
Press release

MOBILE NETWORK SHARING

The Conseil d'Etat upholds Arcep's actions on the roaming agreement between Free Mobile and Orange

Paris, 17 December 2021

Free Mobile has been relying on nationwide roaming on Orange's 2G and 3G network since its entry into the French telecoms market in 2012, with maximum connection speeds that have been steadily reduced since 2016. This agreement between the two operators for the supply of roaming services up to 31 December 2020 was extended by two years through a contractual amendment, with no change to the maximum upstream and downstream speed of 384 kbits to which roaming customers would have access.

The Conseil d'Etat rejects the challenge from the firms Bouygues Telecom and SFR to Arcep's decision not to modify the amendment to the roaming agreement between Free Mobile and Orange

In a press release dated 3 April 2020¹, Arcep informed market players of the existence of the contractual amendment and asked for their comments. These observations were then made public, and Arcep made the decision not to request any changes to the amended version of the roaming agreement between Free Mobile and Orange dated 24 February 2020. This Decision, which was announced in a press release on 23 October 2020², was challenged by the firms Bouygues Telecom and SFR, who filed an appeal with the Conseil d'Etat – France's highest commercial court. The Conseil d'Etat rejected this appeal in a decision dated 15 December 2021, thereby upholding Arcep's decision not to request any changes to the amended version of the roaming agreement³.

Arcep welcomes this ruling, which supports its approach to and analysis of mobile network sharing since 2015

The Conseil d'Etat issued a reminder that roaming agreements do not by nature violate the regulatory objectives set forth in Article L. 32-1 of the French Postal and Electronic Communications Code (CPCE), notably the goals of fair and effective competition between service providers, and of promoting infrastructure-based competition, whose compliance require case-by-case analysis.

It stressed that the extension of the roaming agreement up to 31 December 2022 *"includes a cap on the capacity of the interconnection links between the Free Mobile network and the Orange network used to relay roaming traffic, and the introduction of a financial mechanism in 2022 to encourage a decrease in the number of customers that rely on this roaming,"* that *"Free Mobile has continued to deploy its own 3G network at a steady pace, beyond the final milestone set in its licence to use 3G frequencies, to reach 98% coverage of the population at the end of 2020. The percentage of Free Mobile traffic being relayed via roaming has decreased continuously, and currently represents only 1% of its customers' total traffic, reduced to an equal amount of radio resource consumption,"* and, finally, that *"this agreement does not enable Free Mobile to provide a higher quality of voice services than its competitors"*.

The Highest Court concluded that *"under these circumstances, the elements contained in the dossiers do not, as of the date of this decision, make clear that extending the contested agreement until 31 December 2022 would have anti-competitive effects on the mobile telephony market, which would require actions from Arcep to achieve the different objectives set forth in Article L. 32-1 of the Code, notably to enable fair and effective competition between service providers and, when appropriate, to promote infrastructure-based competition,"*

¹ <https://en.arcep.fr/news/press-releases/view/n/mobile-network-sharing-030420.html>

² <https://en.arcep.fr/news/press-releases/view/n/mobile-network-sharing-231020.html>

³ Since August 2015, Arcep has had the power to request that mobile operators amend their network sharing agreements whenever it appears necessary to meet regulatory objectives set out CPCE Article L. 34-8-1-1, introduced by Act No. 2015-990 of 6 August 2015 on Growth, Business and Equal Economic Opportunity

and that in abstaining to take action, pursuant to Article L. 34-8-1-1 of the French Postal and Electronic Communications Code, Arcep did not commit an error of law nor an error of assessment.

Associated documents:

- [The Conseil d'Etat decision](#)
- [Arcep press release of 3 April 2020](#)
- [Bouygues Telecom, SFR and Alternative Telecom remarks](#) (zip – 1.69 Mb)
- [Arcep press release of 23 October 2020](#)

Arcep at a glance

The Regulatory Authority for Electronic Communications, Postal Affairs and Print Media Distribution (Arcep), a neutral and expert arbitrator with the status of independent administrative authority (IAA), is the architect and guardian of internet, fixed and mobile communications and postal networks in France.

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