

France

1. Country facts

1.1 Political background

The Constitution of October 4, 1958 provides the institutional basis for the Fifth Republic.

The Head of State, the President of the Republic, is elected for a five-year term by direct universal suffrage. Mr. Jacques Chirac became the fifth President of the Fifth Republic on May 7, 1995 for the last seven-year mandate and was reelected on May 5, 2002 for a five-year term.

The President of the Republic appoints the Prime Minister (currently Mr. Jean-Pierre Raffarin) and the other members of the government.

Under the direction of the Prime Minister, the government sets and carries out national policies. It is responsible for its actions to Parliament. The Prime Minister directs the operations of the government and ensures the implementation of legislation.

The Parliament is formed of two assemblies:

- The Senate, elected for a nine-year term by indirect universal suffrage, with one third renewed every three years. The last election took place in September 2001.
- The National Assembly, whose members (deputies) are elected by direct universal suffrage for a five-year term. The most recent general election was held in June 2002.

1.2 Demography

Population: 61.4 million (January 1, 2003)

Density: 107 inhabitants per km².

France has 52 urban areas with over 150,000 inhabitants with a total population of 30 million; the five largest ones are: Paris with 10.6 million, Lyon with 1.6 million, Marseille-Aix-en-Provence with 1.4 million, Lille with 1.1 million and Toulouse with 0.9 million inhabitants (1999).

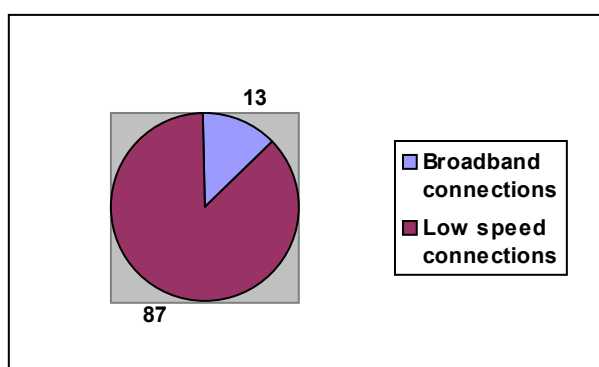
The French Republic comprises metropolitan France, divided into 22 regions and subdivided into 96 departments, along with four overseas departments (DOM) - Guadeloupe, Martinique, Guyane (French Guiana) and Réunion. It also includes four overseas territories (TOM) - French Polynesia, New Caledonia, Wallis and Futuna and the French Southern and Antarctic Territories - and two "territorial collectivities" with a special status, Mayotte and St Pierre and Miquelon.

1.3 Telecom consumption habits

Fixed voice telephony	1998	2000	2001	2002
Main lines per 100 inhabitants	58.39	57.93	57.35	n.d.
Total traffic volume (minutes per capita)	n.d.	n.d.	482.67	440.85
Mobile telephony	1998	2000	2001	2002
Mobile telephony subscribers per 100 inhabitants	18.78	49.33	60.53	64
Total traffic volume (minutes per capita)	n.d.	n.d.	182.36	206.48
Internet	1998	2000	2001	2002
PCs per 100 inhabitants	23.22	30.43	33.7	n.d.
Internet users per 100 inhabitants	6.34	14.43	26.38	37
Average surfing time per month in average (hours)	n.d.	n.d.	6.43 (07/01)	10.37 (06/02) 9.01 (10/02)

Source: ITU

Figure 1: Broadband and low-speed Internet connections in 2001 (% of online users at home) in France



Source: *The Current state of Play, Australia's scorecard, National Office for Information Economy Australia, 2002*

2. Brief telecom history

2.1 Historical background and liberalization process

Telecom liberalization in France and in most European countries was mainly influenced by the European Commission.

The liberalization of the French telecom market took place in several steps:

- 1941: Foundation of the DGT (*Direction Générale des Télécommunications*) belonging to the formal Ministry of PTT, when the government realized the importance of telecommunications research and development.
- 1987: SFR (*Société française de radiotéléphonie*) obtains the authorization to carry out and operate a public analogue wireless telephony service.
- 1988: Foundation of France Télécom or FT (former DGT).
- 1991: SFR and FT obtain the authorization to carry out and use a GSM public wireless telephony service. FT becomes an autonomous provider of public service (*exploitant de droit public*).
- 1994: Bouygues Télécom obtains the authorization to carry out a wireless telephony service (DCS1800 norm).
- 1996: January 16: European Commission Directive (Nr. 96/2) allows small mobile carriers to use other infrastructures than those of the incumbent.
- March 13: Directive (Nr. 96/19) on the implementation of full competition in telecommunication markets allows the liberalization of alternative infrastructures from July 1, 1996.
- July: New telecommunications law, essentially amending the existing Posts and Telecommunications Code of 1990 (CPT: *Code des Postes et Télécommunications*) which remains the cornerstone of French telecommunications policy. The main innovation of this new Act is the introduction of full market competition from January 1, 1998 in line with the European Union's directives and the creation of a regulatory authority, ART (*Autorité de Régulation des Télécommunications*).
FT becomes a limited liability company.
- 1997: July: ART confirms the possibility of using the cable for telephony service.
- Dec. 1997: The government delivers the first operators licenses (Cegetel, Omnicom, 9 Télécom, Siris, etc.).
FT becomes a stock corporation and enters the NY stock exchange.
- 1998: January 1: Beginning of competition on the fixed voice telephony market, call-by-call carrier selection for international and domestic long-distance calls.
- 2000: January 1: Carrier pre-selection for long-distance.

FT introduces its Internet subsidiary, Wanadoo and buys the British mobile company Orange. FT becomes the European Nr.2 in this field.

2001: January: Launch of local loop unbundling (LLU).

2002: January: Extension of pre-selection for local calls.

2.2 Incumbent operator

Despite liberalization and increased competition, France's telecommunications market continues to be dominated by FT, which is the third largest telecommunications carrier in Europe in terms of revenue, after DTAG (Germany) and Vodafone (UK). During the first half of 2001, FT earned a revenue of 18.63 billion € from its telecommunications operations, ranking it as the eighth largest telecommunications operator in the world.

Until 1997, FT was wholly state-owned like most other European incumbents. In October 1997, about one third of FT was privatized. Like in Germany, the French government still owns the majority of the incumbent, i.e. 56.45%; public shareholders own 32.25%; the Treasury of France (Ministry of finances) owns 8.26% and employees own the remaining 3.04%.

The partial privatization of FT provided capital and stock that allowed FT to make the acquisitions and other necessary investments to become a truly global operator (customers in 22 countries). In fact, FT earns 36% of its revenues from outside of France and 10% of its shareholders are non-French. FT's mobile division, Orange, has subsidiaries in every EU member state except Spain.

Like many other IT companies, FT was hit in recent years by the economic slowdown, losing more than two thirds of its capitalization between its peak in the spring of 2000 and the end of 2001 and another 50% during the following year¹.

FT has 7 principal lines of business, provided by the following 7 subsidiaries, most of which are wholly owned by FT:

- Fixe et distribution France: Everything concerning fixed telephony.
- FT Cable: Provides cable TV service to 2.1 million people in Europe.
- FT multimedia: Provides multimedia services such as Internet access and telephone directories through two subsidiaries, Wanadoo and Olean, making FT the third largest ISP in Europe.
- France Cables et Radio: Builds and manages national and international telecommunications networks.
- Telediffusion de France: Provides primarily audiovisual distribution services but also mobile and data communications.
- Orange: A holding company, 85% of which is owned by FT, with subsidiaries in 20 countries, serving 33 million mobile subscribers as of September 2001.

¹ Source www.reuters.com

- Equant: Based in Amsterdam, 54% owned by FT. One of the leading providers of international IP and data services to multinational businesses, with operations in over 140 countries.

FT recorded a net loss of 8 billion € in 2001. FT's loss was mainly due to payments on its staggering debt burden of about 70 billion €², to overpayments for recent acquisitions like the German mobile operator Mobilcom and British cable TV operator NTL, and to the purchase of licenses to offer 3G wireless services in numerous countries. This loss was a major turnaround for a company that had earned considerable after-tax profits for each of the preceding two years.

The former FT Chairman Michel Bon who had already begun with cutting the losses of FT was replaced on October 2, 2002 by Thierry Breton, ex President of Thomson SA and Thomson Multimedia. FT Group announced the results of its in-depth-study and launched the so-called "FT 2005" strategy on December 4, 2002. This initiative includes 4 components:

- TOP: A program to improve operational performance, which will generate more than 15 billion € in free cash flow to reduce debt;
- "15+15+15": A plan to strengthen the group's financial structure: 15 billion € via the TOP program; 15 billion € in fresh equity, with the participation of the French State in the capital increase as shareholder pro rata for approximately 9 billion €, and 15 billion € from refinancing the group's debt;
- A strategy focused on customer satisfaction and an integrated operational management of a portfolio of assets comprising business that are leaders in their principal markets, with strong brands such as FT, Orange, Wanadoo and Equant. Assets with weak strategic and financial positions or those for which majority control is not possible will be considered being divested;
- A completely new management team with a simplified organization and greater responsibility assigned to managers.

² Source France Télécom, Investor Fact sheet, first-half 2002

Table 1: France Télécom Profile

Name	France Télécom (FT)
Services	Full service: Fixed, mobile and Internet
Ownership %	56.45% French state, 32.25% Public, 8.26% Treasury shares, 3.04% Employees

Market share %	Subscribers	Call minutes	Revenues
Fixed lines¹	n.d.	N/A	n.d.
Local calls	N/A	85.4%	89.8%
Long-distance	N/A	61.6%	74.3%
International	N/A	63.2%	67.6%
Mobile²	n.d.	49.8%	n.d.
Internet (active PC's connection repartition)³	n.d.	36.19%	n.d.
Dial-up⁴	n.d.	35%	n.d.
DSL⁵	90%	N/A	n.d.
Cable⁶	20.37%	N/A	n.d.

¹ August 2002 in 8. implementation Report – Annex 1-, European Commission, December 3, 2002

² December 31, 2002, ART, Mobile Observatory

³ First term 2002, Source IDC in www.journaldunet.com

⁴ Septembre 2001, Source IDATE

⁵ June 2002, Source www.reseaux-telecoms.com, Christine Serou, La consolidation n'empêche pas la concurrence, December 6, 2002

⁶ September 30, 2002, Source AFORM, Association française des opérateurs de réseaux multiservices

2.3 Main Competing operators

2.3.1 Fixed telephony

Since 1998, FT's principal fixed voice telephony competitor has been Cegetel, a formally joint venture between Vivendi Universal (44%), BT (26%), Vodaphone (15%) and SBC (15%). Cegetel offers long distance and international services under the brand name "le 7", for which it had 2.9 millions subscribers at the end of 2001, 14,000 of whom were business customers. After Cegetel, 9 Télécom (formally owned by Telecom Italia) is the next largest fixed voice telephony competitor in France.

The competition in long-distance and international telecommunications services is a success because FT has lost about 35% of its market share since the beginning of the liberalization in

1998. Regarding the local call market, FT's market share in this field has decreased to 85.4% (call minutes August 2002) since the introduction of carrier pre-selection at the beginning of 2002, which is rather positive. This market should normally develop itself with the policy of LLU which is still at its take-off stage in France. Many delays were caused by a large number of appeals by FT against ART decisions and by ART's lack of power to enforce its decisions or implement sanctions.

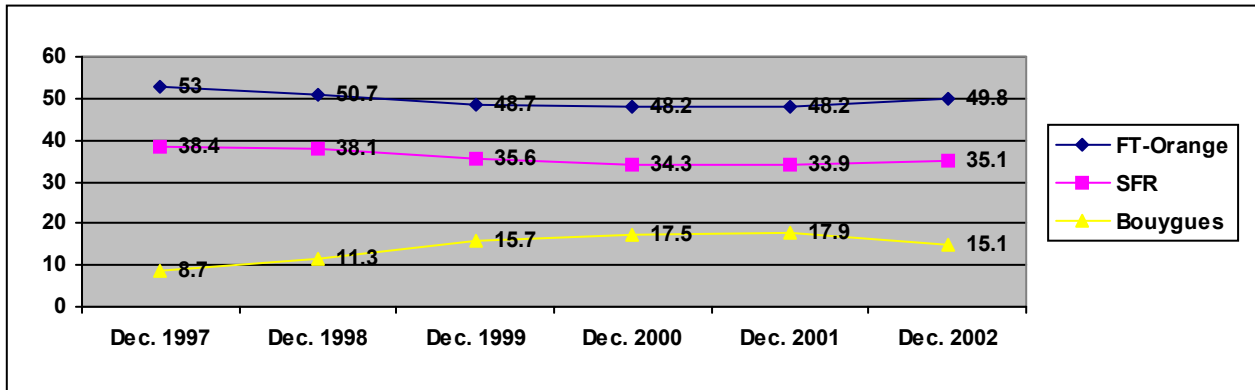
2.3.2 Mobile telephony

France liberalized its mobile telephony market in 1987, far in advance of the 1995 deadline established by the EU. As elsewhere in Europe, mobile communications has been the fastest growing telecommunications service since it was opened to competition. There are three wireless network operators in France: Orange (FT's Mobile subsidiary), SFR (Cegetel), and Bouygues Télécom³ (part of a media, telecommunications and construction group). Orange established its GSM 900 network in July 1992 and is the leading operator, with about 50% of the subscribers as of December 2002. With nearly 17.8 million subscribers, Orange is the fourth largest mobile operator in Europe. SFR launched a similar GSM 900 network five months after Orange and controls 35.1% of the French mobile market. Bouygues Télécom established a GSM 1800 network in May 1996 and has the remaining 15.1%. The French mobile operators' ownership structure is quite complicated: SFR is owned by Cegetel (80%) and Vodafone (20%). Vivendi Universal effectively controls SFR, because it owns 70% of Cegetel since recently. Vodafone was likely to increase its share in line with its strategy of having control in all its mobile subsidiaries. However, it struggled to acquire 15% more from Cegetel (to reach 30%), which may indicate a certain attractiveness of the French mobile market.

The mobile penetration rate attained 65% in 2002 and there is a tendency to stagnation. Indeed, it seems to be almost at its maximum (average penetration rate for Europe is about 70%).

Figure 2: French mobile subscriber share (December 1997-December 2002)

³ "Recent figures from ART show that Bouygues Telecom is hurting, losing 320,500 customers in the three months from September 30, 2002 to the end of the quarter. Its rivals fared better, although their growth was minimal; SFR (currently the subject of a battle between Vivendi and Vodafone) added 277,100 to take its total to 12.65 million, while Orange France netted 169,000 to raise its base to 17.73 million". CIT Telecommunications Update, December 17, 2002



Source ART, Observatoire des mobiles, December 31, 1997 – December 31, 2002

2.3.3 Internet (broadband)

The broadband market in France is relatively uncompetitive. FT has been allowed to dominate the business and residential sectors and faces little challenge from cable networks (some of which it owns or formerly owned anyway). FT dominates the Internet market in general in France through its Wanadoo ISP subsidiary, which had 6,337,000 subscribers on December 31, 2001 (3,001,000 in France and 3,336,000 in other countries⁴), and especially the French DSL market with around 90% of the market share. It also profits from calls to the Minitel service, a text-based forerunner of the Internet still popular in France. As of January 2003, there were about 20.1 million Internet users in France.⁵

FT did not use this position to drive DSL rollout rapidly forward like Deutsche Telekom. However, during the second half of 2001, FT did start promoting popular DSL products at a low-cost and subscriber numbers started to increase rapidly. The Networks Division announced a number of 1.3 million active ADSL lines and 21 million phone lines with access to ADSL by the end of 2002, taking the country's availability rate to 74%; by the same date close to 80% of businesses in France had xDSL coverage. [...] *The cost of ADSL in France has fallen by over 37% since its launch in December 1999 and the company has extended its choice of bandwidth solutions to satisfy users demand from.*⁶

The French cable companies launched cable modem services as early as 1998 but after an initial burst of activity, progress has been slow. As of September 2002, there were 250,053 cable modem subscribers in France, of which Noos had 137,428, France Telecom Cable 50,946 and NC Numéricable 25,468 outnumbering UPC France (which was third in 2001). FT is in the process of withdrawing from the cable industry, as required by competition directives, and this may eventually mean that it faces more effective competition from cable operators.

Table 2: Main competing operators on the French telecommunications market

Name	Ownership	Nationwide market share
Fixed telephony (long distance)		

⁴ Source France Télécom, www.francetelecom.fr

⁵ Source Médiamétrie in www.journaldunet.com

⁶ Source CIT Communications Update, November 18, 2002

telephony, call minutes) ¹		
Cegetel – le 7	Cegetel Group Since recently Vivendi Universal: 70% Vodafone: 30%	13%
Télé2 France	Tele2 AB (Sweden) : 100%	8.1%
9 Télécom	Groupe Louis Dreyfus : 42,6% Suez : 16,7% Belgacom : 8,1% Telecom Italia : 7% Crédit Suisse First Boston : 8,3% Wendel Investissement :7,3% Other investors : 10 % (as of January 22, 2003)	2.3%
T-Systems Siris (companies and collectivities)	DTAG: 100% since 11/1999	n.d.
Others		1.8%
Mobile telephony ² (number of subscribers)		
SFR	Vivendi Universal: 80% Vodafone: 20%	35.1%
Bouygues Télécom	BDT Holding (owned 79.1% by Bouygues and 20.9% by JCDecaux): 55% Bouygues: 21% E-on: 17.5% BNP Paribas: 6.5%	15.1%
Internet ³ (active PC connections repartition)		
AOL Compuserve		20.79%
Tiscali		14.43%
Club Internet (T-Online)		8.87%
Free		7.02%
Others		12.07%
Cable Internet ⁴ (number of subscribers)		Number of subscribers
Noos		55%
France Télécom câble		20.37%

NC Numéricâble		10.2%
UPC France		8%
Est Vidéocommunication		5.07%
Vialis		0.8%
ADSL⁵		
Cegetel, others		10%

¹: December 31, 2000, Source ART, *Rapport public d'activité 2001*

²: December 31, 2001, Source ART, « *Observatoire des mobiles* »

³: First term 2002, Source IDC (world's leading provider of technology intelligence) in www.journaldunet.com, June 11, 2002

⁴: September 30, 2002, Source AFORM (Association française des opérateurs de réseaux multiservices)

⁵: June 2002, Source www.reseaux-telecoms.com, December 6, 2002

3. Legal framework

3.1 EU directives

Like other EU member states, France will have to transpose the new EU regulatory framework for electronic communications into national law by July 2003. This goal is not far from being reached as the consultation process began in March 2002. The ART, the Competition Council, FT, and the AFORS (Association Française des Opérateurs de Réseaux et Services de Télécommunications, an independent association of FT's competing telcos) were consulted about the review of the current regulatory framework. The ART globally agrees with the EU dispositions but nevertheless enounces its specific wills:

- The ART thinks that the Commission should better define what a regulator is. Using the traditional term of "National Regulatory Authority" (NRA), it omits the significant distinction of responsibilities between the institutions in charge of setting the law and those who enforce it; the latter should be empowered to act fully independently, i.e. using impartially their dispute settlement and competition powers.
- The ART is still in doubt about the possibility for governments to include new services in the field of universal service and, in particular, to extend it to the access to broadband networks, without prejudicing technological neutrality and financial fairness.
- The ART wishes to see more precise provisions concerning the rights and obligations of market players included in the directives, in order to ensure the strongest legal certainty.
- Given the persistency of dominant or quasi-monopolistic positions of incumbent operators on certain segments of the market, notably on the local loop, the ART considers that sector-specific rules remain indispensable to deepen the liberalization process and to reach a real balance on the market and therefore favors the continuity of an asymmetric regulation, notably in the field of interconnection.

Like the Commission, the ART thinks that it is indispensable to apply the principle of technological neutrality to regulation. Nevertheless, this does not exclude a more proactive policy, whenever the implementation of European standards designed by manufacturers and operators seem likely to sustain market development, to increase players' visibility and to benefit the consumer through a better interoperability.

The ART believes, on the other hand, that private bodies, in the accomplishment of the competencies they received in the field of standardization, should comply with the same requirements of transparency which apply to public authorities; the Commission is invited to add relevant provisions to its proposals.

The last Chairman of the ART, Jean-Michel Hubert, recently replaced by Paul Champsaur, said in October 2001 that the ART welcomed this new framework because it will adapt regulation to take into account increased competition and the convergence of telecommunications and audio-visual networks. He also noted that it should strengthen regulatory harmonization between member states. He pointed out that European regulatory harmonization is necessary because it reflects the political will of all EU member states and it supports the growth of a very capital-intensive sector by allowing it to profit from European economies of scale.

3.2 General national framework for Telecommunications

The first legal basis for the telecommunications sector was called the Posts and Telecommunications Code (*Code des Postes et Télécommunications* or CPT) of July 2, 1990 and was significantly amended on July 27, 1996 by the Telecommunications Act.

The objectives of this new Act were as follows:

- A change of status of FT (from a government department to a public company with limited liability). The government owned all shares until September 1997, when 30% of the company was floated on the Paris stock exchange.
- The introduction of full market competition on January 1, 1998 in line with the EU directive.
- The creation of a new independent regulator (the *Autorité de régulation des télécommunications* or ART) which replaced the DGPT.
- To authorize the use of proprietary telecommunications infrastructure (with immediate effect) for services already open to competition (essentially the mobile, satellite, data and leased line markets). This permitted owners of telecommunications infrastructure to offer services to third parties.
- To set out a framework for Universal Service Obligation.
- To set a deadline for the completion of FT's rebalancing on December 31, 2000.

Table 3: Characteristics of the French Telecommunications Law, 1996

<p>General provisions (L32-1 I.)</p>	<p>Telecommunications activities shall be carried out freely; The public telecommunications service obligations which include, in particular, guaranteeing all persons access to the universal telecommunications service, shall be safeguarded and developed; The telecommunications sector shall be regulated independently of the operation of networks and the provision of telecommunications services. Regulation shall be administered, on behalf of the government, by the Minister for Telecommunications and the Telecommunications Regulatory Authority.</p>
<p>Minister and the ART's main tasks according to their respective competencies (L32-1 II.)</p>	<p>The provision and financing of all the components of the public telecommunications service; Effective and fair competition among network operators and telecommunications service providers, in the interests of users; Job development, innovation and competitiveness in the telecommunications sector; Public network access and interconnection conditions which guarantee equal market conditions and the possibility of unrestricted communication between users; Consideration of the interests of users and their territories with regard to access to services and equipment.</p>
<p>Universal service (L35)</p>	<p>Two main points: <i>"The universal telecommunications service means the provision to the public of a quality telephone service at an affordable price"</i>. It includes the conveyance of telephone calls, the conveyance of emergency calls free of charge, the provision of an enquiry and directory service, in printed and electronic form, the provision of public payphones, specific conditions for social groups with special needs, the connection of any person who requests it. FT is in charge of universal service.</p>
<p>Interconnection regulation (L34-8 I. → L34-8 III.)</p>	<p>L34-8 I. <i>"Public network operators shall satisfy requests for interconnection from licensed operators in an objective, transparent and non-discriminatory manner. Interconnection may not be refused if the request is reasonable with regard to the applicant's requirements and the operator's capacity to satisfy them. All interconnection refusals shall be fully reasoned."</i> <i>"The telecommunications regulatory authority may be called on to settle disputes relating to the refusal of interconnection, interconnection arrangements or access conditions, as laid down in article."</i> The Calculation method for interconnection charges is Long Run Incremental Costs (LRIC).</p>
<p>Rates regulation</p>	<p>Rates regulation applies to operators with SMP, who are required to receive approval from ART prior to the introduction of new tariffs on the end-user market. As a result, all FT's promotional offers are subject to approval by ART, before effective introduction on the market. The regulator can only approve or disapprove rates, but cannot set rates by itself.</p>

4. Key regulation actors

4.1 National Regulatory Agency (NRA)

- **Foundation and history**

The ART (Telecommunications Regulatory Authority⁷) was created through the Telecommunications Act of July 1996 and has been functional since January 5, 1997. The ART replaced the DGPT (Directorate General of Posts and Telecommunications⁸) which was previously an integral part of MINEFI (Ministry of Economy, Finance and Industry⁹).

- **Structure**

The law institutes an executive board (*Collège*) consisting of five members. Their independence vis-à-vis the government is ensured by the way they are appointed. Three of them, including the Chairman, are appointed by the President of the Republic. The other two are respectively appointed by the Chairman of the National Assembly and the Chairman of the Senate. The members of the Authority are appointed for a period of six years, are irrevocable and may not renew their mandate. The ART is composed of 6 divisions. These divisions are placed under the responsibility of the Director General, who ensures management and coordination under the Chairman's authority. There are a total of about 150 full-time employees at the ART among which about a half are civil servants and the other half are contractual employees (generally younger people with 3 years contracts).

The independence of the ART may be seen in the fact that it is quite free in its actions. Indeed, it only has to report once a year to the National Assembly and to the government. The ART is rarely questioned about its activities by the deputies or senators. Nevertheless, a member of ART's Communication Service sometimes attends parliamentary debates to be absolutely up to date. The ART also has politically supporting group at the Parliament, which is a commission named CSSPPT (*Commission Supérieure du Service Public des Postes et Télécommunications*)¹⁰ and established by the Parliament itself.

- **Legal attributions, responsibilities and duties**

The ART has 7 areas of competencies:

⁷ *Autorité de Régulation des Télécommunications*

⁸ *Direction Générale des Postes et Télécommunications*

⁹ *Ministère de l'Economie, des Finances et de l'Industrie*

¹⁰ The CSSPPT was instituted through the law Nr. 90-568 of July 2, 1990 concerning the organization of public service of posts and telecommunications. The Telecommunications Act of 1996 enlarged its competencies. In the field of telecommunications, the first mission of the CSSPPT is to verify the carry out of the new Telecommunications Act. It also takes care of the public service principles and especially of the universal service in the field of telecommunications. It may be consulted by the ART and by permanent parliamentary or senatorial commissions about telecommunication topics. It may refer to the ART about topics concerning ART's competence in matter of control and sanctions of operators' misbehaviors. The CSSPPT pronounces itself about all projects of European directives which respect its competence.

- Consultative competencies: Consultation by the government on law projects¹¹; support to the preparation of the French position in international negotiations (Art. L.36-5); designation of dominant operators following the Art. L.36-7 “7 of the Telecommunications Act: *The telecommunications regulatory authority shall follow the opinion of the competition authority, [...], draw up an annual list of the operators [...], which are considered to have a significant market power (i.e. a share of more than 25%) in a particular market governed by these provisions in the telecommunications sector. The telecommunications regulatory authority shall also take into account the operator’s turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources, and its experience in providing products and services in the market;* evaluation of the universal service (US) cost, evaluation of contributions amount for competing carriers forwarded to the Ministry which takes notice of them and evaluation of non-competitive services.
- Control competencies: Evaluation of network dial-up terminal equipment.
- Competencies of legislation implementation: ART suggests and is consulted on legislative provisions and is in charge of their implementation
- Decision competencies: Investigation about allocation of licenses and transfer of files to the Ministry which gives authorizations (Art. L.36-7 “1); allocation of scarce resources (Art. L.36-7 “6).
- Competencies of conflict resolution between operators: Especially interconnection conflicts, conflicts about the disrespect of conventions and public or private equipment sharing disputes (Art. L.36-8.-I).
- Conciliation competencies: Complaints of private persons, professional organizations or consumers associations which are forwarded to the Competition Council (Art. L.36-9).
- Sanction competencies: In case of disrespect of telecommunications legislative dispositions by network owners or by telcos (Art. L.36-7 “3; Art. L36-11), the ART may suspend temporarily or definitively a license or penalize an operator in the event of a second offence.

The French regulatory regime is asymmetric. Indeed, its main mission is to exert surveillance on the incumbent and then to offset its historical advantages in the market. In particular, the regulator will control interconnection prices, LLU tariffs, promotional end-user offers and advertising. The ART acts mostly ex-ante, controlling for example all FT’s promotional offers and marketing plans and stopping them if it can see any trace in advance of a future anticompetitive behavior. This asymmetric regulation is quite natural in the context of enhancing competition in a formal monopolized field but is sometimes considered as excessive, especially with regard to innovation, as we will see later on.

¹¹ The process of consultation is the following: The ART receives a letter (at the same time as the CSSPPT) about advising projects or amendment propositions, the topics are then discussed by the College and the answer of the ART is then forwarded to the Assembly.

In regards to other telcos, we observed that, the ART is often considered as a defender of the competitors' interests, since the first mission of the ART is to promote equal competition conditions on the market.

- **Resources in terms of staff**

ART's employees have generally good technical skills (a major part of them come former the formal DGPT, FT or the Post). People coming from FT are sometimes put in a difficult situation, in which they need to demonstrate their allegiance to their new employer even more than employees with other backgrounds. According to certain people close to the situation, those employees may be tempted to act more severely towards FT, in order to avoid any suspicion of complaisance vis-à-vis their former employer.

ART's personnel is not plethoric (according to www.dict.leo.org this word does not exist) like RegTP's and is well divided between different divisions. The double presence of civil servants and contractual employees grants the organization a certain degree of personnel turnover and flexibility, as contractual employees do not enjoy the same guarantees as the French civil servants. However, according to ART officials, the personnel turnover at ART's is low. It means that very few people leave the ART and only few employees changed to private telcos. 2 to 3 new people are hired each year.

- **Resources in terms of financial means**

The ART is directly financed from the national budget. Each year, the ART prepares a budget proposal to MINEFI. The President of the ART plans the expenses and presents each year an accounting report to the General Accounting Office (*Cour des Comptes*). ART's budget in 2002 was of 16.08 million €.

4.2 Ministry

The MINEFI¹² was the former regulatory body through the DGPT and at the same time the only owner of FT before the partial privatization. When the liberalization process started in 1996, the MINEFI reluctantly lost many of its powers and competencies to the ART. Tensions between the new ART and the former regulator were frequent and have phased-out overtime when ART's usefulness and sector-specific competencies were progressively recognized by the MINEFI. The ART collaborates intensively with the DiGITIP (Directorate General for Industry, Information Technology and Posts¹³) which is the service of the Ministry in charge among other things of license allocation. The ART forwards license applications to the DiGITIP for approval.

4.3 Competition Authority

¹² Ministry of Economy, Finance and Industry

¹³ *Direction Générale de l'Industrie, des Technologies de l'Information et des Postes*

The Competition Council (*Conseil de la Concurrence*) was founded by the Ordinance of December 1, 1986. As the competition expert, it has a consultative role to the government, the Parliament and moral persons representing collective interests. Its role, organization and functions are specified in the Code of Commercial Law (Title VI: Chapters I to III)

The Competition Council intervenes in any field when market competition is distorted, whether the firms involved are private or state-owned. This institution neither has powers to curb what are considered unfair or pernicious trade practices nor does it intervene in disputes between parties, which fall within the jurisdiction of civil or criminal courts.

The Competition Council is composed of 17 members drawn from 3 Colleges:

- The first College consists of members of the Council of State (*Conseil d'État*), the General Accounting Office (*Cour des Comptes*), the Supreme Court (*Cour de Cassation*) and other administrative or civil courts.
- The second College comprises experts in economics or in competition and consumer affairs.
- The third College is composed of professionals from production, distribution, crafts, trade, services and liberal professions

Three of the four seats belonging to the Chairperson and the Vice-Chairpersons are filled by members of the first College. Members of the Council are appointed for a six-year period on the recommendation of the Minister of Economy. They are irrevocable, except in cases strictly specified in the Code of Commercial Law (Chapter I, Articles L. 461-1 and L. 461-2). The Chairperson and the three Vice-Chairpersons hold permanent office.

In its advisory capacity, the Council may have cases referred to it by the government, the Parliament, local and regional authorities, trade organizations, professions regulatory boards, trade unions, and consumer groups or under special statutory provisions industry sector specific regulators like the ART.

In its legal capacity of regulating cartel agreements and abuses of a dominant position or economic dependency, the Competition Council may have cases referred to it not only by the Minister of Economy but also by companies, local and regional authorities, trade organizations, professions regulatory boards, trade unions, and consumer groups. It may also assume jurisdiction on its own initiative.

It may also be consulted by the courts whether ordinary, administrative or special, on anti-competitive practices prohibited by Articles L. 420-1, L. 420-2 and L. 420-5 of the Code of Commercial Law.

There are several decision categories that the Competition Council can make:

- Interim measures: If the originator of a referral considers that the alleged practices pose a serious and immediate threat to competition, he or she may request the Council to take

interim measures. Interim measures are limited in scope. They consist in ordering companies to suspend the practices concerned or to reestablish a previous situation.

- Decision to impose penalties: The Council may impose fines (the maximum amount for a company being 10% of its worldwide pre-tax turnover, or 3 million € if the offender is not a company), issue injunctions compelling the parties concerned to change their behavior, or order its decisions to be published in newspapers (Article L. 464-2).

- Transfer of cases to the Attorney General for Criminal Prosecution: If it is found that management has taken a personal and decisive part in fraudulent practices adversely affecting competition, the Council may decide to pass on the case to the Attorney General for Criminal Prosecution (Articles L. 420-6 and L. 426-6).

The ART and the Competition Council

The process of mutual consultation seems to work very well since the competencies of the two institutions are clearly defined by law. The ART (expert in telecommunications) may ask the Competition Council (expert in competition) for advice in matter of competition and vice-versa. In the telecommunications field, the Competition Council is entitled to deal with complaints on advertising or mergers.

As prerogatives are rather well delimited, the relations between the ART and the Competition Council do not seem to pose serious problems. Sometimes however both institutions compete for customers (companies or people complaining) in order to increase their own scope of work.

4.4 Judiciary

- **Administrative Court of Appeal**

The Court of Appeal is a second instance jurisdiction which examines a decision made by a first instance administrative court that does not satisfy a party involved.

The Court of Appeal is the only court empowered to carry out appeals versus certain specific economic and financial authorities like the Competition Council, the Financial Markets Council, the Stock Exchange Operations Commission and the ART. There are 7 administrative Courts of Appeal: Paris, Nantes, Lyon, Bordeaux, Nancy, Marseille and Douai.

- **State Council**

The State Council is the supreme administrative court which judges the decisions of the Court of Appeal and of specialized administrative jurisdictions. Secondly, the State Council is the last instance to judge the appeals against decrees, the acts of the national Collegial organism and about regional and European elections.

- **The ART and the judiciary power**

Since it has been set up, the ART has made 43 decisions regarding settlements of disputes, 2 in 1997, 16 in 1998, 6 in 1999, 9 in 2000, 10 in 2001 and has decreed rulings in relation to two further requests for precautionary measures.

The Court of Appeal of Paris has only decreed eleven rulings on appeals (which is relatively low against the decisions made by the ART), which until recently confirmed the decisions made earlier.

This could lead to the conclusion that the ART is very fair and efficient in terms of decision (in dispute settlement). It could also indicate that the appeal processes are discouraging (because of their length, many applicants are renouncing) or that the judiciary establishment is keen on supporting administrative decisions.

4.5 Owner of incumbent operator

FT is still mainly state-owned but since 1996 it is a limited liability company treated at the stock exchange. The state and its institutions still fear that a bankruptcy of FT would be a disaster for the French economy and for employment. This is with no doubt the reason why the government proposed recently to support FT with 9 billion €. Competitors complained about this decision arguing that the government should help all telcos with financial problems in the same way; specifically Bouygues complained to the European Commission.

4.6 Competing operators

The competitors of FT can find assistance in the ART, which tries to support them with the objective to improve their situation on the market.

With regard to the market, new carriers have much less power in terms of financial means and influence than FT. For years FT has been known in the whole of France as the first and therefore the most reliable telco and recognized as an engineers' company with deep technical and practical skills. Most new telcos are regrouped in an association called AFORS (*Association Française des Opérateurs de Réseaux et Services de télécommunications*), resulting of the fusion of 2 operators associations (AFOPT and AOST) in 2002. AFORS aims at defending common positions of all carriers, which becomes more and more difficult as business models and strategies diverge and clash.

5. Regulatory functions

5.1 Allocation of scarce resources

5.1.1 Frequencies

Frequencies are planned by the *Agence Nationale des Fréquences* (ANFr)¹⁴ and allocated to telcos and wireless communications operators by the ART according to Art. 16 of the Telecommunications Act. No specific problem has been reported in this area.

5.1.2 Rights-of-way

The Telecommunications Act (Art. L.45-1) gives licensees the right to use public ways to install their networks and the right to install and use their equipment in collective parts of households.

Regarding carriageways, the operators enjoy rights-of-way issued by a territorial authority (commune, county or state). The use of non carriageways is subject of an agreement between the responsible authority and the operators in transparent and non-discriminatory ways. Both usages can lead to the payment of a fee. The ART intervenes only in case of disputes. The operators also enjoy rights-of-way to communal parts of apartment buildings and estates to install their telecommunications equipment like antennas.

5.2 Enhancing competition

5.2.1 Licensing

The ART oversees the license requirements and MINEFI issues licenses for fixed and mobile telephony. There are three different types of licenses:

- L.33-1: License for operators of networks open to the public.
- L.34-1: License for operators of telephony services.
- LEX type: "Experimental" license for alternative service providers up to a maximum of 20,000 subscribers.

L.33-1 and L.34-1 licenses are valid for a 15 year renewable period and LEX licenses are awarded for 5 years. Holders of both L.33-1 and L.34-1 licenses are deemed by the ART to be full license holders. By February 2002, the number of companies holding L.33-1 or L.34-1 licenses (or both) was at 79, down from 112 a year earlier.

The French 3G beauty contest was victim of a bad timing, coinciding with both a downturn in telecoms stocks and widespread investor criticism of the huge fees being paid for UMTS concessions elsewhere in Europe (June 2000). The first sign of trouble came in November 2000, when DTAG announced it would not be participating in the French process because, it claimed, the licenses were overpriced (about 5 billion € per license). On January 31, 2001 (deadline for submission) Bouygues Télécom pulled out of the contest, leaving only two applicants: FT Mobiles (FTM) and SFR. On May 31, 2001, the ART announced that both had

¹⁴ Institution established through the Telecommunications Act in 1996 and belonging to the MINEFI

been awarded licenses, with SFR scoring 410 points and FTM 379 (on a total of 500 possible points). The two remaining licenses were auctioned a second time with a deadline being May 16, 2002. This time there was only one applicant: Bouygues Télécom, who was awarded a 20 year-term license on December 12, 2002 for an amount of about 515 million €.

5.2.2 Granting access to infrastructures to new companies

- **Interconnection rates and agreements**

Interconnection rates are relatively low in France compared to other European countries like Austria for instance. However these rates are seen to be high by the competitors of FT.

The ART approves the annual Reference Interconnection Offer (RIO)¹⁵ of operators with 'significant market power' (Operators which have more than a 25% percent interconnection market share like FT have the obligation to issue a RIO) and resolves disputes. It also may request a change in an agreement of interconnection between operators after notification of the Competition Council.

Table 4: French interconnection rates

	Interconnection Price/ min (average basket)							
	Cost accounting system: LRIC (long run incremental costs)							
	+ mark-up for common costs + specific costs							
€ cents /min	1998	1999	2000	2001	2002	2003	Evolution 2002-2003	Evolution in a 5 years term
Local Intra-CA	0.928	0.707	0.667	0.616	0.579	0.5734	-1.0%	-38.2%
Regional Single transit	1.948	1.537	1.356	1.252	1.051	1.0092	-4.0%	-48.2%

Source ART, « L'Autorité approuve le catalogue d'interconnexion 2003 de France Télécom », 29 November 2002

Until last year the ART did not have the power to intervene on its own initiative in interconnection negotiations. Instead, the ART had developed detailed procedures requiring a party to request intervention (only after negotiations had failed) that put a greater burden on new entrants to justify the need for regulatory intervention and delayed an effective resolution of disputes. New entrants want the ART to have full initiation powers so it can intervene on its own initiative without having to wait for a request by an operator. New entrants also criticize the current procedure for the conceptualizing of the annual RIO. They say it is inappropriate and lacks transparency. Especially in the way, the final version takes comments from the competitors into account. Competitors argue that the RIO fails to fit the actual needs of the market as the deadlines for its negotiation are excessively long and as the final RIO

¹⁵ In France, the so-called *Catalogue*

sometimes even requires intervention by the ART afterwards. For instance, it took very long before FT's RIO included services such as FRIACO (*Flat-rate Internet access call origination*)¹⁶, third-party billing or partial circuits.

Regarding the 2003 RIO, there have been attempts to modify the manner in which it is prepared. The ART requested FT to present a draft RIO in mid-August following discussions with other operators, and adopted it on November 28, 2002.

In 2002, interconnection fees are expected to yield more than 1 billion € for FT and represent a traffic volume of about 100 billion of minutes (including voice and Internet).

- **Leased lines**

The ART has attempted to stimulate the development of competition in the wholesale data transmission market across France, by allowing FT's competitors to complete their own medium- and high speed leased lines network.

As part of the result of a dispute resolution procedure (begun in August 2001) between a new entrant (MFS Communication – Worldcom) and FT, the ART issued a decision in February 2002 on a number of leased line issues in dispute. This forced FT to introduce leased lines into its RIO, and to modify the conditions for delivery.

The ART also introduced a mechanism of temporary reduction in leased lines prices of 27% applicable until carriers have had the possibility to migrate from their existing leased lines regime to the new products (interconnection leased lines). According to ART's calculation, for a typical range of distance and data rates that would be used by a new entrant, the interconnection offer represents a price reduction of approximately 40% from the standard leased lines offer without taking into account the temporary discounts offered to carriers.

While new entrants are experiencing difficulties with the practical implementation of the new offer, it is close to what they were requesting and provides much greater scope for shaping the use of leased lines closely to the carriers' network and the needs of their customers. Carriers had to wait for a final offer from the incumbent until late July 2002. This caused problems with the timing, given that the ART established a window during which certain price reductions and the conditions for transfer would apply.

In 2001, the turnover of the leased lines market was 2.3 billion € (2 billion for FT with a total market share of 85%).

¹⁶ In France it is called IFI offer (*Offre d'interconnexion forfaitaire à Internet*)

- **Unbundling of the local loop**

In regard to LLU, the ART has a power of surveillance. It controls tariffs and access conditions to the local loop which is supposed support loyal and durable competition. It can impose modifications in the Reference Unbundling Offer (RUO) of FT and settle disputes between operators and if necessary impose sanctions on operators who violate legislative dispositions (Art. 36-11 CPT).

Since the LLU regulation became effective in January 2001, the ART has intervened actively in order to obtain effective implementation, primarily in terms of tariffs and conditions offered by the incumbent to other operators in its RUO. Nevertheless, progress has been slow: As of January 2003, there were 1,413 fully unbundled lines and 9,027 shared unbundled lines.

On April 16, 2002, the ART obliged the incumbent to modify its RUO, by reducing all main tariffs. The decision appears to set the conditions for proper competition in local access, as the tariff for full unbundling is one of the lowest in the EU (after Denmark). FT has appealed the tariff aspects of the decision to the State Council, but the decision stood in a meantime. On June 14, 2002 FT published its modified RUO in conformity with ART's decisions and the European Commission request (sub-loop unbundling offer).

With regard to the operators, 9 have signed an unbundling agreement with FT, allowing them to enter the sales phase of an unbundled offer. Of these, eight have ordered unbundling rooms from FT.

Table 5: Evolution of Unbundling and Collocation in France

Unbundling in France			
FT's fixed lines		34 million	
FT's ADSL fixed lines		About 1,400,000	
Evolution of the number of unbundled lines			
Type of unbundling	May 2002	December 2002	January 2003
Fully unbundled lines	650	1,200	1,413
Shared unbundled lines	1	1,500	9,027
Collocation in France			
Type of collocation	Ordered sites (in installation)	Installed sites (where work can begin)	
Operators' room	126	116	
Distance collocation, shelter, other solutions	0	0	
Geographical repartition of ordered collocation sites			
Parisian region		63%	
Region of Marseille		12%	
Region of Lyon		10%	
Other agglomerations of more than 100,000 inhabitants		15%	

Source: ART, in www.journaldunet.com, February 13, 2003

5.2.3 Facilitating access to customers for new companies

- **Carrier pre-selection and call-by-call carrier selection**

Call-by-call carrier selection (CbC) for domestic long-distance and international calls was introduced on January 1, 1998 and Carrier pre-selection (CPS) for long-distance calls on January 1, 2000. In the beginning of July 2001, there were 4.8 million subscribers in France for CbC services and 2.1 million subscribers for CPS services. The combined figure of 6.9 million represents an incline of around 60% since mid-2000. Despite the plethora of alternative operators, only three are able to boast substantial subscriber bases (Cegetel, Tele2 France and 9 Télécom) that total 6.3 million pre-selected or call-by-call long-distance and international customers.

CPS for local calls was introduced in January 2002. Given the methodology for conversion, where existing users of CPS for long-distance calls were informed of the change and were subsequently pre-selected for the other operator unless they objected. There was an immediate impact on market share for local calls and the system was deemed a success.

However, there have been complaints by FT and new entrants about certain underhand or illegal practices related to the acquisition of new CPS customers. Some of these complaints have now been brought before the French courts.

- **Number portability**

Geographic number portability (NP) exists since January 1, 1998. This allows subscribers to change their local loop operator without changing their number, as long as they do not change their geographic location.

As of January 1, 2001, all users can request a number from their operator which will allow them to change their geographic location or operator while keeping the same number.

Mobile NP (2G or 3G mobiles) initially foreseen as well for January 1, 2001, will become effective on June 30, 2003.

5.2.4 Guaranty of stable and fair market conditions

- **Legal certainty and planning certainty**

Legal certainty and planning certainty are not totally guaranteed to operators in France due mainly to proceeding's problems. The time frame in 2001 for the ART to instruct requests of licenses for instance was an average of 65 days. MINEFI's final decisions were made in an average of 51 days, which means a total of 116 days to be awarded a license (almost 4 months). To settle disputes the time frame is 3 to 6 months, which is long compared to Germany or Austria whose regulators handle cases in a maximum of 10 weeks. These time frames are quite long for defrauded small telcos and hinder the implementation of long-term business strategies. A second problem is the enforcement of decisions which can be delayed by the incumbent with several appeals (indeed it has more means to appeal than its competitors).

However, the decisions of the ART are generally interpreted as favorable to small carriers and are well accepted by them. Substantial exceptions are universal services costs decisions which have been contested at many occasions and some of FT's pricing offers (accepted by the ART and then refused by the Competition Council), for example FT's anticompetitive flat rate offers advertised in 2001¹⁷.

The decisions of the ART, as we previously saw, can be appealed against at the Court of Appeal, but if this is the case, they are generally confirmed. For instance, in two rulings decreed on April 28, 1998, the Court specified that Internet access services are indeed telecommunications services, thus justifying the competence of the authority in this field.

As far as legal and planning certainty is concerned, the situation has improved over the past 2 years in favor of the competitors. Most people report that since May 2000 (first time the ART fined FT), the ART has adopted a more severe attitude towards FT and taken the complaints of competitors more seriously. As a result, FT is constrained to bring more lightness up its business practices.

- **Debt authorization**

In terms of debt authorization, there is definitely no equal treatment between the incumbent and new market players. Recently, the French State approved an investment of 9 billion € in FT to help the partly state-owned company. New entrants do obviously not benefit from such large contributions and the European Commission has initiated an investigation on this case to verify if the French state, through its generosity towards FT, was not infringing EU competition directives.

- **Sanction power**

Sanctions are not often issued by the ART and therefore a method of pressure that is underused. On May 30, 2000, FT received a fine of about 305,000 € from ART relating to Art L.36-11 of the Telecommunications Act. This was the first time for the ART to make such a decision; FT had indeed not respected its obligation (as a significant market player) to issue a retail tariff offer and after having received a first disclaimer did not entirely correct this mistake. In view of this, we describe ART's effectiveness of sanctions as satisfactory, assuming that this first case is, as stated by the regulator, the first demonstration of a tougher regulatory intervention towards FT.

Sanctions amounts cannot exceed 3% of a company's yearly turnover.

Until 2000, the ART was very reluctant to use its sanction power towards FT, certainly because of FT's strong link to the French state. Concerning other operators, sanctions were scarce as well; they mainly consisted of partial invalidation of authorization, like in June 2002 for Landtel France SAS and Broadnet France SAS (Wireless local loop).

¹⁷ These flat rate offers had been already appealed once, in front of the Competition Council by Cegetel and Télé2. The Council had ordered FT to stop these offers commercialization. The ART which is always consulted about new price offers confirmed this decision by refusing the new one, deeming that they did not respect totally the Council's recommendations. These offers were indeed mixing monopolized services like local telephony with liberalized services like Internet access.

5.3 Guaranty of public service

5.3.1 Universal Service

The Art. L 35-1 of the 1996 Telecommunications Act clearly defines the core of universal service (US). The law characterizes 3 components of the public telecommunications service: universal telecommunications service; mandatory telecommunications services, which contains a global access offer to integrated services i.e. digital networks (ISDN, leased lines, data services, voice telephony services and telex services); missions in the general interest in matter of defense and public security, public research and higher education in the field of telecommunications.

Even if the law specifies in the Art. L.35-2 that *an operator may be given the responsibility of providing the universal service if it agrees to provide the service to the whole country and is capable of doing so*, it designates FT as responsible for the universal service, but this might disappear in the next revision of the CPT¹⁸.

The ART determines the conditions of the financing of US and estimates each year its cost to the MINEFI which confirms it.

The law specifies that the cost of FT's service must be shared fairly between all telcos and financed on the pro rata of their traffic. The cost of US is divided in 5 components: 1) The cost of structural imbalance of FT's current telephone tariffs, 2) the cost of geographical averaging, 3) the cost of social tariffs and advantages¹⁹, 4) the cost of territory coverage with public payphones, and 5) the cost of directory and inquiry services. Some costs are not taken into account: Emergency calls and maintenance of service for people in debt.

According to the EU Community Directive, eventual benefits in the market deriving from the position of a universal service provider (brand recognition, presence in many services, non-profitable area which becomes profitable following the life cycle effect, database which gives invaluable information on consumers) must also be taken into account. France was convicted in 2001 by the European Commission for not doing so.

Universal Service Obligations (USO) generate important costs, therefore any operator, including FT, bears a part of financial USO charges, proportional of their market share. The cost of USO for year 2002 was of about 428 million €.

¹⁸ This idea is supported by FT

¹⁹ 1) In the event of non-payment, maintenance of a service enabling debtors to receive calls and to make calls to free numbers and emergency services calls.

2) Social tariffs:

- A bill discount for beneficiaries of some welfare payments and invalid soldiers (5 € with VAT per month in 2002): More than 1 million are benefiting of this discount and there is only FT as provider (Kertel abandoned the market recently).
- Telephone debts are able to be withdrawn (after survey by a departmental committee).

Until December 31, 1999, two modes of financing co-existed in what was called the transitory period: “Rémunération additionnelle” (for components 1 and 2) and contribution to US fund (for components 3 to 5). From January 1, 2000 on, the operators contribute to the cost of US through payments into the US fund which finances all components of US.

Table 6: Contribution to US fund of operators other than France Télécom:

Million €	1997	1998	1999	2000	2001	2002
	Final	Final	Final	Preliminary	Preliminary	Preliminary
US fund contribution except FT	1.1	0.8	n.d.	11	92	115

Source: Universal service in France, Jean-Louis Tertian, ART, Seminar on Universal Access and Services for CEE and Baltic States, Bratislava, Slovak Republic, March 5-7, 2002

5.3.2 Consumer protection and quality control

In order to protect and to advise consumers, a unit called “*Unité Consommateurs*” was established in the ART division “*Economie et Concurrence*”, but it does not have any competencies in terms of complaints (those are within the competence of the DGCCRF, *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*, belonging to MINEFI).

6. Evaluation of the regulatory system

6.1 Assessment of the NRA

6.1.1 Resources and expertise

The transposition of the new European directives package should normally strengthen the independence and the attributions of the ART, especially in terms of repartition of competencies between the ART and the Ministry.

The ART has good skill resources in terms of staff. Its employees are recruited according to their telecommunications expertise. However, the ART could use more staff in regard to its current and future responsibilities. The expertise of the ART is largely recognized, even if the board is sometimes considered as being far from the reality of the market and its difficulties.

The fact that half of the employees have a contract is a factor of independence and flexibility. However points of friction sometimes appear between civil servants and contractual employees because of their different statutes, and this can lead to a bad atmosphere at work.

6.1.2 Independence vis-à-vis political interests and transparency

The fact that FT is still a partly state-owned company obviously has an influence on the independence of the regulatory body. Even if the ART claims that its independence is guaranteed by law, political influences and pressures are unavoidable since the government has major interests in the company and since the MINEFI still has some prerogatives in

matter of retail tariffs (homologation of tariffs decided by ART) and universal service (content and funding) for which the ART only has an advisory function.

The visibility that the authority must provide to the market requires permanent consultation and a will to ensure transparency. Consultation involves periodic meetings of the consultative bodies: Consultative committees on telecommunications networks and services and the interconnection committee. Consultation also involves regular public hearings and consultations (UMTS, IP telephony, development of competition on the local market and access to Internet by the telephone network). Consultation with the industry has been quite well developed at the ART; the weak point concerns consumers' consultation which is not very frequent at the ART.

Market certainty calls for the implementation of tools for analysis, information and forward planning. The creation of a Mobile Observatory answers the needs of the statistical monitoring mission, while external and internal studies provide support for longer term assessment of changes. On the one hand, we can say that in terms of studies, the ART is quite up to date: Private studies, quality services reports, field studies, etc. On the other hand, there is of course an annual report of the ART which should describe the competition situation and the state of compliance of its legal objectives, but in practice, there is a lack of important data, especially about market shares which are primordial to be aware of the competition situation. There is also very little information about ART's negotiations with operators, hearings or meetings. More information and transparency would be helpful for small operators to defend themselves better and in a more reasonable time limit.

6.1.3 Efficacy and credibility

As mentioned previously, the length of proceedings is often criticized by operators as being fatal for regulatory efficacy. Indeed 3 to 6 months to settle disputes is quite long for small operators who lack legal certainty to define and follow their business strategies.

On the other hand, some specialists say that the asymmetric regulation exerted by the ART towards FT is a too strong ex-ante regulation, in the sense that the ART judges FT's prices offers and promotion offers with regard to possible anti-competitive consequences before they are applied. Especially promotion offers are often preventively censured, which, according to FT, hinders any competitive dynamism on the market.

6.2 Flexibility of the whole regulatory system

There are no specific monitoring systems at the ART but assessment studies are regularly carried out by the ART; for example *Adapter la régulation au nouveau contexte du marché des télécommunications*, ART, July 2002. The Senate issued also an evaluation report on the assessment of the Telecommunications Act of 1996 on March 26, 2002.

After the fast growth of the NTIC sector characterized by vertical concentrations (globalization of operators), horizontal concentrations (geographical expansion of incumbents) and convergent concentrations (mergers within some activity's holdings with common synergies),

a period of crisis occurred (economic slowdown, collapse of stock exchanges) and gave rise to restructuring attempts in the telecommunications field. Operators are indeed reorienting themselves around specific areas (fixed / mobile; local / long distance) and specializing on specific customers (business/ private). This new context should particularly imply for the regulator:

- To maintain itself as a sector-specific regulator in order to deal better with the real complexity and specificity of the telecommunications sector.
- To improve its expertise in matter of economics and competition and to base its decisions on real market analysis (benchmarking, technology and competition, etc.). The ART already established a cell for technology prospect and takes actively part in national, European and international standardization initiatives.
- New ex-ante means (economical and judiciary) to be able to anticipate problems generated by technological evolutions.
- To put more focus on the consumers' demand (quantitatively and qualitatively) and to improve its market apprehension²⁰.

The French regulatory regime is often seen by different protagonists as flexible but not quick enough. Indeed in terms of legislation and adaptation to European directives the regime reacts quite late especially comparing to Germanic countries. For instance, it adapted European Community decisions of 1998-1999 in 2001.

Concerning dispute resolution and decision-making time frames, the regulator should handle cases as fast as the evolution of today's economy, which is not exactly the case. Three to six months to answer a case is too long in a sector where operators have to update to economic conjunctures and to react very fast to daily difficulties in order to survive in the market.

These long time frames have several explanations among which a lack of personnel at the ART. Indeed, according to the ART, the staff is not sufficient to solve problems rapidly, although the ART has been recruiting more people in the last months. Shared competencies between the Ministry and the ART (in matter of licensing, universal service costs, retail tariffs attestation) also extend time frames and many advocate the principle of one-stop shopping: For operators to have only one interlocutor in matter of regulatory issues ("Guichet Unique").

7. Performance indicators

7.1 Competition

- **Number of operators in the market**

There are currently many operators in the French telecommunications market but their number has been slightly decreasing since the telecommunications field became less attractive in the last years due to the economic slowdown. As of December 2002, there were 84 L.33-1 and/or L34-1 licensees, down from 112 in 2001. In July 2002, there were 15 mobile telephony and radio-messaging licensees (including 2 UMTS licenses and DOM+TOM

²⁰ Source ART: *Adapter la régulation au nouveau contexte du marché des télécommunications*, July 2002

subsidiaries licenses), down from 16 in 2001. In 2001, 5 long-distance operators were forced to compulsory liquidation. In addition, many international groups reorganized themselves, interrupting their authorized activities in France. Regarding the Internet field, the number of operators is regularly increasing. We can currently estimate eight main Internet providers. Eventually, we can describe the indicator “number of operators” as good in France.

It is difficult to say if the regulator has an obvious responsibility for this situation. Indeed, the economic slowdown is the main cause of the decreasing number of operators and the demand-side cannot be influenced (external factors). Nevertheless, we can consider that the disappearances of operators could have been more if the regulator had not promoted adequate interconnection tariffs, did not control dumping practices of the incumbent or had not promoted the introduction of features promoting competition like CbC, CPS, LLU or NP. We can observe that ART’s practices in order to enhance or preserve a certain degree of competition are various and market oriented in a good sense. Other external factors can be pointed out to explain the number of operators in the market such as business models, the degree of foreign ownership, the level of private investment and the state of the stock exchange.

- **Market shares of the incumbent**

As we could notice, FT’s market shares are still very high especially in the fixed telephony market in general and ADSL because of its advantage in the infrastructure, its deep implantation in French households and minds and because of the delay in the application of LLU. In addition, since the beginning of 2001, FT’s market share losses in fixed telephony have stabilized. However, it is important to point out that, for instance, since the introduction of pre-selection in the local market in January 2002, FT has lost about 17% market shares.

FT’s market share is still substantial (even in slight progress) in mobile telephony (about 50%).

FT’s dominance in the fixed telephony field has effects on the Internet market. In regards to ADSL, FT was first reluctant to invest in this field, because, otherwise, it would have been urged afterwards to rent its infrastructure to competitors. As a result, FT did not start operations before all ADSL issues were clarified, in order to make its investment plans. As of June 2002, FT had about 90% of the ADSL market, but this situation is certainly going to evolve within the next years with the effective LLU. ADSL offers are multiplying. Therefore, the ART must exert a strong surveillance in this market in order to prevent uncompetitive practices and to control the content of these offers. In brief, we can say that the indicator ‘market shares’ is reasonably bad in France: FT’s market shares are dominating in fixed telephony and ADSL, are acceptable in mobile telephony and dial-up Internet (37.9%) and are in second position in cable Internet.

Strong asymmetric regulation remains therefore a prerequisite in the French telecom market. It must not be forgotten that until recently (for instance with the beginning of LLU), the ART seemed to be less powerful than FT. Indeed it was not until May 2000 that the ART imposed a fine on FT for failing to make its RIO. In this regard, it is primordial to insist on the fact that in spite of its administrative independence, the ART is still an organ attached to the

government and thus under its influence especially concerning government's interests in FT. The same government persists with the notion that the country can operate with a liberalized telecommunications market that is largely run by the state.

An example illustrating ART's difficult task to intervene on FT's market share could be the ADSL dispute which took place in 1999. 9 Télécom had complained that the government had granted FT the unfair advantage of launching ADSL well before its competitors were able to do so. After 9 Télécom's complaint and endorsement by other companies, the Court of Appeal ruled that FT would have to develop an ADSL system for rival carriers to use. The dispute intensified when FT began providing ADSL outside the areas where it had been given permission to start service (Paris and its suburbs) for this criminal offense, it was only given an injunction by the ART. FT also rolled out ADSL to towns including Lyon, Strasbourg and Lille, and when questioned claimed that it thought it had been given permission to roll out national services. The ADSL dispute continued until the Competition Council finally intervened in March 2002 and ordered FT to offer ADSL access to other internet service providers on the same terms as those provided to its unit Wanadoo.

Nevertheless, several actions of the ART in order to reduce FT's market shares can be reported: The introductions of CbC, CPS, LLU and NP, control of price-dumping practices by the incumbent, strong asymmetric regulation (fines on FT since 2000), and the surveillance of abusing marketing practices. The ART does quite well in the area of market shares repartition but could do even better if it had a better policy of information towards potential consumers (specifically about different prices offers and technical features) as we will discuss later on, and if it exerted a stronger surveillance on the incumbent's compliance with the provision of pre-products (prices, time limits, quality, time of response).

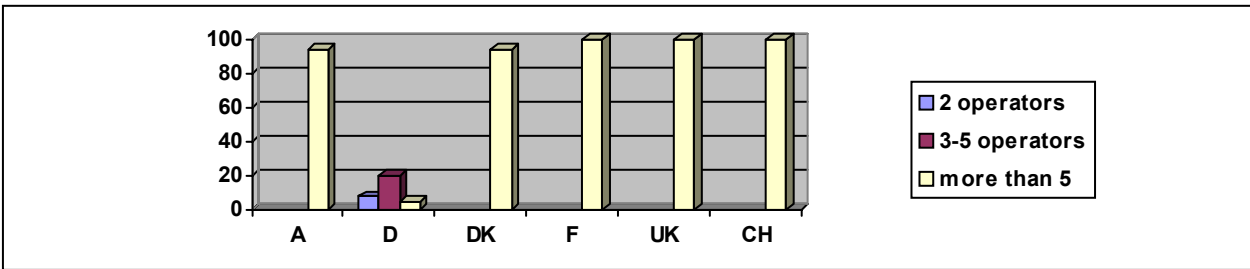
- **Choice for the consumers in terms of operators/ technologies**

Several different technologies are offered to French customers: For the fixed telephony market three technologies are proposed: Fixed telephony which absolutely dominates telephony over cable (proposed in an increasing number of cities) and wireless local loop. For Internet, 4 technologies are proposed: Dial-up, ISDN, cable Internet and ADSL.

The choice is wide but French consumers (who fell a little bit behind compared to other OECD citizens) are only beginning to respond to it, especially to ADSL. This technology is promised to a bright future.

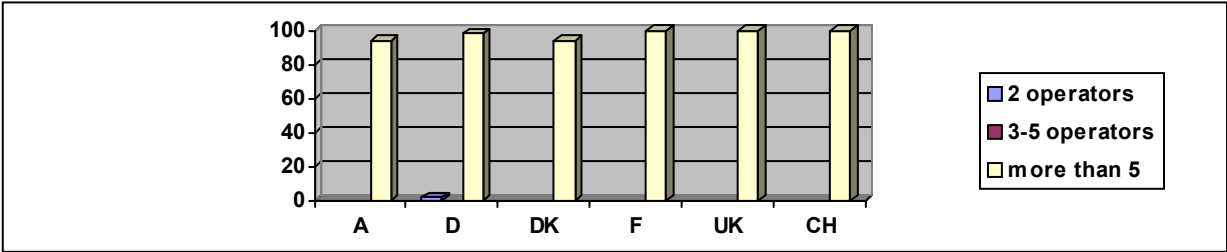
Regarding the choice of operators, we can observe that it is rather high in France, except for subscriber lines. 100% of inhabitants have a choice of more than 5 operators in each field of fixed telephony (local, long-distance and international,) but the consumers' response to it could be more positive than it currently is. Consumers are still supporting and trusting the incumbent and are reluctant to a change of operator unless very attractive promotion offers are proposed by competitors.

Figure 3: Percentage of population that can choose between different operators for fixed telephony local calls



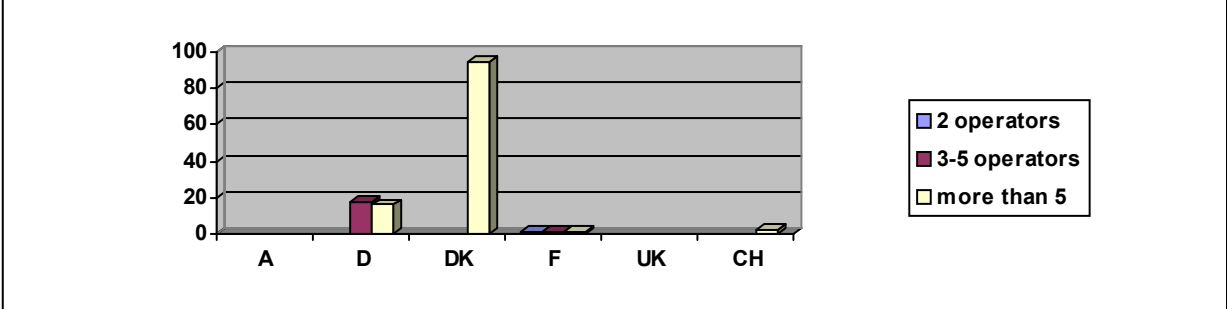
Source: WIK Consult Auszug aus dem 8. Implementation Report der EU -erweitert um die Schweiz

Figure 4: Percentage of population that can choose between different operators for fixed telephony domestic long distance and international



Source: WIK Consult Auszug aus dem 8. Implementation Report der EU -erweitert um die Schweiz

Figure 5: Percentage of population that can choose between different operators for subscriber line connection



Source: WIK Consult Auszug aus dem 8. Implementation Report der EU erweitert um die Schweiz

We can describe the indicator “choice for the consumers” as reasonably good in France since the whole population has access to various operators, although the choice for subscriber line connections is still limited because of the low degree of LLU.

The French regulator has succeeded in offering more choice to the consumer regarding technologies and operators respectively. However, in matter of technologies we can point out that the ART does not stimulate the deployment of new technologies, maybe because of the lack of politic will in this matter. For instance in South Korea, implementing new technologies and being the leader in this domain is the cornerstone of government’s policies.

Regarding the choice of operators, the ART tries to stimulate competition in each technology, (for example, in France, cable Internet is not dominated by FT but by Noos) by having an efficient asymmetric policy towards FT. However, we have to point out that most of FT's competitors still have difficulties to rival or resist to the diversity of FT's services (ubiquity). Broad information to the public about new features and services like in Denmark for instance is primordial. Furthermore, enhancing LLU and carrying on with asymmetric regulation is also important to allow operators' services diversification and to help them to survive.

- **End-user prices**

Figure 6: Fixed voice telephony, 3 minute local call, average charge, Source ITU

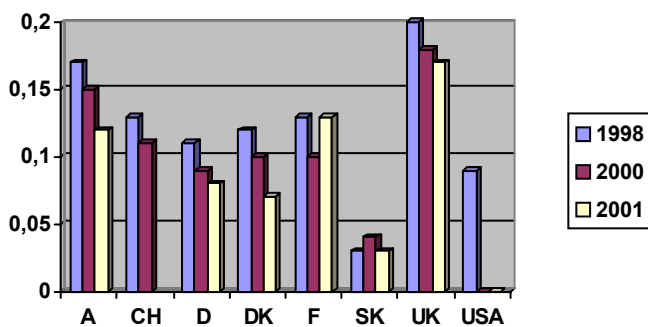


Figure 7: Fixed voice telephony, 10 minute local call, average charge in €, Source Eurostat

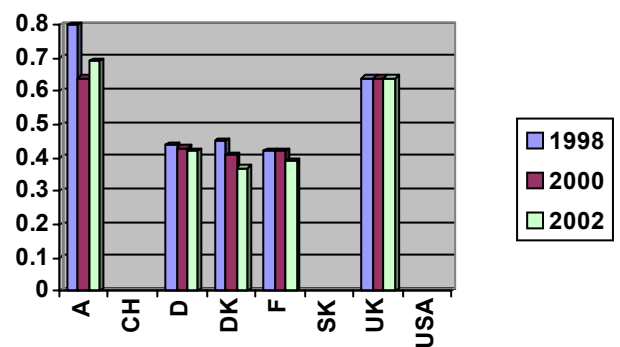


Figure 8: Fixed voice telephony, 10 minute domestic long-distance call, average charge in €, Source ITU

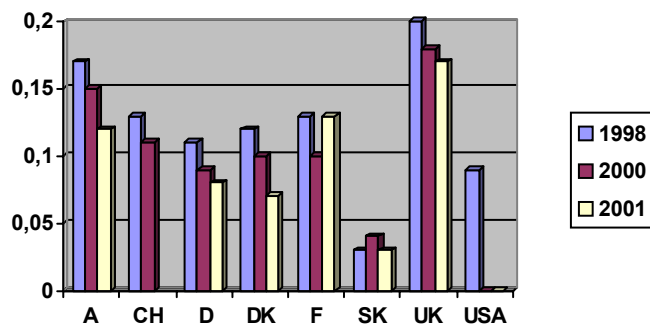


Figure 9: Mobile telephony, 3 minute local call, average charge in €, source ITU

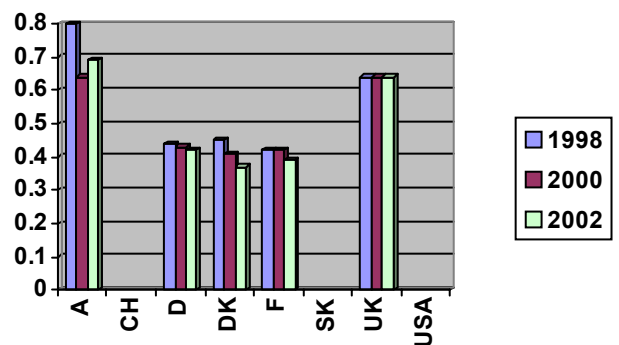


Figure 10: Average price for 20 hours Internet access, in €, Source OECD

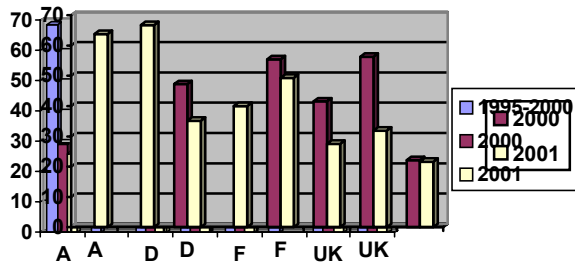


Figure 11: Average price for 40 hours Internet access peak times, in €, Source OECD

- Regarding fixed telephony, we can observe that prices hardly decreased since 1998 especially in the field of local calls where a 3-minute call even slightly increased in 2001. Local calls only decreased by 11% for households and by 14% for companies between 1996 and

2001.

The drop is more significant in the area of domestic long-distance calls. For instance, a 10-minute call costed in average 0.96 € in 2002 compared to 1.75 € in 1998. Concerning national calls (in regard with ART's consumers' baskets), FT has witnessed a drop of prices of about 60% in 6 years (1996-2001) for companies and households. From 1999 to 2001, the average price for long-distance communications decreased by 26.6% with FT and by 35.6% with FT's main competitors.

- In the field of mobile telephony, data is missing for France for a 3-minute local call for the years 2000 and 2001. In 1998, the average price for a 3 minute call was of 2.27 € which was the highest price in our eight case studies.

Between 1998 and 2001, when 4 different baskets were established by the ART, prices decreased by 29.7% for 30 minutes of monthly communication, by 11.6% for one-hour of monthly communication, by 20.9% for 2 hours of monthly communication and by 15.7% for 3 hours of monthly communication.

For fixed to mobile calls, prices dropped 40% within the period of 1999-2000. A 40% drop of interconnection charges in the networks of significant mobile operators (Orange and SFR) was scheduled by the ART for the period 2001-2004.

Eventually, all telephony fields were concerned by the drop of prices till 2001. This indicates active regulatory intervention by ART in this area, even if France still ranks in the average of our 8 case studies and even with regards to domestic long-distance and mobile calls prices.

- French Internet tariffs are in the upper-average of our eight countries. Between 1998 and 2001, the average price for a 20-hour Internet connection decreased from 50.42 € to 24.23 €. Between 2000 and 2001 the average price for a 40-hour Internet connection at peak times decreased slightly from 55.45 € to 49.3 €.

Between January 1999 and December 2001, the average price of Internet access decreased significantly: A drop by about 65% for short monthly communications (3 to 10 hours); a drop of about 75% for average monthly communications (15 to 30 hours) and a drop of about 50% for long monthly communications (40 to 100 hours). For short and average time communications, prices have been stabilizing since spring 2001. Long time communication prices decreased strongly till spring 2001 and increased a bit since the second half of 2001 because of the disappearance of non-limit offers.

The ART could contribute more in order to reduce end-user prices than it currently does. On the one hand, it regularly imposes price deductions on the incumbent's services, above all on interconnection's prices (for instance regarding mobile telephony), allowing reductions of wholesale prices (leased lines, unbundled local loop) which are among the lowest in OECD countries. On the other hand, the ART neglects to monitor wholesale prices enough (although it contributed with no doubt to the drop of leased lines prices) and to impose prices reductions or caps on all telcos.

7.2 Public service

- **Availability of services throughout the country**

In this regard, some lacks of coverage can be reported:

- ADSL coverage rate reaches about 72% but is constantly increasing.
- The current state of development of cable should allow about 8 million of French households to access cable services. At the end of the first half of 2001, only 3.1 million households were registered to one of these services.²¹
- Wireless local loop is offered in about 30 French agglomerations.

Concerning other services, no big difficulties have been reported as the coverage is complete for fixed telephony and almost complete for mobile telephony with a territorial coverage of 92% and a population coverage of 99%: Only about 390,000 people are living in badly served areas, mainly in the mountains.²² In brief, the indicator 'availability of services throughout the country' is reasonably good in France: Efforts could be made concerning new Internet technologies such as ADSL, cable and wireless local loop.

ART's impact on the availability of services in France is insufficient. Legal certainty is not satisfactory, information about new technologies is missing, and efforts in the development of content related initiatives to sustain the demand-side are completely neglected.

Other factors can be found in the regulatory environment: The political will to make technologies available at a country level could be more dynamic, public policies stimulating investments are left aside, and policies introducing technologies in public institutions (schools for instance), developing websites in national language or guaranty of security were till

²¹ Source ART, *Rapport public d'activité 2001*, June 2002

²² Source www.francemobiles.com, *l'actualité en ligne*, March 15, 2002

recently neglected. However, there is hope that some of these issues will be addressed in the near future.

The topography of the country, the population density and the dynamism of telcos are also important factors that can explain the more or less availability of services. France's topography is various but the majority of the country is not mountainous (it is thus easier to install networks), the density is quite low compared to Denmark or South Korea (networks reach fewer people) and the dynamism of telcos is disappointing (especially initiative to install networks everywhere and rapidly).

- **Quality of services**

The indicator 'quality of services' is good in France: Indeed, no big problems are reported apart in mobile telephony (network disorders) or in ADSL (lack of good customer services).

From our point of view, not enough efforts are made by the ART in this area. There is of course a yearly inquiry on mobile services quality which concerns more technical or network problems. However, there is no monitoring system concentrated on customers services problems (fixed, mobile telephony, or Internet), which are reported by consumers associations to be widely spread.

The ART should change its orientation, following the new business management applications, for instance carrying out the CRM system (Customer Relationship Management). Especially for the ART, it is a question of support to the consumers: Requests reception, follow-up of complaints, publishing of operators' performances, developing quality measurement tools and making public inquiries about quality availability in all telecommunications fields, testing services such as directory inquiries or value-added services and testing the quality of customers care within telcos. This system considers that the consumers (customers for a common company) are in the center of a company's preoccupations.²³

- **Information to the public**

In our opinion, there is room for improvement in this area, on behalf of the ART as well as the operators.

Indeed, the regulator does not inform consumers enough. On ART's website for instance, there is some basic data about operators (addresses, Internet sites, type of license, etc.), services quality reports and information about features and technologies (which is difficult to comprehend for profanes). Still, price comparisons are severely missing whereas prices are the main interest of consumers. In this field the ART should make some progress as soon as possible and be more consumer oriented.

In order to better inform the public the ART and the MINEFI should use their Internet sites in a better way by making information permanently available, increasing the amount of

²³ The ART already mentioned this idea in its study: *Adapter la régulation au nouveau contexte du marché des télécommunications*.

information and providing information about prices and quality of telecommunication services. In addition to that, the ART should improve its consumer service and the consumer response time.

8. Conclusion

Generally speaking, the French regulator has had a rather mixed record since its establishment in 1997. In the first years, the ART was torn between its ambition to promote competition and its protective attitude towards FT. The ART changed this recently, mainly under the pressure of international context and of the European Union's equal competition surveillance. On ART's behavior towards FT, the last Chairman Jean-Michel Hubert said on September 19, 2002 that *"FT is the mainspring of the market development and of the carry out of innovation. Yes, France needs a strong and efficient incumbent operator. This is not in the opposite of ART's objective to carry out real competition. In order to persist with this thought, I would say that the market needs all actors. Surely the mission of regulation is to apply the European legislation package, which is sometimes constraining, but its role is to sustain and to support the market; to facilitate rather than to constrain, in order to help the market to find its own balance, its own rhythm and its viability."*²⁴

The ART clearly affirmed its independence. However the MINEFI still has several regulation duties and competencies at its disposal and has therefore a non negligible influence on it. In the future, it would be better if the ART acquires all regulation tasks and duties in order to reduce time in the treatment of regulatory affairs and to impose only one interlocutor to the public.

Currently four areas seem interesting to point out in order to light up the French regulatory future:

- **Convergence:** It is important, when different networks are competing to offer similar services, to ensure the coherence of authorization policies and the rights and obligations linked with actors' activity area. It is especially the case for French cable networks for which the juridical regime should be simplified in order to favor their development.
- **Territorial collectivities:** In spite of the progress achieved with the Law of 1996, a territorial digital divide rapidly appeared in rural and oversee areas. 20% of the territorial collectivities is not set-up with GSM networks and 20% to 30% of the same territory will be left aside in matter of ADSL equipment. Territorial collectivities have at their disposal one article (L.1511-6 of the General Code of territorial collectivities) which still has to be clarified: Which equipment can a collectivity invest in? Which are the limits to these investments? Could territorial collectivities subsidize subvention operators in order to encourage them to install their network on their territories? Could they install their own telecommunications network, in areas where no private operator can invest in viable conditions?

²⁴ Intervention of Jean-Michel HUBERT, President of ART, *Semaine Télécoms et Réseaux*, September 19, 2002

Even though these questions have not received a clear answer yet, changes are already on the way: Territorial collectivities are going to finance at least 43 million € to have mobile territory coverage; at the same time their engagement for the installation of broadband networks could reach 1.5 billion €.

- LLU: Unbundling is still at a take-off stage in France. However, serious progress has been achieved since its introduction in January 2001. Competitors hope that these enhancement efforts will be maintained and that FT will carry on with its collaboration with the ART.
- ADSL: FT proposes several offers to allow competitors to provide ADSL services to their customers: LLU, a collect offer to operators (Option 3) and collect offers to Internet access providers (Option 5). The ART did a lot to ensure the improvement and the technical and tariffs coherence of these offers which had as a result a substantial drop of prices (40% for operators and 25% for Internet access providers).

ADSL access conditions are currently favorable for all actors. In particular, FT's offer to operators (tariffs and technical conditions of "ADSL Connect ATM offer" = Option 3) was made viable, which is not the case in most European countries where such an offer exists and even more so in countries where it does not exist. We can currently observe a real beginning of competition in this area, which is primordial for the development of the information society.

Finally we insist on the fact that France has to make efforts in the consumer area (information and assistance in particular). This is clearly the weak point of the French regulator and regulatory system.

Other "French" particularities have to be mentioned:

- Centralization of the regulatory system (French historical and current organization) in Paris apart for some Courts of Appeal.
- A strong culture of public service which is certainly the reason why the government keeps helping FT (recent promise of 9 billion € help to FT) and why the ART was reluctant until recently to be stricter with FT.
- Many market developments or innovations such as NP or LLU were introduced late in France.
- New technologies are spreading more slowly in France than in most other OECD countries. For instance mobile telephony penetration which progressed very slowly compared to most European countries. This has also been the case until nowadays with the Internet and the ADSL technology.

In conclusion we want to point out that the French regulatory system could be improved significantly by enhancing asymmetric regulation towards FT in order to improve fairness on

the market, and by enhancing the consumer service in order to inform consumers about prices, technologies and about their rights.

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