13 June 2014: Mobile Telephony in La Réunion and Mayotte

Published on June 18, 2014

The Autorité de la concurrence fines SFR and its subsidiary in La Réunion SRR nearly 46 million euros.

> *Version française*

The Autorité de la concurrence has today issued a decision whereby it has imposed a fine of 45.9 million euros against SFR and its subsidiary in La Réunion SRR, for having implemented and maintained (for over 12 years in La Réunion and over three years in Mayotte) unfair pricing differences between calls made to other customers of the SRR network (*on net* calls), and calls to its competitors' networks (*off net* calls), that were charged at a higher price.

Background of the case

For the record, Orange (Orange Réunion and Orange Mayotte) and Outremer Télécom[1] brought a complaint to the Autorité de la concurrence, accusing SRR of abusing its dominant position in La Réunion and Mayotte by practising unfair pricing differentiation between on net calls and *off net* calls.

In its first decision issued in 2009 as an interim measure, the Autorité de la concurrence ordered SRR (several weeks before the Christmas and New Year holidays representing a peak sales period) to end its excessive pricing differences linked to the networks that its customers were calling (see press release of 17 September 2009). The company did not challenge this decision.

In 2012, the Autorité de la concurrence fined SRR 2 million euros for not having fully complied with the 2009 decision. Indeed for several deals offered in La Réunion in 2010, SRR maintained a pricing difference between "*on net*" and "*off net*" calls, which exceeded the differences in costs borne by the operator (see press release of 24 January 2012). The operator did not challenge this decision either.

The Autorité de la concurrence is today issuing its decision on the merits of the case.

SRR implemented excessive pricing differentiation – regardless of the costs borne – between calls made within its network and calls made to competitors' networks

As the sole operator in La Réunion until the year 2000, and until 2006 in Mayotte, at the time of the events in question SRR had retained up to 70% of the market share. The operator currently continues to occupy over half of the market in competition with Orange and Outremer Télécom.

As soon as Orange entered the market at the end of 2000, SRR implemented excessive pricing differences in relation to the costs borne for call terminations[2] between calls made to its network and calls made to competitors' networks.

SRR billed its La Réunion customers between 3 and 24 euro cents more for calls made to other networks (e.g. for its Maxxi and Intégral packages, blocked accounts, SFR La Carte etc.), and billed its Mayotte customers up to 26 euro cents more (Intégral, Maxxi and Illimité packages, Liberté accounts and prepaid cards). These pricing differences also cover text messages, which cost between 3 and 10 euros cents more if the recipient was with a competitor (Liberté account, Liberté Illimité account, prepaid cards and Illimité package).

This pricing difference was not justified by the costs borne by SRR for routing these communications

Although the existence of a pricing differentiation is not in itself an infringement, this differentiation becomes an anticompetitive practice when the pricing difference exceeds the differences in price borne by the operator.

In this case, for voice calls, pricing differences were more than 3 times higher than the differences in price borne by SRR in La Réunion. In Mayotte, pricing differences were sometimes more than 50% higher than the differences in price borne by the operator.
For text messages, in both La Réunion and Mayotte, the pricing differences noted were also not justified by differences in price, as the cost of sending a text message to a competitor's network is no more expensive than sending one within the SRR network.

The packages offered created an artificial "club effect", giving competitors the image of networks that were too expensive to call and reducing their financial resources.

- *Magnifying of the club effect*

The excessive pricing differentiation between *on net* and *off net* voice calls and text messages magnified the "club" effect, thus encouraging consumers to subscribe to SRR, which possessed the most customers within the territory (560,000 lines out of the 800,000 open in 2007). Consumers therefore maximized the possibility of calling and being called by the greatest possible number of contacts at an attractive rate.

- *Competing operators may have appeared too expensive to call*

The minimum potential consequence of these practices was to tarnish the "price image" of Orange and Outremer Télécom, which from the point of view of consumers may have appeared as networks that were too expensive to call. SRR's customers could have therefore been encouraged to limit the number of calls that they made to competing operators due to the price of calls.

- *The financial resources of Orange and Outremer Télécom are likely to have been diminished*

By therefore artificially reducing the number of voice calls and text messages to the Orange Réunion and Outremer Télécom networks, SRR may have deprived its competitors of revenue and margins on their voice call termination and text message services, thus limiting their potential means of investment.

Fine issued

These practices relate to packages marketed by SRR in La Réunion from the end of 2000 to mid-2013, and in Mayotte from the end of 2006 to the start of 2010.

The Autorité de la concurrence issued a fine of 45.9 million euros against SRR and SFR. In order to calculate the fine, the Autorité took into account the legal criteria set out by the French Commercial Code (seriousness of the infringement, importance of the harm done to the economy, company's circumstances) in accordance with the practical terms set out by its Notice on the setting of financial penalties of 16 May 2011.

SRR did not challenge the statement of objections and committed to adopt an antitrust compliance programme. It was therefore granted an 18% fine reduction.

Over the last few years, the three operators Orange, SFR and Bouygues Télécom have in turn complained against their competitors' implementation of pricing differentiation practices between ***on net*** calls and ***off net*** calls, which they unanimously consider to be unfair.

In 2009, the Autorité de la concurrence fined in particular Orange Caraïbe and France Télécom for having unfairly hindered the development of competition by putting in place various unfair practices, including an excessive pricing differentiation practice between on net and off net calls in the Antilles-Guyane area (facts and fine were confirmed by the Paris Court of Appeal, see most recently the judgment of 4 July 2013. An appeal before the ***Cour de Cassation*** (French Supreme Court) remains pending.

In 2012, the Autorité de la concurrence fined Orange and SFR 183 million euros for similar practices in mainland France (see press release of 13 December 2012 - appeal pending before the Paris Court of Appeal).

[1] Outremer Télécom (Only brand) was bought out by Altice (which also owns Numericable) in July 2013.

[2] Schematically, a call is made up of a call origination followed by call termination. For an on net call, origination and call termination 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 the call origination then routes it to the called party's operator, which handles call termination. The called party's operator invoices the caller's operator for this call termination service. Therefore for an off net call, the operator has to handle origination then purchase a call termination service from a third-party operator.

> Full text of Decision Nr 14-D-05 of 13 June 2014 on practices implemented in the mobile telephony sector for household customers in La Réunion and Mayotte

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