
Press release

DISPUTE SETTLEMENT

Arcep denies Valocôme requests, settling its disputes with mobile telephony operators Bouygues Telecom, Orange and SFR, respectively

Paris, 7 January 2025

In September 2024, the Arcep body responsible for settling disputes, legal proceedings and investigations (hereafter “RDPI”) took cognizance of a request from the firm Valocôme to settle a dispute the company was having with mobile telephony operators. Valocôme took over the lease on multiple locations upon which passive infrastructures (towers, masts, etc.) managed by infrastructure operators (hereafter “Towercos”), which were the former leaseholders, housed the aforementioned mobile operators’ equipment.

The firm Valocôme requested that, on the basis of Article L. 36-8 of the French Postal and Electronic Communications Code (hereafter “CPCE”), Arcep enjoin operators Bouygues Telecom, Orange and SFR¹ to enter into negotiations with Valocôme, to conclude a housing agreement on the locations for which the company holds an occupancy agreement.

At the same time, the firm Valocôme initiated several legal actions against the Towercos to have them evicted from some of the locations whose lease it had taken over.

The Arcep body responsible for settling disputes, legal proceedings and investigations (RDPI) denies the requests made by Valocôme.

In essence, the requests made by Valocôme sought to require Bouygues Telecom, Orange and SFR to enter into negotiations with Valocôme, to conclude a housing agreement on those locations for which it had taken over the lease.

As a reminder, Arcep has jurisdiction to deal with disputes:

- Within the meaning of CPCE Article L. 36-8 (I): in cases of refusal to grant access or interconnection, or in the case of failed negotiations over the conclusion or execution of an electronic communications network interconnection or access agreement;
- Within the meaning of CPCE Article L. 36-8 (II): concerning the possibilities and conditions governing access to hosting infrastructures, mentioned in CPCE Article L. 34-8-2-1.

Regarding the aforementioned cases, the RDPI body concluded, first, that while Arcep does have the authority to rule on a refusal to grant access or a refusal to conclude an access agreement, pursuant to Section I of CPCE Article L. 36-8, coming from the party providing the means of access, it does not, however, have the authority to rule on a refusal by a party – which is the access beneficiary within the meaning of the CPCE, to be used to provide electronic communication services (in this case, mobile operators) – to access the means being made available by the access provider.

Second, and in any event, the RDPI body concluded that Arcep was not competent to rule on the Valocôme requests, on the basis of paragraph 2b of Section II of CPCE article L. 36-8, as these provisions do not, in effect, allow for Arcep to be called upon to settle a dispute regarding a request from a hosting infrastructure manager seeking to force an electronic communications operator to use its hosting infrastructure.

¹ Valocôme’s initial application also concerned the operator, Free. Valocôme later withdrew its request for a dispute settlement with the firm, Free, and filed a new request with Arcep regarding the firm, Free Mobile.

These decisions will be published in the coming days, with due regard to confidential matters protected by Law.

Arcep stresses that these decisions are without prejudice to the mobile operators' obligations, particularly with regard to regional digital development

Several circumstances can explain why, when a land lease (or a lease on a rooftop terrace) expires, a mobile operator may be forced to change the location of its equipment. This could include, for instance, the owner of that land (or that rooftop terrace) choosing to reclaim it for another purpose, or to sign a lease with a party other than the Towerco that hosts the mobile operator's equipment.

Operators nevertheless continue to be required to comply with their nationwide digital network coverage obligations. Arcep will be especially vigilant in monitoring this. It is equally important that operators take all the necessary measures to ensure continuity and decent service availability.

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, postal networks and press distribution in France.