

7th November 2000 : the Conseil de la concurrence opens an inquiry into practices by France Télécom Mobiles and SFR in the WAP technology sector

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In a decision dated 7th November 2000, following a referral by the company Wappup.com, the *Conseil de la concurrence* decided to open an inquiry into practices by France Télécom Mobiles and SFR in the WAP technology sector.

At the start of this case, the company Wappup.com submitted a complaint to the *Conseil* concerning the practice of locking mobile telephone handsets used for Internet access, notably included in packs sold by France Télécom Mobiles and SFR. This locking process is a requirement that both mobile telephony operators impose on the manufacturers of the handsets they sell. It means that Internet users using the WAP function of their mobiles are automatically directed to that operator's gateway and portal, and can only connect to a competing gateway by carrying out an operation that involves unlocking the handset, then programming the corresponding gateway.

For the company Wappup.com, an independent mobile Internet access provider, which has a gateway and a portal competing with those of the mobile telephony operators, the practice of locking handsets sold by the mobile telephony operators, linked to the fact that these handsets are not equipped with the OTAP (Over the Air Provisioning) function allowing remote downloads from a competing gateway, distorts the play of competition on the market for mobile Internet access and on that of services accessible via WAP.

Having examined this referral, the *Conseil* considered that there were no grounds for ruling out the possibility that the practices by France Télécom

Mobiles and SFR contravened provisions outlawing agreements and abuses of dominant position that have the aim or effect of restricting the play of competition. It therefore decided to launch a full inquiry on the merits of the case.

On the other hand, the *Conseil* rejected the request for interim measures submitted by the company Wappup.com, which had sought an injunction ordering France Télécom Mobiles and SFR to suspend direct and indirect sales of the handsets locked on the portal or gateway of these operators or their subsidiaries. The Conseil refused to grant interim measures on several grounds.

Firstly, in spring 2000, the *tribunal de commerce de Paris* (Paris Commercial Court) had already taken interim measures, which had since been extended by the *cour d'appel de Paris* (Paris Court of Appeal). These measures were intended to prohibit France Télécom Mobiles from marketing mobile telephones that did not give the user the clearly indicated option of programming the gateway of a competing access provider, simply by carrying out a few simple operations.

Secondly, the *Conseil* observed that the handsets marketed by SFR included a drop-down menu and that by entering the URL of a competing portal, it was possible to access this portal without going through SFR's Vizzavi portal. Thirdly, France Télécom Mobiles declared in session that its new specifications would no longer require manufacturers to incorporate the locking process into handsets, and that 600,000 handsets equipped with OTAP technology would be marketed from the month of October 2000.

Finally, the *Conseil* considered that the company Wappup.com had failed to provide evidence supporting its claim that its negligible sales figures were the result of practices by the mobile telephony operators. This consideration was also based on the observation that certain other mobile Internet access providers, which were subject to the same constraints, had nevertheless recorded several hundred thousand connections to their portals each month.

The referral by the company Wappup.com is the first to be submitted to the *Conseil* on the subject of mobile Internet.