

**Summary notification form relating to a draft decision of the Autorité de régulation  
des communications électroniques et des postes (ARCEP)  
according to article 7 of directive 2002/21/CE as amended by Directive  
2009/140/EC**

The notification concerns the wholesale market for voice mobile call termination (MCT) provided by Free Mobile, Lycamobile and Oméa Telecom

The section “Market definition” (section 1) concludes that there is one single market on each mobile network. The analysis is detailed in the draft decision.

The section “Designation of undertakings with significant market power” (section 2) concludes that each MNO or full-MVNO holds SMP on its own wholesale voice termination market.

The sections “Regulatory obligations” and “Compliance with international obligations” are respectively treated in sections 3 and 4.

The last section 5 provides the list of all the documents attached to the notification.

## **Section 1 Market definition**

### **1.1. The affected relevant market of services**

The notification concerns the wholesale market for voice call termination provided by Free Mobile, Lycamobile and Oméa Telecom. This market includes all call termination towards mobile numbers opened to interconnection on their respective mobile networks.

### **1.2. The affected relevant geographic market**

The relevant geographic markets correspond to the coverage of each network: France mainland.

### **1.3. Summary of the opinion of the National Competition Authority**

The French Competition Authority (*Autorité de la Concurrence*) concludes in its opinion dated 9<sup>th</sup> December 2011 to the same relevant market definition as ARCEP.

With regards to implementation of the regulation, the Competition Authority states that *“if steady decrease of terminations rates must remain the focus of sector regulation, the transitory setting-up of an asymmetric call termination rate to the benefit of new entrants, including Free Mobile, can allow restoring fair competitive conditions between different actors”*. To that effect, it *« notes that there are all reasons to think that current wholesale access tariffs result from an efficient buying process by new entrants and that they can therefore be accounted for while evaluating termination costs in the short-term »*. (courtesy translations)

### **1.4. Overview of the results of the public consultation to date on the proposed market definition**

ARCEP carried out an initial consultation from September 8<sup>th</sup> to October 10<sup>th</sup> 2011 and received 10 answers, all of them including a public part. Contributors have mainly supported ARCEP's analysis regarding market definition.

A second consultation has been launched from December 9<sup>th</sup> 2011 to January 27<sup>th</sup> 2012 prior to the notification to the Commission and other NRAs. ARCEP received 10 answers, all of them including a public part. No more comments were made by the contributors on market definition.

A third consultation has been launched from February 16<sup>th</sup> 2012 to March 2<sup>nd</sup> 2012 on additional information regarding the methodology use by ARCEP to determine the cost evaluation related to an access to a third-party's network. ARCEP received 4 answers, all of the including a public part. No more comments were made by the contributors on market definition.

The operators' comments on all consultations have been synthesised on Annexe B (B.1, page 85) of the notified document.

**1.5. Differences with the Recommendation on relevant markets**

None.

## **Section 2 Designation of undertakings with SMP**

### **2.1. Name of the undertaking designated as having significant market power**

Each MNO or full-MVNO holds SMP on its own wholesale market for voice call termination: Free Mobile, Lycamobile and Oméa Telecom.

### **2.2. Name(s) of the undertaking(s) designated as having collectively significant market power**

N/A

### **2.3. Criteria relied upon for deciding to designate or not an undertaking as SMP**

- market shares;
- control of the location database infrastructure;
- lack of consumers' countervailing buyer power on the retail market;
- lack of countervailing buyer power from MTC buyers (fixed or mobile operators) on the wholesale market;
- lack of potential competition and high entry barriers on the market.

### **2.4. Name of the main undertakings (competitors) present / active in the relevant market**

There are no competitors on the relevant markets, as each MNO or full-MVNO holds 100% of market shares on its own MCT market.

### **2.5. Market shares**

Each MNO or full-MVNO holds 100% of market shares on its own MCT market.

### **2.6. Summary of the opinion of the National Competition Authority**

The French Competition Authority (*Autorité de la Concurrence*) agrees with the conclusion of ARCEP on the SMP exerted by all MNOs or full-MVNO on their own relevant market.

### **2.7. Results of the public consultation to date**

ARCEP carried out an initial consultation from September 8<sup>th</sup> to October 10<sup>th</sup> 2011 and received 10 answers, all of them including a public part. Historic operators and Lebera Mobile agreed with the finding of SMP, while Free Mobile and full-MVNOs did not.

A second consultation has been launched from December 9<sup>th</sup> 2011 to January 27<sup>th</sup> 2012 prior to the notification to the Commission and other NRAs. ARCEP received 10 answers, all of them including a public part. No more comments were made by the contributors on designation of undertakings with SMP.

A third consultation has been launched from February 16<sup>th</sup> 2012 to March 2<sup>nd</sup> 2012 on additional information regarding the methodology use by ARCEP to determine the cost evaluation related to an access to a third-party's network. ARCEP received 4 answers, all of the including a public part. No more comments were made by the contributors on designation of undertakings with SMP.

The operators' comments on all consultations have been synthesised on Annexe B (B.1, page 85) of the notified document..

### **Section 3 Designation of undertakings with SMP**

#### **3.1. The legal basis for the obligations to be imposed, maintained, amended or withdrawn**

The imposition of the proposed obligations is based on the articles 9 to 13 of the Access Directive (implemented by the L.38 article in the French post and electronic communications code).

The obligations planned on the wholesale call termination markets are the following:

- A: Obligation to grant access and interconnection (article 5);
- B: Obligations of non-discrimination (article 6);
- C: Obligation of transparency : publication of a reference offer (article 7);
- D: Obligation of accounting separation and of cost accounting, only for MNO Free Mobile (article 9);
- D. Price control (article 10-11);

#### **3.2. Reasons for which the imposition, maintenance or amendment of obligations on undertaking are proposed**

The reasons for which the obligations are imposed are set out in full in the draft decision, defining the regulatory obligations that are imposed to each MNO or full-MVNO on their relevant market.

A: Obligation to grant access and interconnection	→ 5.2
B: Obligations of non-discrimination	→ 5.3
C: Obligation of transparency	→ 5.4
D: Obligation of accounting separation and of cost accounting	→ 5.5
E: Price control	→ 6

In particular, section 6.3 analyses asymmetry criterias related to the recommendation:

-> Sub-sections 6.3.1 and 6.3.2 (pages 50 à 53) respectively introduce articles 9 and 10 of the recommendation, and to which extend these articles apply to the present situation.

-> Sub-sections 6.3.3 and 6.3.4 (pages 53 to 56) respectively introduce new entrant status and existing of barriers to enter the market

-> Sub-section 6.3.5 analyses incremental costs of new entrants and in particular sub-section 6.3.5.2.2 (pages 58 à 66) deals with the relevance of taking into account costs related to an access to a third-party's network and introduces the basis of efficient economic conditions of generic access. In these subsections, we have found that:

- A new operator will necessarily use an access to a third-party's network, in order to ensure continuity of its services, for a transitory period during which it is deploying its coverage network.
- Access costs represent an additional cost with regards to generic costs because a roaming service, involving an additional actor in the value chain, comes on top of the termination service.
- Use of roaming services will decrease over time because of the operator's coverage obligations and incentives to use its own network to reduce its costs. The increasing proportion of on-net traffic over-time is taken from the operator's obligation, which is considered efficient, and does not depend on its real deployment rate ; this ensures that the operator will not be over compensated in case of slow deployment.
- Defining the efficient economic conditions of a generic access seems an appropriate way to account for these temporary but forced mark-ups:
  - o it prevents from taking into account inefficiencies generated by poor negotiations, as the economic conditions of the generic access are independent of the one of the contracts seen on the market ;
  - o eventual tariff decrease don't have any immediate and direct impact on termination rates once a generic contract is defined, so that hosted operators keep incentives to negotiate better conditions ;
  - o it prevents new entrants from collaborating with hosts by accepting high access tariffs to get high termination rates, in order to share resulting revenues ;
  - o conditions of the generic contract will not be shared with operators in order not to influence commercial negotiations in either way.

### **3.3. Exceptional circumstances**

N/A

### **3.4. Results of the public consultation to date**

ARCEP carried out an initial consultation from September 8<sup>th</sup> to October 10<sup>th</sup> 2011 and received 10 answers, all of them including a public part. Price caps were not submitted in this initial consultation, but ARCEP asked questions on underlying principles likely to justify an asymmetry. Historic operators and Lebera Mobile found no ground for setting asymmetric price caps, while Free Mobile and full-MVNOs did.

A second consultation has been launched from December 9<sup>th</sup> 2011 to January 27<sup>th</sup> 2012 prior to the notification to the Commission and other NRAs. ARCEP received 10 answers, all of them including a public part. Many comments have been made by operators, particularly on price control.

A third consultation has been launched from February 16<sup>th</sup> 2012 to March 2<sup>nd</sup> 2012 on additional information regarding the methodology use by ARCEP to determine the cost evaluation related to an access to a third-party's network. ARCEP received 4 answers, all of the including a public part. Many comments have been made by operators, particularly on price control.

The operators' comments on all consultations have been synthesised on Annexe B (B.2 to B.5, pages 86 to 94) of the notified document.



## Section 4 Compliance with international obligations

4.1. Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players

N/A

4.2. The name(s) of the undertaking(s) concerned

N/A

4.3. Which are the international commitments entered by the Community and its Member States that need to be respected

N/A

## Section 5 Documents included in the notification

NB: All the documents listed in this summary notification form are in French.

### Notification

	Filename	Status
Cover letter	Lettre de couverture M7 ARCEP.pdf	Public
Notification form (English)	Notification form M7 ARCEP.pdf	Public

### Draft decisions

	Filename	Status
Draft decision		
- Confidential version (i.e. including confidential data)	2012-03-12-projet de décision ADM TAM Free MVNO_CP CE vconfidentielle.pdf	Confidential
- Public version	2012-03-12-projet de décision ADM TAM Free MVNO_CP CE vpublique.pdf	Public

### Opinion of the national competition authority

	Filename	Status
<i>Autorité de la concurrence's</i> opinion (n° 11-A-19)	Avis ADLC 11-A-19.pdf	Public
Preliminary consultation on ARCEP analysis amended according to consultation results	2011-10-21-projet de décision ADM TAM Free MVNO_CP ADLC vf pub.pdf	Public

### Contributions received

Orange France		
- Confidential version	OF - ADLC Full MVNO et FreeVF version confidentielle.pdf	Confidential
- Public version	ADLC Full MVNO et Free	Public

	Réponse FT Orange version publique.pdf	
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**Initial consultation from September 8<sup>th</sup> to October 10<sup>th</sup> 2011**

	Filename	Status
Preliminary public consultation on ARCEP analysis	2011-09-08-projet de décision ADM TAM Free MVNO_CP I vf pub.pdf	Public

**Contributions received**

Bouygues Telecom	Réponse BOUYGUES TELECOM - CONFIDENTIELLE.pdf	Confidential
- Confidential version		
- Public version	Réponse BOUYGUES TELECOM - PUBLIQUE.pdf	Public
Alternative Mobile	Réponse ALTERNATIVE MOBILE - CONFIDENTIELLE.doc	Confidential
- Confidential version		
- Cover letter	Courrier ALTERNATIVE MOBILE – CONFIDENTIEL.doc	Confidential
- Public version	Réponse ALTERNATIVE MOBILE - PUBLIQUE.doc	Public
Free Mobile	Réponse FREE MOBILE - CONFIDENTIELLE.pdf	Confidential
- Confidential version		
- Public version	Réponse FREE MOBILE - PUBLIQUE.pdf	Public
France Télécom	Réponse FRANCE TELECOM - CONFIDENTIELLE.pdf	Confidential
- Confidential version		
- Public version	Réponse FRANCE TELECOM - PUBLIQUE.pdf	Public
Oméa Télécom	Réponse OMEA TELECOM -CONFIDENTIELLE.pdf	Confidential
- Confidential version		
- Public version	Réponse OMEA TELECOM - PUBLIQUE.pdf	Public
NRJ Mobile	Réponse NRJ MOBILE - CONFIDENTIELLE.pdf	Confidential
- Confidential version		

- Public version	Réponse NRJ MOBILE - PUBLIQUE.pdf	Public
SFR		
- Confidential version	Réponse SFR - CONFIDENTIELLE.pdf	Confidential
- Cover letter	Courrier SFR - CONFIDENTIEL.pdf	Confidential
- Public version	Réponse SFR - PUBLIQUE.pdf	Public
Lebara Mobile		
- Confidential version	Réponse LEBARA MOBILE - CONFIDENTIELLE.pdf	Confidential
- Cover letter	Courrier LEBARA MOBILE - CONFIDENTIEL.pdf	Confidential
- Public version	Réponse LEBARA MOBILE - PUBLIQUE.pdf	Public
Lycamobile		
- Confidential version	Réponse LYCAMOBILE - CONFIDENTIELLE.pdf	Confidential
- Presentation	Présentation LYCAMOBILE -CONFIDENTIELLE.pdf	Confidential
- Public version	Réponse LYCAMOBILE - PUBLIQUE.pdf	Public
Transatel		
- Confidential version	Réponse TRANSATEL - CONFIDENTIELLE.pdf	Confidential
- Public version	Réponse TRANSATEL - PUBLIQUE.pdf	Public

### Second consultation from December 13<sup>th</sup> 2011 to January 27<sup>th</sup> 2012

	Filename	Status
National public consultation on ARCEP draft decision	2011-12-13-projet de décision ADM TAM Free MVNO_CP II vf SDA.pdf	Confidential
	2011-12-13-projet de décision ADM TAM Free MVNO_CP II vf pub.pdf	Public

### Contributions received

Bouygues Telecom	Réponse Bouygues Telecom 2ème	
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Public version	Consultation TA Free-Full MVNO - publique.pdf	Public
Free Mobile Confidential version	Réponse FREE MOBILE 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential
Public version	Réponse FREE MOBILE 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
Oméa Telecom Confidential version	Réponse Omea 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential
Public version	Réponse Omea 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
Orange France Confidential version	Réponse OF 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential
Public version	Réponse OF 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
NRJ Mobile Confidential version	Réponse NRJ 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential
Public version	Réponse NRJ 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
SFR Confidential version	Courrier SFR 2ème Consultation TA Free-Full MVNO.pdf	Confidential
Confidential version	Réponse SFR 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential
Public version	Réponse SFR 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
Outremer Telecom Confidential version	Réponse OMT 2ème Consultation TA Free-Full MVNO - confidentielle.pdf	Confidential

Public version	Réponse OMT 2ème Consultation TA Free-Full MVNO - publique.pdf	Public
Individual Public version	Yohann Journe - publique.msg	Public
	Thierry Vaschalde - publique.msg	Public
	Aurélien Billioud - publique.msg	Public

### Third consultation from February 16<sup>th</sup> 2012 to March 2<sup>nd</sup> 2012

	Filename	Status
Consultation on economic conditions of the generic access	Méthodologie construction du contrat d'accès générique efficace.pdf	Confidential

### Contributions received

Bouygues Telecom	Confidential version	2012 03 02 - Réponse BYG sur méthodologie_confidentielle.pdf	Confidential
	Public version	2012 03 02 - Réponse BYG sur méthodologie_publice.pdf	Public
Oméa Telecom	Public version	2012 03 02 - Réponse Omea sur méthodologie_publice.pdf	Public
Orange France	Confidential version	2012 03 02 - Réponse OF sur méthodologie_confidentielle.pdf	Confidential
	Public version	2012 03 02 - Réponse OF sur méthodologie_publice.pdf	Public
SFR	Public version	2012 03 02 - Réponse SFR sur méthodologie_publice.pdf	Public

