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Press release

## FRENCH OVERSEAS TERRITORIES

### Mobile networks in the French Antilles and in Guiana: The Conseil d'État puts an end to the Outremer Telecom appeal against two Arcep Decisions

Paris, 27 June 2022

On 21 June 2022, the highest administrative court in France, the Conseil d'État, rejected two appeals filed by Outremer Telecom:

- One against the Arcep Decision not to request any amendment to the sharing agreement between Digicel and Free Caraïbe;
- The other against the Decision issuing Free Caraïbe with a formal notice to comply with its rollout obligations in the Antilles-Guiana region.

#### **Sharing agreement between Digicel and Free Caraïbe in the French Antilles and in Guiana: the Conseil d'État upholds Arcep's Decision**

In February 2020, Digicel and Free Caraïbe signed a mobile network sharing agreement for Antilles and Guiana. Through their Madiacom joint venture created under this agreement, the two operators plan on steadily implementing a radio access network or RAN-sharing scheme throughout the regions where they operate, with temporary cross-sharing of their low-band frequencies and, in the interim, hosting Free Caraïbe temporarily on only Digicel frequencies. An amendment to this agreement was agreed upon in December 2020, which stipulates the time limit on the roaming period as well as the geographical scope of the cross-sharing of their low-band frequencies.

Arcep informed the other market players of the contract's existence, and invited them to submit any remarks they might have<sup>1</sup>. It then informed the sector of the adoption of the contractual amendment on 18 December 2020<sup>2</sup>. After conducting an in-depth investigation, in [a press release dated 13 April 2021](https://en.arcep.fr/news/press-releases/view/n/mobile-network-sharing-181220.html)<sup>3</sup> Arcep announced its Decision not to request changes to the sharing agreement between Free Caraïbe and Digicel<sup>4</sup>. The firm Outremer Telecom lodged an appeal of this Decision with the Conseil d'État, which the latter rejected on 21 June 2022.

#### **Arcep welcomes this decision from the Conseil d'État, which upholds its actions on mobile network sharing**

In its decision, the Conseil d'Etat issues a reminder that mobile network sharing agreements do not, by nature, create an obstacle to achieving the regulatory objectives set forth in Article L. 32-1 of the French Postal and Electronic Communications Code, and that it is up to Arcep to perform an analysis of these agreements on a case-by-case basis.

In particular, it notes that *"the disputed agreement involves significant investments from both firms, Digicel (...) and Free Caraïbe, in their joint venture, Madiacom, owner of the radio access network, which needs to be altered and outfitted to enable the two operators to utilise their own frequencies, but also to be expanded and improved to meet the commitments made by the parties,"* and that, *"the two parties will be incentivised to*

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<sup>1</sup> <https://en.arcep.fr/news/press-releases/view/n/partage-de-reseaux-mobiles.html>

<sup>2</sup> <https://en.arcep.fr/news/press-releases/view/n/mobile-network-sharing-181220.html>.

<sup>3</sup> <https://en.arcep.fr/news/press-releases/view/n/mobile-network-sharing-130421.html>.

<sup>4</sup> Since August 2015, Arcep has had the power to request that mobile network operators amend their network sharing agreements when such a change appears necessary to achieving the regulatory objectives set forth in Article L. 32-1 of the French Postal and Electronic Communications Code (CPCE). This power is stipulated in CPCE Article L. 34-8-1-1 introduced by Act No. 2015-990 of 6 August 2015 Growth, business and equal economic opportunity.

*invest, will remain autonomous in how they manage their frequencies, their core networks and their business policies”.*

The Conseil d’État also underscores the temporary nature of the roaming and frequency cross-sharing periods, *“in the 800 and 900 MHz bands in Martinique and in Guadeloupe and in the 800 MHz band in Guiana, of which the parties have smaller holdings than their competitors in these territories”.* It concludes that Arcep did not commit an error either of law or assessment by abstaining to request changes to this agreement.

### **The formal notice issued to Free Caraïbe to comply with the rollout obligations attached to its frequency licence for the Antilles-Guiana region: the Conseil d’État rejects the appeal filed by Outremer Telecom for lack of locus standi**

Outremer Telecom was contesting the Decision issued by the Arcep body responsible for investigations and legal proceedings (RDPI), dated 9 December 2020, putting its competitor Free Caraïbe on formal notice to comply with certain of the coverage obligations attached to its frequency licence. While recalling that Arcep has broad discretionary powers when exercising its sanctioning powers, the Conseil d’État concluded that when Arcep decides to issue a formal notice, *“only the party that is the subject of this formal notice has the standing to contest it, regardless of its content”.*

#### **Associated documents:**

- [Conseil d’Etat decision on the sharing agreement between Free Caraïbe and Digicel](#)
- [Arcep press release of 12 June 2020](#)
- [Arcep press release of 18 December 2020](#)
- [Arcep press release of 13 April 2021](#)
- [Conseil d’Etat Decision on the decision to issue a formal notice to Free Caraïbe](#)
- [Arcep Decision No. 2020-1455-RDPI of 9 December 2020 implementing the formal notice to Free Caraïbe to comply with its obligations in accordance with the provisions of Arcep Decision No. 2017-1038 of 5 September 2017](#)

#### **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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