15th September 2003 : Universal directory : France Télécom sanctioned by the Conseil de la concurrence for breaching an injunction

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> Version française

Following a referral by the companies Sonera France (now Fonecta) and Scoot France, the *Conseil de la concurrence* imposed fines totalling 40 million Euros as part of breach of injunction proceedings.

The injunctions issued

In its decision 98-D-60 dated 29th September 1998 (Filetech case), the *Conseil de la concurrence* issued injunctions against France Télécom for abuse of a dominant position on the market for trade in telephone subscriber lists, and imposed fines.

After having set aside the decision of the *Conseil* for procedural reasons, the Paris court of appeal issued almost identical injunctions in its decision dated 29th June 1999.

On 4th December 2001, the *Cour de Cassation* (Supreme Court) rejected France Télécom's appeal against this decision.

The Paris court of appeal thus ordered the company France Télécom :

"- to provide the complete list, including information contained in the universal directory, to any person requesting it, under identical conditions, subject to the rights of the persons concerned,

- to offer a service under which files containing nominative data held by third parties can be brought into conformity with the so-called "orange" list of

telephone subscribers, irrespective of whether or not the said files are directly drawn from the directory information base ;

[…] these services must be offered under transparent, objective and non-discriminatory conditions, at a price reflecting costs resulting from the technical operations needed to meet this demand […]".

The complaints lodged by Scoot and Sonera

The companies Scoot and Sonera referred breach of injunction proceedings to the *Conseil de la concurrence*, for failure to respect the injunctions issued by the Paris court of appeal. Citing the need to access the list of telephone subscribers in order to exercise their activity, they contest the tariffs imposed on them by France Télécom. They also consider that these tariffs prevent them from achieving economically viable development.

The company Sonera France, which was founded in January 2000, wishes to position its offer on telephone information with added value. Its activity clearly enters into competition with the service proposed by France Télécom, "*le 12*".

The company Scoot France, which was founded in February 2000, wishes to develop an "*intelligent directory*" service, via telephone and Internet.

Offers for access to France Télécom's directory information base

France Télécom proposes two offers to this type of operator:

- On-line data access (consultation) via Intelmatique
- Sale of its entire directory information base

The decision of the *Conseil de la concurrence*

The *Conseil de la concurrence* examined these breach of injunction proceedings in two stages :

- In decision 02-D-41 dated 26th June 2002, it judged that the company France Télécom had failed to adhere to the injunctions pronounced against it by the Paris court of appeal in its decision of 29th June 1999, on the following two points :

- the prices demanded for consulting the directory information base via the services offered by the company Intelmatique do not reflect costs ;

- the sale prices of directory information [...] for users wishing to provide an information service but who do not wish to publish printed directories, are discriminatory compared with those practised within the France Télécom group itself ;

With respect to the demand that tariffs for France Télécom's activity as file manager must reflect costs, which was also included in the court of appeal's injunction, the Conseil referred the dossier to inquiry on this point. An expert was appointed.

However, the Conseil indicated in its decision that the costs referred to were solely those specific to the activities of constituting and managing the universal directory (incremental costs): since France Télécom is unable to exercise its own activity without establishing a commercial file for its subscribers, there are no grounds for the company to pass on the costs common to both its directory management and sales activities to its competitors in the directory and information market.

- In its decision 03-D-43 of 12th September 2003, in light of the conclusions of the expert report and following inter partes proceedings, the *Conseil de la concurrence* judged that France Télécom failed to adhere to the injunction requiring that the tariffs practised for the activity of file manager should reflect costs.

  The appointed expert carried out a comparison between the turnover resulting from France Télécom's file management activity, and the incremental cost of constituting the directory information base. This comparison revealed a clear disparity :

	Year 1999	Year 2000	Year 2001

Costs (expert estimate)	12.96 M Euros (85.02 M Francs)	12.33 M Euros (80.88 M Francs)	11.09 M Euros (72.75 M Francs)
Turnover	16.3 M Euros (106.9 M Francs)	15.71 M Euros (103.05 M Francs)	16.69 M Euros (109.49 M Francs)

Comparisons with other countries, in particular Great Britain, show that the tariffs practised by the historical operators, in some cases after intervention by the industry regulator, are substantially lower than those practised by France Telecom.

On the basis of these elements, the *Conseil de la concurrence* handed down fines against France Télécom for breaching the injunction requiring that its file management activity should reflect costs, as well as for two other practices already established in decision 02-D-41 and those mentioned above.

Seriousness of the practices

In order to appreciate the seriousness of the practices in question, the *Conseil* took into consideration the fact that:

- France Télécom, which had been warned as early as September 1998 (decision 98-D-60) about the excessive nature of the prices invoiced to operators for accessing information contained in the universal directory list, must have been aware that these practices were illegal, as confirmed by the subsequent decisions of the Paris appeal court and the Cour de Cassation (Supreme Court).

  Despite the injunctions issued by the court of appeal and since that date, it took none of the measures necessary to provide these services in a non-discriminatory fashion and at a price reflecting the costs resulting from the technical operations required to meet the demand.
- these excessive prices created an artificial entry barrier to the markets downstream, and prevented the development of activities competing with those of France Télécom, in particular directory and information services. In

this respect, the *Conseil* notes that these practices, to the detriment of consumers, hindered both the lowering of prices of the services concerned and the appearance of innovative services, which would have been encouraged by the free play of competition.

> Decision n° 03-D-43 of 12th September 2003, relative to respecting the injunctions issued against the company France Télécom by the Paris court of appeal in its decision dated 29th June 1999

> Decision n° 02-D-41 of 26th June 2002, relative to respecting the injunction issued against the company France Télécom by the Paris court of appeal in its decision dated 29th June 1999

> Decision n° 98-D-60 of 29th September 1998, relative to practices implemented by the company France Télécom in the sector for sale of telephone subscriber lists

> See decision of the Paris Court of Appeal (6th April 2004) following the appeal lodged against the decision n°03-D-43

> See decision of the Paris Court of Appeal (29th June 1999) following the appeal lodged against the decision n° 98-D-60