded the cost differences the operator bore for these two types of call. This practice affected nearly one third of SRR's customers in La Réunion.

A serious practice that deserves to be sanctioned

The fact that a company disregards an injunction of the Autorité de la concurrence is serious as a matter of principle, as recalled by the Paris court of appeal case law. That notwithstanding, in the case in point the Autorité has noted that the injunction had been complied with in respect of most of the offers, and as for the others, the price differential only exceeded costs by 0.33 cents per minute.

Accordingly, the Autorité has imposed a financial penalty limited to 2 million euros on SRR.

[1] *The Autorité will soon issue its decision on the merits of the case.*
[2] *Schematically, there are two parts of a mobile call: call origination then call termination. For an "on net" call, origination and termination of the call occur on the same network and the operator only needs to handle two internal operations. For an "off net" call, the caller's operator handles origination then routes it to the called party's operator (the end point), which handles call termination. The called party's operator invoices the caller's operator for this call termination service. So, for an "off net" call, the operator has to handle origination then purchase a call termination service from a third-party operator.*
[3] *La Carte Réunion, La Carte Réunion à la seconde, Compte Liberté Réunion Kozagogo, Compte Liberté Réunion Kozagogo à la seconde.*

> Full text of decision 12-D-05 of 24 January 2012 on SRR's partial inobservance of the injunction imposed by decision 09-MC-02 of 16 September 2009

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