France Télécom fined 40 million FF for abuse of a dominant position

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In a decision dated 23rd July 2001, issued in response to a complaint filed in 2000 by the *Autorité de régulation des télécommunications* (Telecommunications Regulation Authority), the *Conseil de la concurrence* found that, in 1999, the company France Télécom had abused its dominant position on markets in the telecommunications sector. The *Conseil* found that the company had attempted to obstruct access to the major accounts market for new competitors, using methods that are not compliant with merit-based competition. It subsequently fined the company a total of 40 million Francs.

A global offer

In 1999, France Télécom responded to a consultation organised by the company Renault concerning its complete telecommunications requirements. Initially, France Télécom presented its response in the form of a global tailored offer. However, at the time the historical operator was the only one able to offer local communications, except at a very few sites at which operators had deployed their own local loops.

The *Conseil de la concurrence* took the view that by establishing links between the tariff reductions granted and the global volume of communications (local and national), France Télécom had in effect offered the reductions on local communications only on the condition that Renault also give it responsibility for neighbourhood and long-distance communications (services that have recently been opened up to competition). Consequently, this practice had the aim and the effect of obstructing access to the major accounts market for its competitors.

The *Conseil* indicated that in an opinion dated 24th December 1998 (issued at the request of the ART and concerning France Télécom's tailored offers), it had explicitly recommended that these offers, which deviate from procedures to approve France Télécom's tariffs, be presented and justified segment by segment, in order to protect competition.

Tariff scissor effect

France Télécom submitted to Renault a tariff offer that included volume-based reductions for communications from land lines to Itinéris mobiles. Under the terms of the offer, the average tariff invoiced to Renault for this type of communication amounted to approximately 1.33 FF per minute. For communications from land lines to Itinéris mobiles, France Télécom was required to pay France Télécom Mobiles a sum of 1.53 FF per minute, corresponding to the call completion charge (carrying the call from the land line network to the Itinéris mobile network). Any competing operator wishing to submit an offer for communications from land lines to mobiles, would have had to pay the same call completion charge to France Télécom Mobiles. Consequently, he would have been unable to offer Renault a price that was competitive with that offered by France Télécom without making a loss. The tariff that France Télécom offered Renault thus included a “scissor effect”, which ruled out any effective competition on this market.

Even supposing that the prices obtained by Renault offered it an immediate advantage, the fact that competing operators saw their access to the market obstructed by this type of practice is likely to damage the proper play of competition on the telecommunications markets.

It was the first time that the *Conseil de la concurrence* had received a litigious referral from the ART, in application of the Code of Posts and Telecommunications. It was also the first time that the *Conseil* found France Télécom guilty of practices committed posterior to the opening of the market to competition (January 1998).

See the decision (01-D-46)