

ART in 2003-2004

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The most noteworthy development in 2003 was the amendment of the legal and regulatory framework covering electronic communications. Indeed, 2003 was the first year in which this comprehensive change in the legal system following the transposition of European directives into French law came into effect. Due to the complexity of the process, there were delays in implementing the timetable for the official deadline of 24 July 2003. The first concrete milestone was achieved in the summer of 2003, with the implementation of a transitional framework allowing some of the main principles of the directives to be applied before being transposed into French law. The first changes concerned the freedom for any operator to deploy a network and provide public services. This change from a system of individual licences to one of general authorisation guarantees greater freedom of action and hence encourages competition to the benefit of consumers, both individuals and business users.

Approval by parliament of the Act of 31 December 2003 transposing the "universal service" directive was the second concrete milestone in this change in the legal system. Transposition will be complete once Parliament has adopted the law on electronic communications and audiovisual communication services and the digital economy law.

With this new framework, regulation takes another step forward. By analysing the different market segments identified by the Commission, it can adapt to the competitive situation as it exists in the marketplace. This process of analysis commenced in 2003 and will continue in 2004. Sector regulation is adopting the principles and methods of competition law and will therefore be more effective in the fields in which it intervenes, in particular the wholesale markets, even if this means playing a less important role in other areas.

Two major developments occurred in the telecommunications services sector in 2003, a year in which new applications took over from traditional fixed-telephony services.

First, in the fourth quarter of 2003, mobile telephony revenues overtook fixed-line revenues, which fell in most European countries. This trend towards replacement of fixed by mobile telephony has gathered pace, as confirmed by the fall in the overall fixed-line installed base. Mobile telephony is driving growth and now represents one-third of voice calls compared to less than one-quarter in

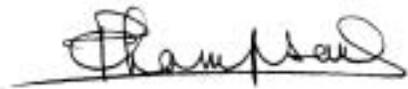


2000. Growth in subscriber numbers resumed in the fourth quarter, demonstrating the dynamism of this market. This reserve of growth is supplemented by consumer take-up of the new mobile multimedia services, which rose by 50%, suggesting that users will give a warm reception to the UMTS services launched in 2004.

Another major development in 2003 was the confirmation of sharp growth in broadband, with over 3.5 million subscribers. This represents a doubling of user volumes in one year, with 3 million connected via ADSL. Local loop unbundling has become a reality and France is one of the European leaders in this process. ART believes that it is as vital in 2004 as in 2003 to preserve competition between Internet service providers in the retail market and between operators in the intermediate wholesale markets, primarily through unbundling, to guarantee service diversity and innovation.

However, competition in broadband must not be confined to urban areas. ART has set itself a 2004 target of extending the unbundling process to less densely populated areas. It will pursue the efforts initiated in December 2003 to encourage unbundling of small sites. Likewise, ART will support local authority projects to improve local provision of digital services as authorised by the new article L.1425-1 of the Local Authority General Code. ART will take care to ensure that local authority initiatives reconcile, as far as possible, public action and the principles of competition.

In 2004, the fall in operator debt, the refocusing on core businesses, restored margins and easier access to the financial markets should consolidate the improvement in the situation observed at the end of 2003. Working with market players under conditions of total transparency, ART will pursue its actions to foster competition, which means ensuring that there is adequate economic scope for intervention by alternative operators. This will benefit consumers, both business users and individuals alike: indeed, the stimulus of competition is the best way to guarantee that operators will improve performance to satisfy users' needs.



Paul Champsaur

Presentation of ART

CREATION OF A REGULATORY AUTHORITY

Creation of an independent administrative authority to regulate competition in the telecommunications sector was the consequence of opening up to competition a sector that was previously a legal monopoly. Opening up this market with its very high entry barriers required specific regulation to supplement common competition law, in order to encourage the entry of new players and further competition. In addition, the technological factors and cost structures that led naturally to a monopoly situation did not disappear with the opening of the market. However, sector regulation will gradually be replaced by common competition law as competitive conditions in the different segments of the electronic communications market become satisfactory.

Hence, the Telecommunications Act dated 26 July 1996 created the Telecommunications Regulatory Authority (ART) with an independent 5-member executive board, whose task is to:

- foster competition to the benefit of users;
- monitor the provision and financing of universal service in the framework of a public telecommunications service;
- monitor development of employment, innovation and competitiveness in the telecommunications sector;
- take into account the interests of regions and users in terms of access to services and equipment.

THE CHAIRMAN AND MEMBERS OF THE EXECUTIVE BOARD

As a guarantee of ART's independence, the members of the executive board may not be dismissed nor may their six-year term be renewed. This independence is strengthened by the fact that the board members are appointed by several elected authorities. Three of them are appointed by the President of the Republic, while the two others are appointed, respectively, by the President of the National Assembly and the President of the Senate.

Three members of the board were appointed by order of the President of the Republic:

- as Chairman, **Paul CHAMPSAUR**, inspector general of Institut national de la statistique et des études économiques (INSEE), on 3 January 2003;
- as members, **Dominique ROUX**, professor at the Université de Paris Dauphine, on 4 January 1999, and **Michel FENEYROL**, telecommunications engineer, on 3 January 2001;
- the President of the Senate appointed former minister **Jacques DOUFFIAGUES** as member of the board on 4 January 2001;
- the President of the National Assembly appointed **Gabrielle GAUTHEY**, telecommunications engineer, as member of the board on 31 December 2002.

The executive board - 1^{er} janvier 2004



Michel FENEYROL

Paul CHAMPSAUR

Gabrielle GAUTHEY

Jacques DOUFFIAGUES

Dominique ROUX

These five members make up ART's Executive Board. It defines the major guidelines for action and issues the decisions and recommendations that structure ART's overall action.

ORGANISATION

ART adopted a new organisational structure in February 2004 with the aim of responding in a more satisfactory manner to the increasingly complex technical and economic challenges of a fast-changing sector. This new phase, which should lead to a consolidation of competition, coincides with the implementation of the new legal framework created by the European directives, which place even stronger emphasis on the economic and competitive issues facing the sector.

The main change in ART's structure is the creation of a transversal service responsible for defining economic policy (the economic and forecasting division) and two new vertical divisions: the "local authorities and regulation of the broadband market" division and the "regulation of the fixed and mobile market" division, which are directly responsible for applying the new framework in terms of defining relevant markets, designating SMP (significant market power) operators and implementing the obligations applying to these operators.

The action of the different departments is placed under the responsibility of the Director General, who is responsible for overall management and coordination under the authority of the Chairman. Since October 2003, this position has been occupied by **Philippe Distler**, telecommunications engineer.

"The first stage in ART's development was devoted to building up the Authority and positioning it in the administrative framework (...) Competition was just being established at that time and the technical and economic issues were less complex (...) We are now entering a second phase of regulation, a phase of consolidation of competition over the longer term, with implementation of a new legal framework and an even greater emphasis on economic and competitive issues."

*Philippe Distler, Director General of ART,
ART's newsletter no. 35, November 2003*

THE EXECUTIVE BOARD AND ART DEPARTMENTS

Executive Board

Chairman



Paul CHAMPSAUR

Members



Jacques DOUFFIAGUES



Michel FENEYROL



Gabrielle GAUTHEY



Dominique ROUX

Market analysis project

Ingrid MALFAIT

Director General



Philippe DISTLER

Communication

Jean-François HERNANDEZ

Deputy :
Ingrid VIOLET-APPENZELLER

Économic and forecasting division

François LIONS

Deputy : Antoine MAUCORPS

Coordination of economic analyses.
Universal service and directories.
Observatories and external studies.
Forecasting.

Economic assessments
François VARLOOT

Forecasting
Didier CHAUVÉAU

Market observatories and external reports
externes Sylvie DUMARTIN

Regulation of fixed and mobile markets

Benoit LOUTREL

Regulation of wholesale and retail markets for fixed (switched and leased line) and mobile services.
Tariff regulation and portability.

Fixed market
Gweltas QUENTREC

Mobile market
Matthias COLLOT

Local authorities and regulation of broadband markets

Laurent LAGANIER

Regulation of wholesale and retail markets for broadband networks and services and broadcasting.
Relations with local authorities for regional digital development.

Broadband access
Cécile GAUBERT

Broadcast and broadband services
Bernard CELLI

Local authorities
Jean-Claude BEAUCHEMIN

Operators and Regulation of Scarce Resources

Jérôme ROUSSEAU

Deputy : Olivier BLONDEAU

Point of entry for operators (notifications, framework for new technologies).
Planning and regulation of scarce resources (numbers and frequencies).
Monitoring of licence obligations (notably QoS coverage).

Operators and Resource Planning
Anne HUGUET

Mobiles operators
Michaël TRABBIA

Frequencies
Olivier BLONDEAU

Numbering
Jacques LOUESDON

International

Anne LENFANT

Deputy : Joël VOISIN-RATELLE

Coordination and implementation of ART's international actions.

European affairs
Françoise LAFORGE

International relations
Joël VOISIN-RATELLE

ITU Coordination and standardisation
Marie-Thérèse ALAJOUANINE

Legal

Elisabeth ROLIN

Deputy : Loïc TAILLANTER

Responsible for all legal aspects of ART's activity;
ensure the legal security of decisions.

Administration and Human Resources

Jean-Marc SALMON

Deputy : Elisabeth CHEHU-BEIS

Manages ART resources, documentation,
the intranet and consumer relations.

Information systems and office support
services Pierre-Jean DARMANIN

Programming, budget and management
audits Bernard THOUIGNON

Documentation
Elisabeth CHEHU-BEIS

Consumers
Stéphane KUNA

Human resources and labour relations
Catherine AUTIER

CONSULTATION AND TRANSPARENCY

The effectiveness and appropriateness of regulatory action is determined to a large extent by the methods used to guide this action. ART must guarantee visibility for market players, which requires permanent consultation and a concern with transparency.

The consultation process involves periodic meetings of consultative bodies:

- the CCRST (Telecommunications Networks & Services Consultative Committee) and the CCR (Radiocommunications Consultative Committee), both of which have close links with the Minister responsible for Telecommunications and ART;
- the Interconnection Committee.

It also involves regular organisation of hearings, meetings and public consultations, notably through calls for comments.

ART's recommendations and decisions are public and are published on ART's website (www.art-telecom.fr). This website is a major communication tool for ART, since it is the main distribution channel for publishing information (press releases, calls for comments and abstracts of responses, reference texts, observatories, etc.). To inform consumers, fact sheets and maps showing the progress of unbundling, for instance, may be consulted online.

ART also publishes a newsletter, each edition of which includes articles on recent developments along with an article on a specific theme, giving ART's point of view alongside that of other representative players.

CONTROL MECHANISMS

A number of agencies are responsible for controlling ART decisions:

- **Parliament:** every year, ART delivers an annual report to the government and Parliament. The regulator is invited to attend permanent parliamentary committee hearings. ART also maintains regular relations with the CCSPPT (public service commission for posts and telecommunications) and with the Competition Authority in respect of relevant-market analysis.
- **The courts:** ART decisions may be referred for appeal to the Paris Appeal Court or the Conseil d'Etat, whichever is applicable.
- **The European Commission:** draft decisions concerning analysis of relevant markets are notified for recommendation to the Commission (which has a right of veto over definition of relevant markets and designation of SMP operators) and to the other European regulators.

ART's responsibilities and power

ART'S MAIN RESPONSIBILITIES

■ to foster "real and fair competition to the benefit of users".

Competition is not an end in itself; rather, it aims to provide consumers, whether individuals or business users, with better quality of service at the best possible cost, along with a diversified service offering that meets their expectations.

■ to monitor "provision and funding of the components making up the public telecommunications sector"; this principle, reaffirmed by the Act of 31 December 2003, must be implemented in a competitive environment.

The public telecommunications service includes universal service, which consists of:

- provision of a high-quality telephone service to all at an affordable price;
- provision of a directory enquiry service and a subscriber directory, in printed and electronic form;
- access to public payphones installed in the public domain;
- access to the telephone service, the directory enquiry service and public payphones for disabled users under the same conditions as for other users.

■ to monitor "development of employment, innovation and competitiveness in the telecommunications sector".

Competition is only valid if it contributes to market development. In its recommendations and decisions, ART is concerned with encouraging employment and innovation in companies in the sector, while preserving an environment favourable to their competitiveness.

■ to take into account "the interests of regions and users in terms of access to services and equipment".

Regional development is a major concern for ART in decisions aimed at encouraging mobile coverage and expanding broadband into sparsely populated regions.

MARKET ANALYSES AND OBLIGATIONS

One of ART's major powers is to monitor real competition in the eighteen different market segments identified by the Commission and referred to as relevant markets. On completion of its analysis, it is responsible for imposing obligations on SMP operators. These obligations must be justified, proportionate and commensurate with the nature of the competitive problem identified. This action is primarily exercised in the wholesale markets.

These obligations, or remedies, are defined in the following directives

■ **The obligations listed in the "access" directive:**

- transparency;
- publication of a reference offer;
- non-discrimination;
- access to and use of specific network resources;
- control of prices and obligations in respect of the cost accounting system (cost-oriented tariffs);
- accounting separation.

■ **The obligations arising from the "universal service" directive (list not exhaustive):**

- prohibition against charging excessive or predatory prices;
- prohibition against discriminatory practices, etc.

On completion of the market analyses, the regulator may also impose obligations:

- with respect to retail services and notably retail prices if the market is not sufficiently competitive and if the obligations imposed on SMP operators in respect of access and interconnection in the underlying wholesale markets are not sufficient;
- on SMP operators in the fixed telephone service connection market, which are obliged to offer carrier selection or pre-selection.

Obligations may also be imposed on non-SMP operators. They are aimed at ensuring that operators controlling access to the end-user provide end-to-end connectivity. Such obligations may also be imposed to ensure compliance with international commitments.

FROM A LICENCE SYSTEM TO A SYSTEM OF NOTIFICATION

European legislation enshrines the principle of freedom to establish and operate a public network and provide public electronic communications services, marking the change from a system of individual licences to one of general authorisation. Hence, ART is no longer responsible for assessing individual licence applications and the Minister responsible for Telecommunications no longer issues licences. However, operators are obliged to notify ART which issues an acknowledgement allowing them to enforce their rights (interconnection, rights of way, etc.) and familiarise themselves with their obligations (taxes, contribution to funding universal service, etc.).

No authorisation is required to establish and operate an independent network (PMR, microwave networks, VSAT, etc) and no notification is required.

ALLOCATION AND MANAGEMENT OF SCARCE RESOURCES

The new legal framework confirms ART's powers in respect of allocation of scarce resources, i.e. the frequencies and numbers required by operators to carry out their activity. These powers, which must be exercised on an objective, transparent and non-discriminatory basis, give rise to an individual licence issued to the operator making the application in return for payment of a fee. The transitional system provides for the rights acquired in previously awarded licences to be maintained. The investigation period is limited to six weeks for frequency allocations and to three weeks for allocation of number blocks.

Where there is a proven scarcity of frequencies, ART may propose conditions for their allocation to the Minister responsible for Telecommunications, after public consultation. In this case, the period of investigation may not exceed eight months.

UNIVERSAL SERVICE

Pursuant to the Act of 31 December 2003 which transposed the European "universal service" directive dated 7 March 2002, ART must:

- determine the principles and methods for providing universal service;
- calculate the amount of universal service funding contributions , now based on the revenues generated in respect of services (not including interconnection) ; monitor the funding mechanisms;
- impose penalties on operators failing to pay their contribution.

ART must also ensure that the minimum set of leased lines as provided for by the "universal service" directive is provided under non-discriminatory conditions, at cost-oriented tariffs and in a completely transparent manner.

TARIFF REGULATION

Le contrôle tarifaire peut être imposé à double titre à un opérateur:

- in respect of universal service;
- in respect of the competitive state of the market, where the access and interconnection obligations imposed on the underlying wholesale markets are not sufficient to remedy competitive problems identified in the retail markets.

«Regulation of retail tariffs is not antiquated
nor is it specific to French regulation:
it exists everywhere in Europe.»

Paul Champsaur, ART chairman, ART's newsletter n°36 - february 2004

SETTLEMENT OF DISPUTES

ART has the power to settle disputes between operators. It exercises this power in the following three areas:

- refusal to provide interconnection, finalisation and implementation of interconnection agreements and conditions of access to a telecommunications network;
- ensuring compliance of agreements which include exclusion clauses or clauses that bring about restrictions of a legal or technical nature for the provision of telecommunications services on cable networks;
- availability and conditions of shared use of existing installations located in the public domain or on private property.

ART is also responsible for settling cross-border disputes.

Since its creation in 1997, ART has issued almost 90 decisions concerning settlement of disputes, reflecting the importance of this particular regulatory power.

The new legal framework gives ART a deadline of 3 months to issue its decision, although in exceptional cases, this deadline may be extended to six months.

IMPOSITION OF PENALTIES

ART has the power to impose penalties on operators failing to fulfil their obligations. It may withdraw frequency and number resources and may, in cases of emergency, take interim measures.

Recommendations and decisions

Pursuant to the powers given to it to perform its functions, ART issues recommendations and decisions.

Number of recommendations and decisions issued by ART	1997	1998	1999	2000	2001	2002	2003
	458	1047	1159	1365	1299	1200	1340

the new legal framework

THE NEW LEGAL FRAMEWORK

The European Union set up a new regulatory framework for the electronic communications sector in 2002. The main goal was to adapt the European legal framework to progress in competition and the development of network convergence, requiring clearer separation between regulation of carriers and content.

The new European legal framework applying to the electronic communications sector is based on several texts:

■ Six directives

- the "framework" directive 2002/21/EC of the European Parliament and Council, dated 7 March 2002;
- the "access" directive 2002/19/EC of the European Parliament and Council, dated 7 March 2002;
- the "authorisation" directive 2002/20/EC of the European Parliament and Council, dated 7 March 2002;
- the "universal service" directive 2002/22/EC of the European Parliament and Council, dated 7 March 2002;
- the "protection of privacy and electronic communications" directive 2002/58/EC of the European Parliament and Council, dated 12 July 2002;
- the "competition" directive 2002/77/EC of the European Parliament and Council dated 16 September 2002.

■ One decision

- the "radio spectrum" decision no. 676/2002/EC of the European Parliament and Council dated 7 March 2002.

■ Administrative texts

- Commission guidelines dated 11 July 2002 on market analysis and assessment of market power pursuant to the EC regulatory framework for electronic communications networks and services;
- The European Commission recommendation dated 11 February 2003 concerning relevant markets for products and services in the electronic communications sector that are likely to be subjected to ex-ante regulation in compliance with the "framework" directive.

THE LOGIC GOVERNING THE NEW FRAMEWORK

- **Trends in competition:** if competition is to progress in the different markets, regulation must be adapted to the diversity of competitive situations in the different segments of the electronic communications market.
- **Convergence:** the new legal framework takes into account the latest technological developments modifying the boundaries between telecommunications, data-processing and the media. This phenomenon of convergence is the reason why the term 'telecommunications' has been replaced by 'electronic communications'. Regulation is technologically neutral.
- **Simplifying the authorisation system:** convergence between the different electronic communications networks and services requires implementation of a general authorisation system to replace the system of individual licences, thereby guaranteeing the freedom of any player to provide networks and services. The distinction between public and non-public networks and services disappears and all providers benefit from the same rights on a non-discriminatory basis.
- **The principles of competition law:** regulation of the electronic communications sector is based on the underlying principles, concepts and arguments of competition law. ART uses the tools of competition law to analyse the markets and designate SMP operators. This analysis of relevant markets is carried out in consultation with the Competition Authority.

"The legal framework created by the European directives will allow ART to gain a clearer picture of the true situation in the telecoms market in general and make finer distinctions between the different competitive elements. It will then be in a better position to remove obstacles to competition thanks to more appropriate, i.e. more specific, means of intervention. To this end, the "telecoms package" gives market analysis a central role in the process. The in-depth knowledge gained from the very comprehensive work carried out by ART departments should give players greater visibility and reduce uncertainty. In carrying out this task, ART will be guided by a concern for transparency, consultation and explanation. Hence, this regulatory process is positive not only for operators and service providers but also for the end user".

Paul Champsaur, ART chairman, ART's newsletter n° 35, November 2003

THE UNDERLYING PRINCIPLES

■ Confirmation of the central role of *ex-ante* sector regulation

- in guiding sector markets towards full competition ;
- in preparing for the transition towards implementation of general competition law.

■ Simplifying the regulatory process and regulation

- *ex-ante* regulation should only apply if the degree of competition on certain defined markets is deemed insufficient;
- preference is given to *ex-ante* intervention on wholesale markets; regulation of retail markets must be resorted to only as a secondary measure;
- easing of tariff control;
- emerging markets are exempt from *ex-ante* regulation.

■ Elimination of individual licences in favour of a system of general authorisation and notification

■ Reinforcing transparency in the exercise of regulation

- important decisions must be preceded by public consultation;
- the regulator must systematically provide reasons for its decisions.

■ Reinforcing the European Commission's role of harmonisation

- all important decisions made by the regulator must be notified to the European Commission;
- the Commission has a right of veto over definition of relevant markets likely to be subjected to *ex-ante* regulation and designation of SMP operators;
- decisions concerning market analysis are notified for recommendation to the other European regulators.

■ Taking technological convergence into account

- establishment of a harmonised legal framework for all networks, whether telecommunications networks or, notably, cable TV networks.



MARKET ANALYSIS



Market analysis is one of the major tasks entrusted to ART pursuant to the new legal framework created by transposition of the European directives. The regulator must define relevant markets, i.e. markets likely to be subjected to specific regulation, guided by the list contained in the Commission's recommendation. Analysis of the state and conditions of competition in these markets makes it possible to designate operators in a dominant position, where they exist. ART is then responsible for identifying the proportionate obligations that should be imposed on these operators to remedy inadequate competition in a given market.

The market analysis process is closely supervised by the European Commission and ART is obliged to pay very close attention to the Commission's recommendations and guidelines. It must notify the Commission, and the other European regulators, of its draft decisions for recommendation.

ART may deviate from the Commission's recommendations, but must provide detailed reasons and submit them to a more exacting process of consultation and approval. Such deviations, designed to adapt to the specific characteristics of the French market, are intended to remain comparatively limited in scope.

RELEVANT MARKETS

The European Commission recommendation dated 11 February 2003 identifies the 18 products and services markets likely to be subjected to *ex-ante* regulation.

Fixed voice

- 6 retail markets:
access, national and international calls, based on segmentation between residential and non-residential users;
- 3 wholesale markets: call origination, call termination, transit.

Fixed data

- leased lines
 - 1 retail market (lines equal to or lower than 2 mbps);
 - 2 wholesale markets (terminal segment including, primarily, partial leased lines for termination and the trunk market, i.e. the backbone between operators' main network nodes).
- broadband
 - 2 wholesale markets (wholesale provision of broadband access and wholesale provision of unbundled access).

Mobile

- 3 wholesale markets: access and call origination, call termination, wholesale provision of international roaming nationwide.

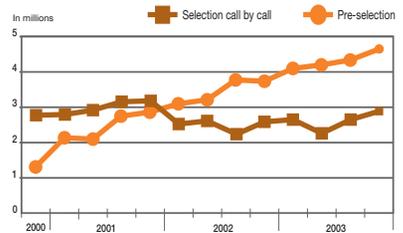
Audiovisual

- 1 wholesale market: audiovisual transmission.

priority issues for ART

CONSOLIDATING COMPETITION IN FIXED TELEPHONY

Competition in the fixed telephony market is assessed by the proportion of subscribers choosing an operator other than the incumbent to route their international, long-distance or local calls. At end 2003, some 7.5 million customers (out of a total of 34 million lines) had switched to rival operators. On 31 December 2003, new entrant operators had won 38.2% of the long-distance call market and 24.2% of the local call market.



Carrier selection end 2003

France Telecom rivals' seemingly strong position in the fixed telephony market in terms of call volumes tends to conceal the comparative weakness of their market share in value after payment of interconnection services to the incumbent operator. The weak position of new entrants justifies the application of ex-ante regulation to operators in a dominant position in order to create sufficient economic scope for rivals to carry out their business. To consolidate their positions, alternative operators must be able to operate in other market segments that they have either not yet penetrated or where their market share is small, notably in the areas of subscription resale and innovative services.

Subscription resale

France Telecom has a pre-eminent position in the access market (copper pair), i.e. in all technical access services invoiced via the telephone subscription. This situation can prevent development of innovative tariff offers and services bundling telecommunications and subscription. On completion of the market analysis process, the incumbent operator may be obliged to offer a wholesale subscription resale package to its rivals, if ART demonstrates that this is necessary and justified for improving competition in the access market. This possible wholesale offer should not dissuade alternative operators from investing in access infrastructure, either on their own account or through full unbundling, with which it is complementary.

Innovative services

Implementation of the new European legal framework should lead to integration of the phenomenon of convergence, which has sharply modified the boundaries between the telecommunications, computing and media industries. New services have emerged since the end of 2003, including TV over ADSL or voice over IP. The development of these technological innovations which open up new markets, referred to as emerging markets, must not be curbed by imposition of ex-ante regulation. However, this does not mean that ex-post regulation is ruled out. The regulator must ensure that competitive conditions are respected and that all operators willing to invest are able to offer these services without hindrance.

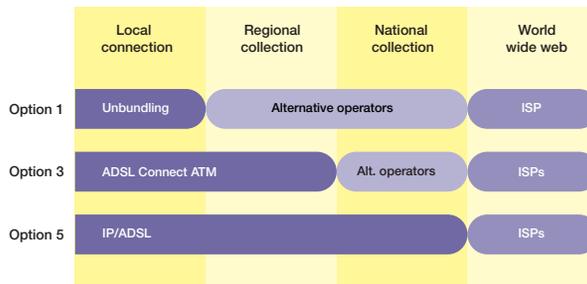
EXPANDING BROADBAND COVERAGE

Broadband competition, notably in ADSL, took off sharply in 2003, with diversified service and tariff offers. This process should be consolidated and the geographical scope widened in 2004.

At end 2003, France was among the European leaders in ADSL and, notably, unbundling, with over 3 million subscribers. The rivals of Wanadoo, France Telecom's internet service provider, won 40% of the retail market and unbundled local loop operators (ULL) took around 10% of the wholesale market.

The fall in wholesale prices (options 3 and 5) at the end of 2003, as well as tariffs being differentiated as a function of production costs, allows the substantial productivity gains in the sector to be passed on to the end-user, while still encouraging alternative operators and France Telecom to persist with geographical rollout of ADSL.

ADSL options



Broadband challenges

- **Multi-service offers:** development of innovative "double or triple play" offers on ADSL (bundling access to broadband Internet, TV on ADSL and telephony) will likely lead to comprehensive changes in the broadband market. It will also raise complex issues for the regulator, notably in terms of the potential leverage provided by content access.
- **Service quality:** improving unbundling service quality to ensure that it is comparable to that of France Telecom's wholesale and retail offers is a challenge for the development of broadband and, particularly, of full unbundling.
- **Coverage:** facilitating development of ADSL in less densely populated areas without any price discrimination compared to densely populated urban areas and supporting local authority efforts in regional digital development.
- **Implementation of the new regulatory framework:** the outcome of the market analyses should ensure that there are France Telecom's wholesale offers and regulation mechanisms commensurate with the challenges and expectations of the sector and end-users.

GSM AND REGIONAL DEVELOPMENT

Renewal of GSM licences

The Orange France and SFR licences are due to expire in March 2006. The conditions for renewing the licences for a period of 15 years in the frequency bands initially allocated, were forwarded to the Minister responsible for Telecommunications on 24 March 2004 who notified the operators. The conditions take user interests into account and establish favourable conditions for continued development of the market.

GSM operators will have to meet new obligations, some of them arising from the "telecoms package", aimed at:

- facilitating competition (limiting terminal blocking, free terminal configuration);
- facilitating access (disabled people, more stringent coverage obligations);
- environmental protection (positioning of antennae, etc);
- making greater efforts to combat phone theft (blocking stolen phones).

Extension of mobile coverage

Extension of mobile coverage is a major regional development challenge. On 15 July 2003, the government, associations of elected representatives, ART and the three GSM operators (Orange France, SFR and Bouygues Telecom) signed an agreement to improve national mobile telephone coverage so as to reduce "dead zones", i.e. zones not covered by any operator (around 3,000 communes).

There are two phases in the agreement:

- up until 2004: installation of 1250 sites covering more than 1600 communes, in accordance with the commitments made by the three operators to ART on 24 September 2002;
- from 2005 to 2006: coverage of the other communes identified.

COMMERCIAL LAUNCH OF UMTS

The launch of UMTS services by Orange France and SFR, which had been delayed for technical and economic reasons, will finally take place in 2004. This delay has led to a review of the obligations of the two operators, which are required to launch their 3G service before the end of 2004 in the twelve largest French cities. By 31 December 2004, the two UMTS operators will be required to cover a minimum of 58% of the population.

The demand of end-users, notably young people, for mobile data services via GSM/GPRS, suggests that third-generation services will get off to a good start. ART has identified several conditions necessary to ensure successful rollout of broadband services via UMTS:

- **technology investment** to roll out the networks and provide the end-user equipment;
- **marketing investment** to ensure that there is a sufficient number of handsets on the market to guarantee the success of certain interpersonal services;
- **a varied and comprehensive service offer**, by opening networks without discrimination to all service providers;
- **improved interoperability** between handsets to allow subscribers to communicate with each other no matter what handsets and networks they use. This requires close technical cooperation between operators and manufacturers;
- **reserves of available frequencies**: the resources available in the frequency band used for deployment of UMTS networks around 2 GHz (the so-called "core band") will not be sufficient in the longer term. Back in 2000, the ITU identified three new internationally harmonised frequency bands, the so-called "additional" or "extension" bands, for the IMT-2000 systems to which UMTS belongs. The preferred extension band in Europe is the 2500-2690 MHz band. To ensure that this band will be really available, ART contributed to the implementation of European regulation designating harmonised, priority use of this band.

OTHER ISSUES

Implementation of the new regulatory framework and technological change are the priority issues facing market players. They also raise problems for the regulator.

Numbering

Implementing the European directives, which eliminate the distinction between "public network operators", "suppliers of public telephone services" or "suppliers of telecommunications services other than the telephone service", means that consideration has to be given to adapting the national numbering plan and the associated management rules. Adaptation is also required because of changes in usage (decreased importance of the one-digit prefix after implementation of carrier pre-selection subscriptions) and service innovation (introduction of voice over IP, for instance).

Wireless local loop and Wimax

Renewed interest in use of the abandoned WLL frequencies in the 3.5 GHz band to operate services based on Wimax wireless technology raises important challenges in terms of competition, innovation and regional development. The regulator intends to assess the situation by launching a call for comments.

m-commerce

Mobile payment systems are transforming the mobile value chain by introducing a mobile payment service provider. This new role could be played either by the mobile operator or a financial establishment, or alternatively by a mixed structure involving both these categories of players. The m-commerce market has high potential given the possible service configurations and requires a climate of confidence to reassure the consumer. ART will participate in this effort by clarifying the situation in fields that fall within its scope, i.e. numbering and market analysis.

Voice over IP and mobiles

While the trend whereby fixed telephony is being replaced by mobile telephony has been evident everywhere in Western Europe since the beginning of the millennium, it may reverse in the longer term. Voice over IP constitutes a radical breakthrough in the traditional value chain of voice telephony by doing away with the cost constraints linked to time and distance. The question is whether this development will eventually lead to a more balanced breakdown of fixed and mobile use.

NEW PLAYERS: THE LOCAL AUTHORITIES

Article L.1425-1 of the Local Authority General Code significantly widened the powers of local authorities in the field of regional digital development by authorising them to become operators of telecommunications networks and services.

Local authorities can choose between directly managing these networks or outsourcing management to a third party. They may also choose between different legal structures for building and operating telecommunications structures (management, public contracts or public service outsourcing contracts, etc). If they choose to entrust network operation to an outside manager, they must ensure that the infrastructure is made available to operators under transparent and non-discriminatory conditions.

While local public action to reduce regional disparities in broadband access is now recognised as legitimate, the granting of public subsidies in a market sector, i.e. the electronic communications sector, must be done in a way that is compatible with competition. This requires provision of equal access to the network to all users, a crucial factor for the success of projects and for preserving the interests of local authorities.

Like any operator, local authorities (or their agents) will be covered by sector regulation as exercised by ART in accordance with the Post and Telecommunications Code. While ART is not obliged to issue a recommendation for each local authority project, it is nevertheless working on drafting a number of general principles to guide local authorities in reconciling public action and competition. To this end, ART has undertaken to seek the opinions of all the parties concerned (operators, local authorities, institutions, etc.).

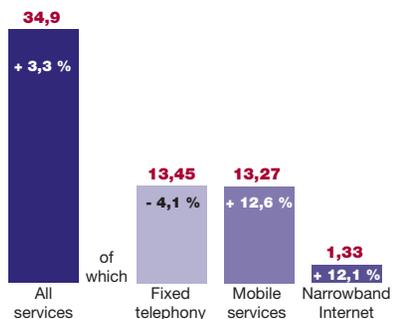
For free and fair competition

Respect of the general principles of neutrality, openness and equality requires that:

- the information gathered by a local authority to respond to an operator's demand must be made available to all operators;
- actions undertaken to inform users about and promote broadband must be carried out in a neutral manner and must not promote the services of a single operator or ISP;
- financial subsidies must be awarded in a way that is compatible with French and Community rules.

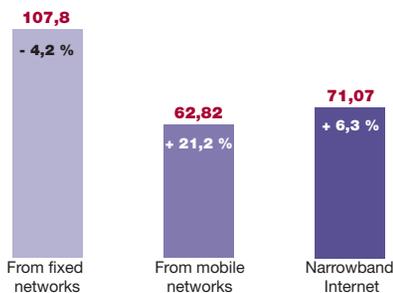
■ The market in 2003

Value and trends compared to 2002 (€ billion)



(Source : ART)

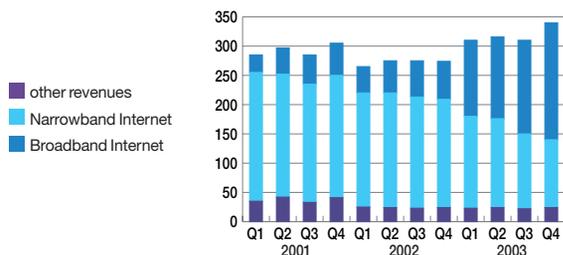
Call volumes and trends compared to 2002 (billions of minutes)



(Source : ART)

■ Broadband

Broadband revenues, declared operators (€ millions)

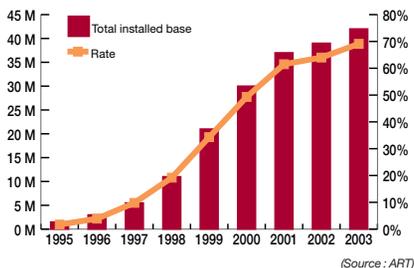


Revenues corresponding to services invoiced directly by declared operators to end-users or ISPs that are not declared operators. The added value generated by such ISPs (Wanadoo, AOL, Club Internet, for instance) is not taken into account.

(Source : ART)

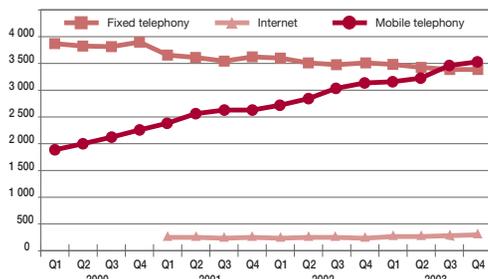
■ Mobiles

Trends in penetration rates and subscriber numbers



(Source : ART)

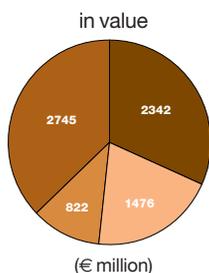
Mobile revenues overtook fixed revenues at end 2003 (€ millions)



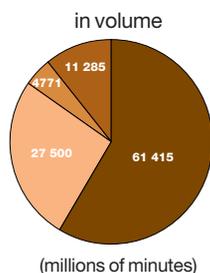
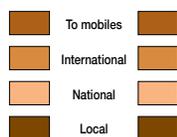
(Source : ART)

■ Fixed

Breakdown of voice calls originating from fixed network



(€ million)

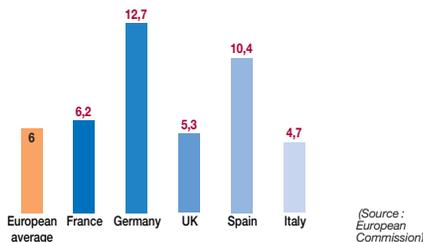


(millions of minutes)

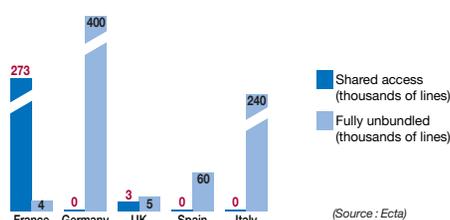
Internet access calls are not included in local calls
(Source : ART)

Broadband

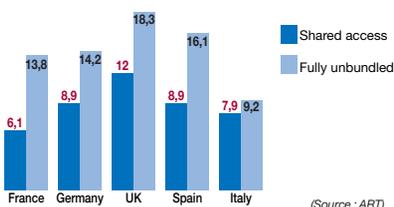
Broadband penetration rate on 1st January 2004 (%)



Number of xDSL unbundled lines on 1 January 2004



Unbundling tariffs on 1st January 2004 (€)



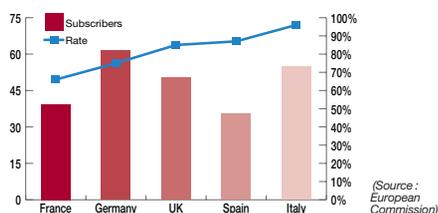
With almost 3.5M broadband subscribers at end 2003 and a growth rate of over 100%, France is now in 3rd place in Europe in terms of number of access lines. The French market has been very dynamic, generating the sharpest growth rate in installed base in the last 6 months: 1,243,000 additional lines (ahead of Italy, with 1,109,000 new lines). France is above the European average in terms of penetration rate.

Growth was led by ADSL, notably via unbundling, primarily via shared access. In Germany and Italy, operators have chosen the full unbundling option rather than shared access.

Mobiles

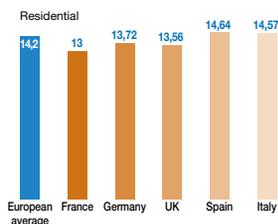
The data gathered by the Commission only partly reflects reality. The rules for calculating customer numbers are not harmonised and vary from one country to another. In some member states, notably Italy, GSM users have several SIM cards in their phone to take advantage of different service offerings, which artificially inflates penetration rates. Moreover, the data gathered from operators is not always adjusted to winnow out inactive users, as it is the case in France.

Number of subscribers (millions)
Penetration rate, August 2003

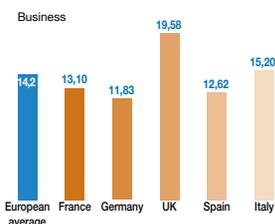


Fixed

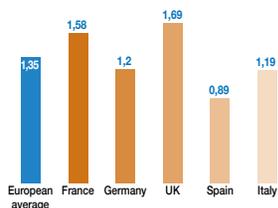
Residential (€ inc. VAT) and business subscription charges (€ exc. VAT) in August 2003



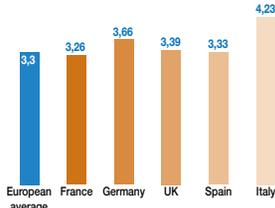
(Source: 9th report European Commission)



Call prices (€ inc. VAT) in August 2003



(Source: 9th report European Commission)

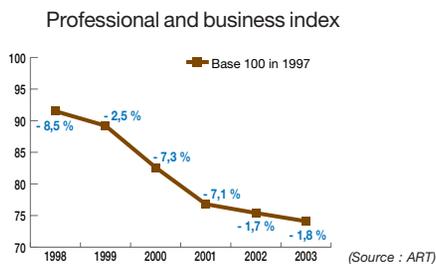
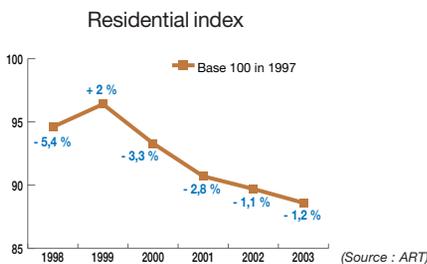


3 min. local call

3 min. national call

■ Spending baskets

France Telecom's fixed-telephony prices (subscription, national calls to geographical numbers and to mobiles, not including special pricing options) continued to fall overall in 2003 at a similar rate to that observed in 2002.

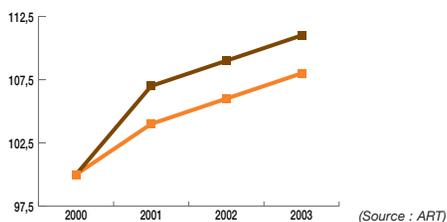


■ Trends in subscription price

- Main residential subscription (€ inc. VAT)
- Professional Business (€ exc. VAT)

Base 100 in 2000

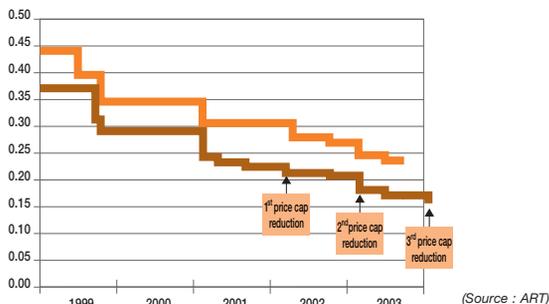
Based on France Telecom base tariff and ART baskets



■ Trends in fixed to mobile prices

Trends in mobile network call termination charges and retail price of fixed-to-mobile calls (euros/minutes)

- average price per minute on the retail market.
- average price per minute on the wholesale fixed to mobile call-termination market.



■ Overall trends in ADSL retail offers

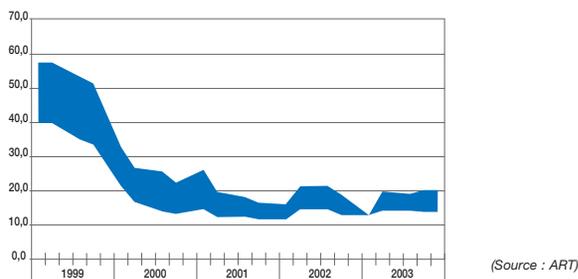
(€, including VAT, not including special offers, access costs and modem included, 1 year minimum commitment)

	march 2003	december 2003	march 2004
128 kbits/s	€30	€19,8 to €29,9	€19,8 to €27,5
512 kbits/s	€29,9 to €45	€19,9 to €34,9	€15,7 to €34,9
1024 kbits/s	€39,9 to €80	€25,7 to €44,9	€20,7 to €44,9

(Source : ART)

■ Trend in narrowband retail offers

Range of best prices (€, including VAT) offered by the 7 major ISPs for average connection time (between 15 and 25 hr/mth)



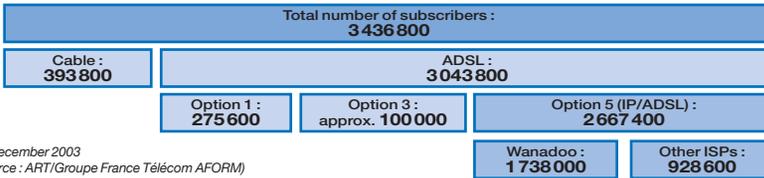
■ Broadband

Internet users

	March 2003	March 2004	% change
Number of individuals aged 11 and over claiming to have connected to the Internet in the last month, whatever the place of connection	20.2 million or 39.7 % of French pop.	23.1 million or 45 % of French pop.	+ 14 %
	1 st quarter 2003	2 nd quarter 2004	
Number of households owning a computer	10.6 million or 27.7 %	11.2 million or 29.2 %	
Number of households with Internet access	6.9 million or 27.7 %	7.3 million or 29 %	

(Source : Observatory of Internet Uses and Observatory of multimedia equipment, Mediametrie)

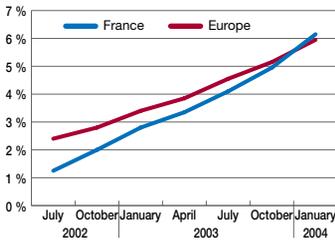
Broadband subscribers



31 December 2003
(Source : ART/Groupe France Télécom AFORM)

Broadband penetration rate

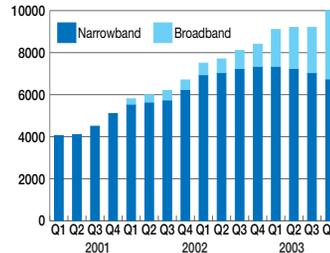
Number of accesslines/population (mbps)



(Source : ART)

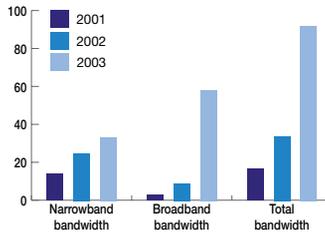
Internet subscribers

(thousands)



(Source : ART)

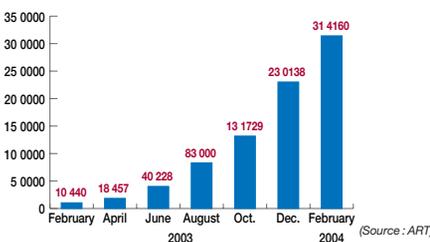
Trends in Internet bandwidth requirements



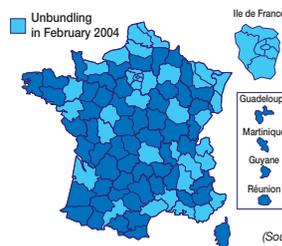
Narrowband Internet:
0.5 mbps for a traffic volume of 1 million minutes
Broadband Internet:
23 mbps to meet the requirements of 1000 subscribers

(Source : ART)

Unbundling progress (number of lines)



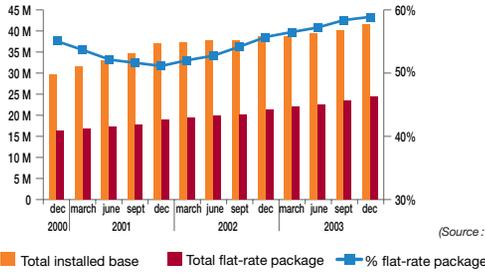
(Source : ART)



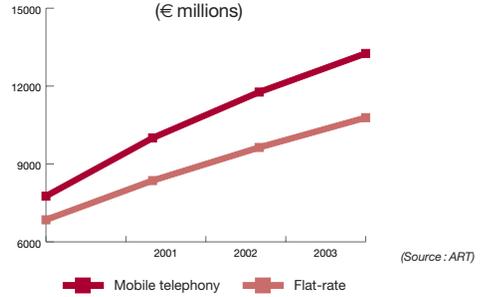
(Source : ART)

Mobiles

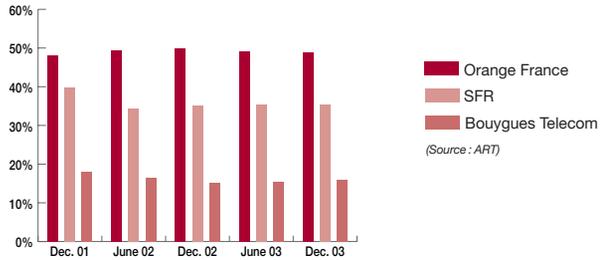
Trends in flat-rate packages/total installed base



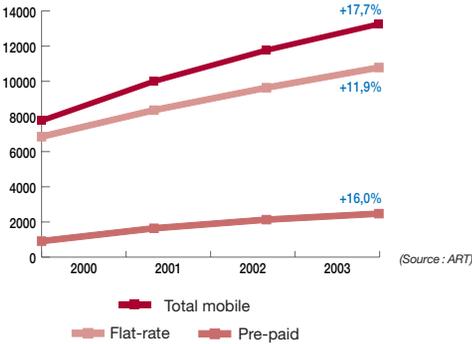
Customer revenues including flat-rate packages



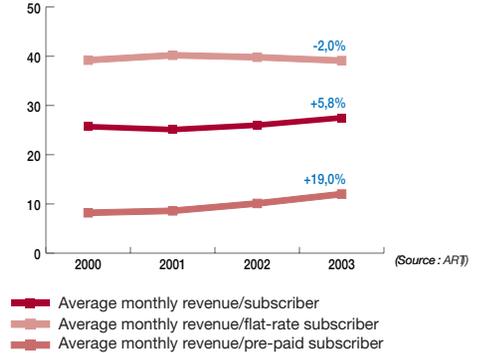
Operators' market share



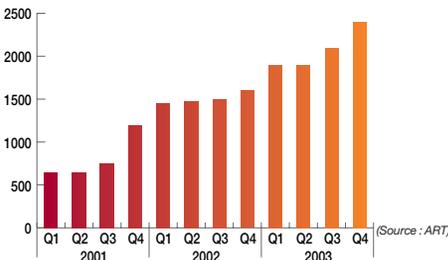
Trends in revenues (€ millions)



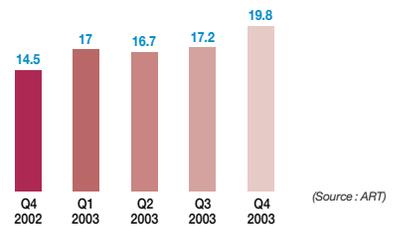
Average monthly revenue/subscriber (€)



Number of SMS sent (millions of messages)



Average monthly SMS total/customer



REGULATORY MILESTONES

- **26 July 1996** *Regulation:* adoption of the Telecommunications Act
- **5 January 1997** *Regulation:* creation of ART
- **1st January 1998** *Competition:* opening of the voice market (long distance and international)
- **24 February 1998** *Numbering:* ART adopts the management rules of the national numbering plan
- **11 March 1998** *Internet in schools:* ART issues an unfavourable recommendation on France Telecom's tariff proposal
- **July 1998** *Internet on cable:* following settlement of a dispute, ART sets a detailed timetable for opening the Internet service on the Paris cabled network
- **30 November 1999** *WLL:* launch of a call for candidates
- **8 December 1999** *Pre-selection:* ART specifies the conditions and deadlines for implementing carrier selection, call-by-call and pre-selection
- **December 1999 -February 2000** *Broadband access:* ART notifies France Telecom to submit its ADSL access offers for approval; the Competition Authority orders FT to propose a permanent virtual service offer to its competitors (option 3) or any other equivalent solution
- **18 August 2000** *UMTS:* launch of the first call for candidates; the 2nd call is launched end 2001
- **1st November 2000** *Pre-selection:* implementation of pre-selection for calls to mobile operators
- **Décember 2000-February 2001** *Broadband access:* ART notifies France Telecom to supply the information required to implement access to the local loop and asks it to modify its reference offer
- **18 July 2001** *Pre-selection:* ART specifies the conditions and deadlines for implementing carrier selection for local calls to start 1 January 2002
- **16 November 2001** *Fixed to mobile calls:* ART imposes a reduction of around 40% over 3 years in the average price of fixed to mobile call termination charges for the two SMP operators in the interconnection market, Orange France and SFR
- **April 2002** *Regulation:* publication of the "telecoms package" directives by the European Commission
- **April 2002 - July 2002** *Broadband access:* ART imposes modification of France Telecom tariff and operating conditions for unbundling, a reduction in option 5 and option 3 tariffs



■ 25 July 2002

■ 9 January 2003

■ 11 February 2003

■ 23 July 2003

■ 23 September 2003

■ 9 December 2003

■ 31 December 2003

■ 2 April 2004

■ 16 April 2004

■ 13 May 2004

■ 3 June 2004

WiFi: deregulation of the 2.4 GHz frequency band

Broadband access: specification of the tariff and technical conditions for the ADSL Connect ATM (option 3) offer

Market analysis: The European Commission issues a recommendation on relevant markets

MNP: implementation of mobile number portability

Directories: ART defines the competitive economic conditions for implementation of universal directory and telephone enquiry services

Broadband access: ART issues a favourable recommendation for France Telecom's "ADSL IP collection" and "ADSL IP" offers. The differentiation in wholesale tariffs aligns the option 5 tariffs more closely with the underlying cost structure

Universal service: promulgation of the universal service Act

Mobiles: renewal of Orange France and SFR GSM licences for 15 years

Market analysis: ART publishes its first analysis of a relevant market: mobile network call termination

Regulation: Parliament adopts the Digital Economy Act authorising local authorities to become telecommunications operators

Regulation: Parliament adopts the Act transposing the new European regulatory framework into French law.