The Technology, Media and Telecommunications Review

Sixth Edition

Editor
John P Janka

Law Business Research

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This article was first published in The Technology, Media and Telecommunications Review - Edition 6
(published in November 2015 – editor John Janka)

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Law Business Research Ltd

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-909830-71-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ABOU JAOUDE & ASSOCIATES LAW FIRM

AJUMOGOBIA & OKEKE

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

BAKER & McKENZIE

CASTRO, BARROS, SOBRAL, GOMES ADVOGADOS

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CONTENTS

EDITOR'S PREFACE

This fully updated sixth edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs relevant to both existing service providers and start-ups in 29 jurisdictions around the world. It is intended as a business-focused framework for beginning to examine evolving law and policy in the rapidly changing TMT sector.

The burgeoning demand for broadband service, and for radio spectrum-based communications in particular, continues to drive law and policy in the TMT sector. The disruptive effect of these new ways of communicating creates similar challenges around the world:

a the need to facilitate the deployment of state-of-the-art communications infrastructure to all citizens;

b the reality that access to the global capital market is essential to finance that infrastructure;

c the need to use the limited radio spectrum more efficiently than before;

d the delicate balance between allowing network operators to obtain a fair return on their assets and ensuring that those networks do not become bottlenecks that stifle innovation or consumer choice; and

e the growing influence of the 'new media' conglomerates that result from increasing consolidation and convergence.

A global focus exists on making radio spectrum available for a host of new demands, such as the developing 'Internet of Things,' broadband service to aeroplanes and vessels, and the as yet undefined, next-generation wireless technology referred to as '5G'. This process involves 'refarming' existing bands, so that new services and technologies can access spectrum previously set aside for businesses that either never developed or no longer have the same spectrum needs. In many cases, an important first step will occur at the World Radiocommunication Conference in November 2015, in Geneva, Switzerland, where countries from around the world will participate in a process that sets the stage for these new applications. No doubt, this conference will lead to changes in long-standing radio

spectrum allocations that have not kept up with advances in technology, and it should also address the flexible ways that new technologies allow many different services to co-exist in the same segment of spectrum.

Many telecommunications networks once designed primarily for voice are now antiquated and not suitable for the interactive broadband applications that can extend economic benefits, educational opportunities and medical services throughout a nation. As a result, many governments are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Governments are also re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. Convergence, vertical integration and consolidation are also leading to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector.

Changes in the TMT ecosystem, including the increased reliance by content providers on broadband for video distribution, have also led to a policy focus on 'network neutrality' – the goal of providing some type of stability for the provision of important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus are laudable, the way in which resulting law and regulation are implemented can have profound effects on the balance of power in the sector, and raises important questions about who should bear the burden of expanding broadband networks to accommodate the capacity strains created by content providers.

These continuing developments around the world are described in the following chapters, as well as the developing liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in the law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I would like to take the opportunity to thank all of the contributors for their insightful contributions to this publication and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

John P Janka
Latham & Watkins LLP
Washington, DC
October 2015

LIST OF ABBREVIATIONS

3G	Third-generation (mobile wireless technology)
4G	Fourth-generation (mobile wireless technology)
5G	Fifth-generation (mobile wireless technology)
ADSL	Asymmetric digital subscriber line
AMPS	Advanced mobile phone system
ARPU	Average revenue per user
BIAP	Broadband internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DECT	Digital enhanced cordless telecommunications
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services

FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node
FTT*x*	Fibre to the *x*
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAC	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IPTV	Internet protocol TV
IPv6	Internet protocol version 6
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MNO	Mobile network operator
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD–PCOs	Subscriber trunk dialling–public call offices
UAS	Unified access services

UASL	Unified access services licence
UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service
USO	Universal service obligation
UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over internet protocol
W-CDMA	Wideband code division multiple access
WiMAX	Worldwide interoperability for microwave access

Chapter 7

FRANCE

Myria Saarinen and Jean-Luc Juhan[1]

I OVERVIEW

The French regulatory framework is still based on the historical distinction between telecoms and postal activities, on the one hand, and radio and television activities, on the other hand (sectors are still governed by separate legislation and by separate regulators). Amendments in the past 15 years reflect the progress and the convergence of electronic communications, media and technologies; and the liberalisation of the TMT sectors caused by the *de facto* competition between fixed telephony (a monopoly until 1998) and new technologies of terrestrial, satellite and internet networks. French law also mirrors the EU regulatory framework through the enactment of the three EU Telecoms Packages in 1996, 2002 and 2009, which have been fully transposed into French law.

The TMT sectors in France have been fully open to competition since 1 January 1998, and are characterised by the interactions of mandatory provisions originating from many sources and involving many actors (regulators, telecoms operators, and local, regional and national authorities). The TMT sectors are key to the French economy, and 2014 was once again an important year in many respects for these sectors' business.

The major trends in the telecommunications and internet sectors in 2014 were the acceleration in the transition to superfast broadband on both fixed and mobile networks, both in terms of coverage and subscription numbers; the growing reconfiguration of the sector, brought in particular by Altice's acquisition of SFR, France's second-largest mobile operator; and the legislative intervention on data protection and security through

1 Myria Saarinen and Jean-Luc Juhan are partners at Latham & Watkins. This chapter was written with contributions from associates Clémence Macé de Gastines and Oriane Fauré.

Law No. 2015-912 of 24 July 2015 and Law No. 2014-1353 of 13 November 2014.[2] Wholesale and retail electronic communications markets in France generated €36.8 billion in revenue, marking the fourth consecutive annual decrease. 2014 was, however, marked by a much less significant downward trend in revenues (-3.4 per cent in 2014 against -7.3 per cent in 2013), and in particular in the mobile services sector, due to a less marked drop in prices coupled with an increase in volume of subscriptions and communications. Operators invested €6.9 billion in 2014, increasing their investments particularly in the deployment of fibre networks (€1 billion spent in 2014), in addition to continuing to invest in the deployment of 4G mobile networks.[3]

In 2014, media markets were marked by an emphasis on diversity, in particular towards better representation in the media of women and people with disabilities.[4]

II REGULATION

i The regulators

There are four specialist authorities involved in the regulation of technology, media and telecommunications in France:

a ARCEP is an independent government agency that oversees the electronic communications and postal services sector. It ensures the implementation of a universal service, imposes requirements upon operators that exert a significant influence in the context of market analyses, participates in defining the regulatory framework, allocates finite resources (radio frequencies and numbers), imposes sanctions,[5] resolves disputes and delivers authorisations for postal activities.

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2 Law No. 2015-912 of 24 July 2015 on intelligence and Law No. 2014-1353 of 13 November 2014 reinforcing the dispositions related to the fight against terrorism.

3 Electronic Communications and Postal Regulatory Authority (ARCEP) Annual Report, 2014.

4 See Law No. 2014-873 of 4 August 2014 for real equity between women and men, and Charter of 11 February 2014 aimed at supporting the training and employment of people with disabilities in the audiovisual communication sector (available at en.www.csa.fre05d.systranlinks.net/en/Espace-juridique/Chartes/Charte-visant-a-favoriser-la-formation-et-l-insertion-professionnelle-des-personnes-handicapees-dans-le-secteur-de-la-communication-audiovisuelle-11-fevrier-2014).

5 ARCEP's sanctioning power was restored by Order No. 2014-329 of 12 March 2014 on the Digital Economy after the French Constitutional Council ruled that the legal provisions contained in the Post and Electronic Communications Code (CPCE) governing ARCEP's power to sanction were unconstitutional as they did not comply with the principle of impartiality (see Constitutional Council, Decision No. 2013-331 QPC of 5 July 2013). The new provisions in the CPCE introduce a separation of the proceedings and the adjudication functions by assigning them to different members of the ARCEP Board (see new Articles L5-3, L36-11 and L130 of the CPCE). The terms of application for this new sanctions procedure are specified in Decree No. 2014-867 of 1 August 2014 (see new Articles D594 to D599 of the CPCE).

b The Superior Audiovisual Council (CSA) is the regulatory authority responsible for the audiovisual sector. The CSA sets rules on broadcasting content and allocates frequencies by granting licences to radio and television operators. It also settles disputes that may arise between TV channels and their distributors, and is empowered to impose sanctions on operators in cases of breaches of specific regulations. Law No. 2013-1028 of 15 November 2013 relating to the independence of the French public service broadcasting has amended the legal nature of the CSA, its composition, the status and appointment procedure of its members and their powers (see Section IV.i, *infra*).

c The Data Protection Authority (CNIL) ensures the protection of personal data. Automatic personal data processing systems must be declared to the CNIL. The CNIL also supervises compliance with the law by inspecting IT systems and applications, and is empowered to issue sanctions that range from warnings to fines.

d The High Authority for the Distribution of Works and the Protection of copyright on the Internet (HADOPI), which was established in 2009, is in charge of protecting intellectual property rights over works of art and literature on the internet.

These four authorities may deliver opinions upon request by the government, parliament or other independent administrative authorities such as the French Competition Authority (FCA), and also renders decisions and opinions that may have a structural impact on these sectors (except for HADOPI). The National Frequencies Agency is also an important agency responsible for managing frequency spectrum and planning its use (see Section IV, *infra*).

The CSA and ARCEP are the two main regulators of the TMT sectors. Discussions about merging these entities at the time of the convergence or to limit the powers of ARCEP occurred regularly during the past few years, but such merger was finally given up. Instead, it was argued that the two regulators should work in closer cooperation on certain common subjects.

The prevailing regulatory regime in France regarding electronic communications is contained primarily in the CPCE, and regarding audiovisual communications in Law No. 86-1067 of 30 September 1986 on Freedom to Communicate, as subsequently amended. The main piece of legislation governing the law applicable to data protection is Law No. 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties, as subsequently amended. Intellectual property rights are governed by the Intellectual Property Code.

ii Regulated activities

Telecoms

Telecoms activities and related authorisations and licences are regulated under the CPCE.

To become a telecoms operator, no specific licences or authorisations are required; the implementation and the operation of public networks and the supply of electronic communication services to the public is free, subject to prior notification to ARCEP (Articles L32-1 and L33-1 of the CPCE).

Conversely, the use of radio frequencies requires a licence granted by ARCEP (Article L42-1 of the CPCE).

Media

Authorisations and licensing in the media sector are regulated under Law No. 86-1067 of 30 September 1986.

Authorisations for private television and radio broadcasting on the hertz-based terrestrial frequencies are granted by the CSA following bid tenders and subject to the conclusion of an agreement with the CSA. The term of authorisations cannot exceed 10 years.[6] Broadcasting services that are not subject to CSA's authorisation – namely, those broadcast or distributed through a network that does not use frequencies allocated by the CSA (cable, satellite, ADSL, internet, telephony, etc.) – are nevertheless subject to a standard agreement or a declaration regime.[7]

iii Ownership and market access restrictions

General regulation of foreign investment

Since the entry into force of Law No. 2004-669 of 9 July 2004, discrimination of non-EU operators is prohibited, and they are subject to the same rights and obligations as EU and national operators.[8] According to Article L151-1 et seq. of the French Monetary and Financial Code, when a foreign (EU or non-EU) investment is made in a strategic sector (such as security, public defence, cryptographics or interception of correspondence),[9] the investor must submit a formal application dossier to the French Ministry of Economy for prior authorisation. Any transaction concluded without prior authorisation is null and void, and criminal sanctions (imprisonment of five years and a fine amounting to twice the amount of the transaction) are also applicable. A recent decree of 14 May 2014[10] has expanded the list of sectors in which foreign investors must seek prior authorisation from the French Ministry of Economy. In particular, the decree has added to the regulated activities referred to in Article R153-2 of the French Monetary and Financial Code activities relating to the integrity, security and continuity of the operation of networks and electronic communications services.

Specific ownership restrictions applicable to the media sector

French regulations provide for media ownership restrictions to preserve media pluralism and competition. In particular, any single individual or legal entity cannot hold, directly or indirectly, more than 49 per cent of the capital or the voting rights of a company that has an authorisation to provide a national terrestrial television service where the average audience for television services (either digital or analogue) exceeds 8 per cent.

6 See Articles 28 to 32 of the Law of 30 September 1986 that determine the CSA's allocation procedures.

7 Articles 33 to 34-5 of the Law of 30 September 1986.

8 Article L33-1 III of the CPCE.

9 Article R153-2 of the French Monetary and Financial Code.

10 Decree No. 2014-479 of 14 May 2014.

In addition, any single individual or legal entity that already holds a national terrestrial television service where the average audience for this service exceeds 8 per cent may not, directly or indirectly, hold more than 33 per cent of the capital or voting rights of a company that has an authorisation to provide a local terrestrial television service.[11]

Regarding the radio sector, a single person cannot retain networks whose coverage exceeds 150 million inhabitants or 20 per cent of the aggregated potential audience.[12] This regulation will, however, be subject to modification in the future, as it is does not take into account local pluralism challenges. In this respect, a report was submitted to parliament by the CSA in April 2014.[13]

Further, unless otherwise agreed in international agreements to which France is a party, a foreign national may not acquire shares in a company holding a licence for a radio or television service in France and that uses radio frequencies if this acquisition has the effect of raising (directly or indirectly) the share of capital or voting rights owned by foreign nationals to more than 20 per cent. This provision does not apply to service providers of which at least 80 per cent of the capital or voting rights are held by public radio broadcasters belonging to Council of Europe Member States, and of which at least 20 per cent is owned by one of the public companies mentioned in Article 44 of the Law of 30 September 1986.[14] Specific rules restricting cross-media ownership also apply.[15]

iv Transfers of control and assignments

The general French merger control framework applies to the TMT sectors, without prejudice to the above-mentioned ownership restrictions and to specific provisions for the media sector. The merger control rules are enforced by the FCA.[16]

Regarding the telecoms and post sectors, the FCA must provide ARCEP with any referrals regarding merger control, and ARCEP can issue a non-binding opinion.[17]

11 Articles 39-I and 39-III of the Law of 30 September 1986.

12 Article 41 of the Law of 30 September 1986.

13 Available at www.csa.fr/Etudes-et-publications/Les-autres-rapports/Rapport-du-CSA-sur-la-concentration-du-media-radiophonique.

14 Article 40 of the Law of 30 September 1986.

15 Articles 41-1 to 41-2-1 of the Law of 30 September 1986.

16 For recent examples of mergers in the TMT sectors, see FCA Decision of 2 April 2014 No. 14-DCC-50, in which the FCA ruled again on the acquisition of D8 and D17 (formerly Direct 8 and Direct Star) by Canal Plus group after the decision was quashed by the Council of State (the highest French administrative court), and cleared the transaction subject to several commitments; see also Decisions of 30 October 2014 No. 14-DCC-160 and of 27 November 2014 No. 14-DCC-179 regarding a series of acquisitions by the Altice group in the telecommunications sector (respectively of SFR, France's second-largest mobile operator, and Omer Telecom Limited, telecoms operator in France under the brand name Virgin Mobile).

17 Article L36-10 of the CPCE.

Regarding companies active in the radio or TV sector involved in a Phase II merger control procedure before the FCA, the FCA must obtain a non-binding opinion from the CSA.[18]

Any modification to the capital of companies authorised by the CSA to broadcast TV or radio services on a frequency is subject to the approval of the CSA.[19]

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

Under the CPCE, electronic communications services other than voice telephony to the public may be provided freely.[20]

As regards the ADSL network, and following local loop unbundling, alternative operators must be provided with direct access to the copper pair infrastructure of France Télécom, the historical operator. Therefore, as with traditional fixed telephony, DSL networks are subject to asymmetrical regulation.

As regards services, ISPs can operate freely and provide services, but they must file a declaration with ARCEP before commencing operations.[21] A failure to comply with this obligation constitutes a criminal offence.[22]

More generally, ISPs must comply with the provisions of Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy governing e-commerce, encryption and liability of technical service providers, as subsequently amended. Law No. 2004-575 of 21 June 2004 also sets out a liability exemption regime for hosting service providers. They are not subject to a general obligation to monitor the information they transmit or store, nor are they obliged to look for facts or circumstances indicating illicit activity. Nevertheless, when the provider becomes aware that the data stored is obviously illicit, it has the obligation to remove the data or render its access impossible. In that respect, the question of the qualification as 'host provider' has been widely debated by French courts.[23]

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18 Article 41-4 of the Law of 30 September 1986.

19 Article 42-3 of the Law of 30 September 1986.

20 Article L32-1 of the CPCE.

21 Article L33-1 of the CPCE.

22 Article L39 of the CPCE. This risk is not theoretical: in March 2013, ARCEP informed the Paris Public Prosecutor of Skype's possible failure to comply with its obligation to declare itself as an electronic communications operator in France. According to ARCEP, most, if not all, of the services that Skype provides relate to electronic communications; this does seem to be the case for the service that allows internet users located in France to call fixed and mobile numbers in France and around the world using their computer or smartphone. As a result, ARCEP has requested several times that Skype declare itself as an electronic communications operator, which the company has so far failed to do.

23 This issue now seems resolved regarding video-sharing sites: see, for instance, the judgment of the French Supreme Court (Cass. civ. 1ère, 17 February 2011, No. 09-67896, *Joyeux Noël*) in which the Supreme Court recognised a simple hosting status for Dailymotion. This issue

ii Universal service

The EU framework for universal services obligations, which defines universal services as the 'minimum set of services of specified quality to which all end users have access, at an affordable price in the light of specific national conditions, without distorting competition',[24] has been implemented by Law No. 96-659 of 26 July 1996 and further strengthened by Law No. 2008-3 of 3 January 2008. Universal service is one of the three components of public service in the telecoms sector in France (the other two being the supply of mandatory services for electronic communications and general interest missions).

Obligations of the operator in charge of universal service are listed in Article L35-1 of the CPCE and fall into two main categories of services:

a telephone services: connection to an affordable public telephone network enabling end-users to take charge of voice communications, facsimile communications and data communications at data rates that are sufficient to permit functional internet access and free emergency calls; and

b enquiry and directory services (both in printed and electronic versions).

These services must be rendered under tariff and technical conditions that take into consideration the difficulties faced by some users, such as users with low incomes, and that do not discriminate between users on the ground of their geographical location.

The designation of the operator or operators in charge of universal service is made by the Minister in charge of electronic communications following calls for applications (one per category). So far, only France Télécom-Orange has been selected as an operator guaranteeing the provision of universal services.

Universal service currently only covers telephone provision and not information technologies. However, in Opinion No. 11-A-10 of 29 June 2011, the FCA considered that the reduced price policy (also called the 'social tariff') set up for telephone networks,

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is still to be debated with respect to online marketplaces such as eBay from which it follows that French courts, which are favouring a very factual analysis of the role of the services provider, will give significant importance to judges' discretion. In that respect, see Cass. Com, 3 May 2012, No. 11-10.507, *Christian Dior Couture*, No. 11-10.505, *Louis Vuitton Malletier* and No. 11-10.508, *Parfums Christian Dior*, in which the Supreme Court confirmed an earlier decision of the Paris Court of Appeals that did not consider eBay as a 'host provider', and therefore refused to apply the liability-exemption regime. See, in contrast, the *Brocanteurs v. eBay* case, Paris Court of Appeals, Pôle 5, ch. 1, 4 April 2012, No. 10-00.878, in which second-hand and antique dealers accused eBay of encouraging illegal practices by providing individuals with the means to compete unfairly against professionals, and in which the Paris Court of Appeals considered eBay as a host provider able to benefit from the liability-exemption regime. The Court of Appeals based its decision on the fact that eBay had no knowledge or control of the adverts stored on its site. If the seller was asked to provide certain information, it was for the purpose of ensuring a more secure relationship between its users.

24 Article 1(2) of Directive No. 2002/22/EC.

pursuant to universal service rules, might be extended to internet services even though the EU Telecoms Package does not expressly allow for the inclusion of such in the universal service. In the absence of regulation, France Télécom-Orange launched a 'social tariff' for multi-service offers (telephone and internet) on 9 February 2012.

ARCEP determines the cost of universal service and, when it is necessary to finance it in the event that it represents an excessive burden for the operator in charge, ARCEP also determines the amount of the other operators' contributions to the financing of universal service obligations through a sectoral fund. In principle, every operator contributes to the financing, with each contribution being calculated on the basis of the turnover realised by the operators in their electronic communications activities.[25]

iii Restrictions on the provision of service

Net neutrality is a growing policy concern in France.[26] From the electronic communications regulator's standpoint, which focuses on the technical and economic conditions of traffic conveyance on the internet, the key question in the debate over net neutrality is how much control internet stakeholders can rightfully exert over the traffic. This implies examining operators' practices on their networks, as well as their relationships with some content and application providers.

In that respect, ARCEP started discussions on net neutrality in 2010 that led to the issuance of 10 proposals to ensure the internet's smooth operation and balanced development, and to define the tools needed to maintain this balance.

ARCEP also issued an important decision on 29 March 2012 giving it the ability to gather information on the market for interconnection between ISPs and the main content and application providers.[27] A new decision dated 18 March 2014[28] introduces two main changes to the system established in 2012: it distinguishes the installed and configured capacity on each interconnection link covered by the decision; and it also allows ARCEP to request additional information periodically to enable it to assess the scale of a presumed traffic overload on interconnection links. For the sake of simplicity, ARCEP has also reduced the amount of information that operators are required to provide, and the number of relationships covered by the decision.

Also in the context of net neutrality, the FCA issued a decision on 20 September 2012[29] regarding the dispute between the US operator Cogent and France Télécom in relation to a controversial issue: whether network operators are entitled to charge for opening additional capacity. The MegaUpload website – which has since been shut down by the US authorities – was a Cogent customer that used to send, via Cogent, to subscribers of France Télécom's subsidiary, Orange, very significant traffic

25 Article L35-3 of the CPCE.

26 See the French Digital Council Opinion issued on 1 March 2013 (available at www.cnnumerique.fr/wp-content/uploads/2013/03/130311-avis-net-neutralite-VFINALE.pdf).

27 ARCEP Decision No. 2012-0366 of 29 March 2012.

28 ARCEP Decision No. 2014-0353 of 18 March 2013.

29 FCA Decision No. 12-D-18 of 20 September 2012 on practices concerning reciprocal interconnection services in the area of internet connectivity.

volumes (up to 13 times greater than in the other direction) of essentially video content downloaded by web users. In view of the severely asymmetric traffic running to its detriment and exceeding the maximum ratio stated in its peering policy, France Télécom wished to charge for opening additional interconnection capacity. The FCA considered that such practice did not contravene competition law inasmuch as France Télécom did not refuse access to its subscribers by Cogent – and indeed opened additional capacity free of charge on several occasions between 2005 and 2011, in response to demand from Cogent – but simply requested payment for opening new capacity, in accordance with its peering policy, without seeking to charge for existing capacity hitherto provided free of charge. The FCA's decision was confirmed by the Paris Court of Appeals in a decision of 19 December 2013[30] and by the French Supreme Court in a decision dated 12 May 2015.[31]

The French regulatory framework is therefore undergoing changes to enhance net neutrality among top internet platforms. On 18 June 2014, the Prime Minister added several measures to France's digital strategy framework, including introducing the principle of net neutrality into the legislation as well as the ability of all internet users to shift their personal data from one service to another. In addition, in a report submitted on 13 June 2014 to the government, the French Digital Council called for the creation of neutrality rating agencies in France.

As to content, pursuant to the Law of 21 June 2004, ISPs have a purely technical role, and they do not have the general obligation to review the content that they transmit or store. Nevertheless, when informed of unlawful information or activity, they must take prompt action to withdraw the relevant content, failing which their civil liability may be sought. Since 2009, HADOPI has been competent to address theft and piracy matters. It intervenes when requested by regularly constituted bodies for professional defence that are entitled to institute legal proceedings in order to defend the interests entrusted to them under their statutes (e.g., SACEM), or by the public prosecutor. After several formal notices to an offender, the procedure may result in a €1,500 fine.[32]

Finally, French e-consumers benefit from consumer law provisions and from specific regulations. In particular, they are protected against certain unsolicited communications via e-mail if their consent has not been obtained prior to the use of their personal data.[33] Moreover, consumers must be provided with valid means by which they may effectively request that such unsolicited communications cease.[34] In addition, a Decree of 19 May 2015 provides for the implementation of an opposition list on which

30 Court of Appeals of Paris, Pôle 5, ch. 5-7, 19 December 2013, No. 2012/19484.

31 French Supreme Court, 12 May 2015, No. 14-10792.

32 See Articles L331-25, L336-3 and R335-5 of the Intellectual Property Code.

33 The CNIL is particularly attentive to the obligation of obtaining prior consent that is free, specific and informed. On 1 June 2015, the CNIL imposed a €15,000 fine on Prisma Media for not giving enough precise information regarding the nature of a newsletter to which its customers may subscribe.

34 See Article L34-5 of the CPCE.

any consumer can add his or her name so that advertising material may not generally be sent to him or her.[35]

iv Security

Law No. 91-646 of 10 July 1991 concerning the secrecy of electronic communications, now codified in the Internal Security Code, provides that the Prime Minister may exceptionally authorise, for a maximum period of four months (renewable only upon a new decision), the interception of electronic communications in order to collect information relating to the defence of the nation or the safeguarding of elements that are key to France's scientific or economic capacity. In addition, pursuant to Law No. 2015-912 of 24 July 2015 (new Article L851-3 of the Internal Security Code) and only for the purpose of preventing terrorism, the Prime Minister may impose on providers of electronic communication services the obligation to implement an automated data-processing system for a maximum period of two months (renewable only upon a new decision) with the aim of detecting connections likely to reveal a terrorist threat.

Further, Law No. 2013-1168 on Military Programming (LPM) introduced a new chapter in the Internal Security Code relating to administrative access to data connection, including real-time geolocation.[36] The new regime, which entered into force on 1 January 2015,[37] authorises the collection of 'information or documents' from operators as opposed to the collection of simply 'technical data' that is authorised under the current law. In addition, access to data organised by the new regime is exclusively administrative, namely, without judicial control. Requests for implementing such measures are submitted by designated administrative agents to a 'chosen personality' appointed by the National Commission for the Control of Security Interceptions (CNCIS) upon proposal of the Prime Minister. CNCIS will be in charge of controlling (*a posteriori*) administrative agents' requests for using geolocation measures in the course of their investigation. The Minister for Internal Security, the Defence Minister and the Finance Minister can also issue direct requests for the implementation of real time geolocation measures to the Prime Minister who, in this case, will directly grant authorisations.

The collection and future processing of personal data is subject to several cumulative conditions, which include information, consent and legitimate purpose, and – as a matter of principle, subject to certain exceptions – no transfer outside the EU.[38] Any operator that determines the purposes and the manner in which personal data are processed is considered a 'data controller' and therefore needs to file a prior declaration

35 See Article L121-34 of the Consumer Code.

36 New Articles L246-1 et seq. of the Internal Security Code introduced by Article 20 of the LPM.

37 Article 20 IV of the LPM.

38 See CNIL Decision No. 2011-238 of 30 August 2011, confirmed by the French Administrative Supreme Court on 23 March 2015 (Conseil d'Etat, 10th and 9th subsections, No. 353717), imposing a €10,000 fine on the database Lexeek for not respecting the right to opposition applicable to the processing of personal data.

of such processing to the CNIL.[39] Although it is considered as such by the CNIL, there is currently discussion about whether an IP address can be considered as personal data.[40]

In addition to these general rules applicable to the protection of personal data, the CPCE provides specific rules pursuant to which operators must delete or preserve the anonymity of any traffic data relating to a communication as soon as it is complete.[41] Exceptions are provided, however, in particular for the prevention of terrorism and in the pursuit of criminal offences.

Data used for the purpose of location identification are also considered as personal data within the meaning of Law No. 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties. In the past few years, the CNIL has taken decisions on statistical measures of advertising effects based on locational identification of smartphones, pay-as-you-drive systems, anti-theft devices, Google Latitude and Google Street View. Two conditions are usually required: the individual's knowledge and consent.

Any person under 18 is considered a child under French law. Unlike in the US, there is no specific statute governing the protection of children online. In general terms, the Law of 21 June 2004 provides that an ISP should inform subscribers where there is a technical means of restricting access to selected services.

As for privacy, children's online rights are protected in the same way as those of adults. According to CNIL practice, collecting children's personal data is allowed only with prior authorisation from their parents and if clear information is provided to the child.

In addition, provisions aimed at protecting children against activities or products such as pornography, gaming or alcohol are enshrined in criminal law and in a range of sectoral legislation. To increase the efficiency of the existing provisions meant to prevent children against pornography, Law No. 2011-267 on Performance Guidance for the Police and Security Services (LOPPSI 2) allows the administrative authorities to order an ISP to cut access to websites displaying images of child abuse.[42] Law No. 2010-788, dated 12 July 2010 also forbids any type of communication with the purpose of promoting the sale, the provision or the use of a mobile for children under 14 years old.[43]

Unauthorised access to automated data-processing systems is prohibited by Articles 323-1 to 323-7 of the French Penal Code. In addition, with regard to cyberattacks, LOPPSI 2 introduced a new offence of online identity theft in Article 226-4-1 of the French Penal Code and empowers police officers, upon judicial authorisation and only

39 In that respect, see the French Supreme Court's recent decision, according to which the fact that an employee is informed of the existence of a monitoring system is not sufficient: the system controlling the flow of data received and sent by an employee constitutes an automated data-processing system that requires prior declaration to the CNIL (Cass Soc, 8 October 2014, No.13 14991).

40 See Court of Appeals of Rennes, 28 April 2015, No. 14/05708.

41 See Articles L34-1 and D98-5 of the CPCE.

42 Article 6 of the Law of 21 June 2004.

43 Article L5231-3 of the Public Health Code.

for a limited period, to install software in order to observe, collect, record, save and transmit all the content displayed on a computer's screen. This helps with the detection of infringements, the collection of evidence and the search for criminals by facilitating the creation of police files and by organising their coordination.

In terms of personal data protection, LOPPSI 2 increases the instances where authorities may set up, transfer and record images on public roads, premises or facilities open to the public in order to protect the rights and freedom of individuals, and recognises that the CNIL has jurisdiction over the control of video protection systems.

IV SPECTRUM POLICY

i Development

The management of the entire French radio frequency spectrum is entrusted to a state agency, the National Frequencies Agency. It apportions the available radio spectrum, whose allocation is administered by governmental administrations (e.g., those of civil aviation, defence, space, the interior) and independent authorities (ARCEP and the CSA) (see Section II.ii, *supra*).

In recent years, French spectrum policy has primarily concerned the development of DTTV and the digital dividend. The total transition to DTTV was completed on 30 November 2011.

ii Flexible spectrum use

The trend towards greater flexibility in spectrum use is facilitated in France by the ability of operators to trade frequency licences, as introduced by the Law of 9 June 2004.[44]

The general terms of spectrum licence trading were defined by Decree No. 2006-1016 of 11 August 2006, and the list of frequency bands whose licences could be traded was laid down by a Ministerial Order of 11 August 2006. A frequency database that provides information regarding the terms for spectrum trading in the different frequency brands open in the secondary market is publicly accessible. The spectrum licence holder may transfer all of its rights and obligations to a third party for the entire remainder of the licence (full transfer) or only a portion of its rights and obligations contained in the licence (e.g., geographical region or frequencies). The transfer of frequency licences is subject either to prior approval of ARCEP[45] or to notification to ARCEP, which may refuse the assignment under certain circumstances.[46] Another option available for operators is spectrum leasing, whereby the licence holder makes frequencies fully or partially available for a third party to operate. Unlike in a sale, the original licence holder remains entirely responsible for complying with the obligations attached to the frequency licence. All frequency-leasing operations require the prior approval of ARCEP.

44 Article L42-3 of the CPCE.

45 Article R20-44-9-2 of the CPCE.

46 Ibid.

iii Broadband and next-generation mobile spectrum use

Until 2009, there were three 3G licence holders in France: Orange France, SFR and Bouygues Telecom. The fourth 3G mobile licence was awarded to Free Mobile on 17 December 2009.

In addition, spectrum in the 800MHz and 2.6GHz bands were allocated for the deployment of the ultra-high-speed 4G mobile network: in that respect, licences for the 2.6GHz frequency were awarded to Bouygues Telecom, Free Mobile, Orange France and SFR in September 2011,[47] and in December 2011, licences for the 800MHz were awarded to the same operators except Free Mobile,[48] which has instead been granted roaming rights in priority roll-out areas. The next step towards greater deployment of the 4G mobile network is the transfer of spectrum in the 700MHz band from TNT services to mobile services. According to the calendar set by the Prime Minister, the allocation of the 700MHz band should be carried out in December 2015, but the transfer will only be made effective from October 2017 to June 2019.

With respect to mobile network, SFR and Bouygues Telecom announced in January 2014 that they have finalised and signed an agreement whereby the two operators will deploy a shared cellular network that covers a portion of France. The announcement followed the issuance of the FCA's Opinion No. 13-A-08 of 11 March 2013 on conditions for sharing and roaming on mobile networks, in which the FCA developed in particular the conditions under which network sharing between mobile phone operators may be permitted without harming competition.[49] The announcement was welcomed by ARCEP, which indicated that resource-pooling agreements can provide telecommunications operators with a way to reduce their costs and increase the benefits passed onto users, including increased coverage and a better quality of service from both operators.[50] However, ARCEP also indicated that the fulfilment of certain conditions remain to be checked. In particular, the two operators must remain independent from one another in terms of both their business strategies and sales. In addition, it must be ascertained that the agreement will not squeeze certain competitors out of the market. Finally, the agreement must result in better coverage and quality of service provided to end users. These improvements must be quantifiable and verifiable over time. On 25 September 2014, the FCA rejected Orange's complaint about and request for provisional measures to suspend the agreement, concluding that the agreement in question did not constitute an immediate and serious threat to the economy. ARCEP announced that it will work closely with the FCA to perform a detailed examination of the agreement to verify whether these various conditions have indeed been met. It also remains to be seen how the recent acquisition of SFR by Altice/Numericable will affect the network sharing agreement between SFR and Bouygues Telecom.

47 ARCEP, Decision No. 2011-1080 of 22 December 2011.

48 Ibid.

49 FCA, Opinion No. 13-A-08 of 11 March 2013 on conditions for sharing and roaming on mobile networks.

50 See ARCEP press release of 31 January 2014.

iv Spectrum auctions and fees

Spectrum auctions in the case of scarce resources

Pursuant to Article L42-2 of the CPCE, when scarce resources such as RF are at stake, the ARCEP may decide to limit the number of licences, either through a call for applications or by auction. The government sets the terms and conditions governing these licensing selection procedures, and until now such proceedings have always been in the form of calls for applications.

Fees

Depending on their size and their turnover, electronic communication operators are subject to different types and levels of fee.[51] If an operator's licence only covers one region in France or its overseas regions, the fee is reduced by half.

In addition to these fees and pursuant to Articles R20-31 to R20-44 of the CPCE, licensed operators contribute to the financing of the universal services.

V MEDIA

i Restrictions on the provision of service

Media are, in particular, subject to certain content requirements and restrictions.

Content requirements

At least 60 per cent of the audiovisual works and films broadcasted by licensed television broadcasters must have been produced in the EU, and 40 per cent must have been produced originally in French.[52]

Private radio broadcasters must – in principle – dedicate at least 40 per cent of their musical programmes to French music.[53]

In addition, pursuant to Law No. 2014-873 of 4 August 2014 for true equality between women and men, audiovisual programmes have the duty to ensure fair representation of both women and men. Furthermore, audiovisual programmes and radio broadcasters must combat sexism by broadcasting specific programmes in this respect.[54]

Advertising

Advertising is particularly regulated in television broadcasting.[55] In particular, advertising must not disrupt the integrity of a film or programme, and there must be at least 20 minutes between two advertising slots. Films may not be interrupted by advertising that lasts more than six minutes.

51 Article 45 of the Law of Finance of 1987 as amended.

52 Articles 7 and 13 of Decree No. 90-66 of 17 January 1990.

53 Article 28 2°-bis of the Law of 30 September 1986.

54 Article 56 of the Law of 4 August 2014.

55 Decree No. 92-280 of 27 March 1992.

Rules governing advertisements are stricter on public channels. In particular, since 2009, advertising is banned on public service broadcasting channels from 8pm to 6am. This prohibition does not, however, concern general-interest messages, generic advertising (for the consumption of fruit, dairy products, etc.) or sponsorships, which may continue to be broadcast.

In addition, some product are prohibited from being advertised, such as alcoholic beverages above a certain level of alcohol or tobacco products. A circular was issued on 25 September 2014 related to the newly marketed electronic cigarettes, prohibiting any form of advertisement of such device or associated refills.

ii Internet-delivered video content

Internet video distribution refers to IPTV services, which can be classified into the three following main categories: live television, time-shifted programming and VOD.

For customers who cannot afford triple-play offers, access to video content is limited to the content of free channels. The regulatory framework for 'social' offers set by the Law of 4 August 2008 is indeed limited to mobile telephony offers, triple play offers being thus outside its scope. Following the FCA's Opinion No. 11-A-10 and in the absence of regulation, France Télécom-Orange launched a 'social tariff' for multi-service offers (telephone and internet) (see Section III.ii, *supra*).

iii Mobile services

Mobile personal television, initiated in 2007, has suffered from substantial delays due to disagreements among operators and content providers on the applicable economic model and on how to finance the deployment of a new network.

Thus, on 8 April 2010, the CSA delivered authorisations to 16 channels (13 private channels selected by the CSA after the call for applications launched on 6 November 2007, together with three public channels selected by the government) for the broadcasting of personal mobile television services.

On 22 April 2010, TDF, a French company that provides radio and television transmission services, services for telecoms operators and other multimedia services, and Virgin Mobile signed an agreement under which TDF committed to developing the new network with up to 50 per cent coverage of the 'outdoor' population and 30 per cent of the 'indoor' population, with Virgin Mobile paying TDF a monthly per customer fee using DVB-H, an airwave broadcasting format that does not allow interaction with the user. However, after Virgin Mobile's decision to withdraw from the project, TDF decided to end the agreement in January 2011, and in June 2011 announced that it no longer wished to be the DVB-H operator in charge of mobile personal television. Further to TDF's withdrawal, the CSA granted a two-month period to the selected channels to appoint a new operator in charge of mobile personal television. On 14 February 2012, no operator being appointed, the CSA acknowledged that the project was abandoned, and withdrew the authorisations it delivered to the 16 channels on 8 April 2010.[56]

56 CSA, Decision No. 2012-275 of 14 February 2012.

VI THE YEAR IN REVIEW

i Deployment of super-fast broadband in France

The 'Super-fast broadband France plan' was launched in 2013, and aims to cover the entire territory with fixed super-fast broadband by 2022. 2014 was marked by great improvements in terms of infrastructures development, and in December 2014, 13.3 million households and premises were eligible for super-fast broadband.[57] The Digital Agency was created in January 2015, and is entrusted with the implementation and monitoring of the deployment of super-fast broadband in France.[58] In addition, the government created an observatory for super-fast broadband, allowing any person to monitor network developments in France.[59]

In large urban areas, the deployment of super-fast broadband is carried out by private operators, and covers about 57 per cent of the population. In order to enable this, ARCEP expanded the access perimeter to Orange's infrastructures to private operators. For rural and less populated areas, public initiative networks have been implemented by local authorities with state financial aid of about €3 billion. In July 2014, the government announced the implementation of seven new public initiative networks aimed at providing super-fast broadband coverage to 4 million households by 2020.

Super-fast broadband is also expanding in the mobile sector through 4G deployment in France, and 2014 was marked by a 47 per cent increase in the number of 4G sites in use. The allocation of the 700MHz band to mobile operators announced in October 2014 was a great step forward in this respect. In addition, ARCEP set out 4G deployment obligations for mobile operators that it monitors on a continuous basis and evaluates annually.

ii Concentration in the telecommunication sector

Altice's acquisition of SFR

In April 2014, after a bidding war that lasted weeks, the cable operator Numericable – a subsidiary of the Altice group – succeeded in purchasing Vivendi's French telecom subsidiary, SFR. Following a rather favourable opinion from ARCEP,[60] the FCA authorised the merger after an in-depth Phase II review on 30 October 2014.[61] Numericable had to offer several significant remedies to obtain the approval of the FCA (this is the first time that such remedies have had to be made), including opening up its cable network to its competitors and disposing of its mobile activities in La Réunion and Mayotte (French overseas territories) due to the organisation's dominance in the Indian Ocean island market. In January 2015, the FCA decided on its own initiative to examine Numericable's compliance with the remedies related to the disposal of its mobile activities, and on 29 July 2015 announced that Numericable had complied with its undertaking

57 ARCEP Annual Report, 2015.

58 Decree No. 2015-113 of 3 February 2015.

59 http://francethd.fr/l-observatoire/l-observatoire-france-tres-haut-debit.html.

60 ARCEP, Opinion No. 2014-0815 of 22 July 2014.

61 FCA, Decision No. 14-DCC-160 of 30 October 2014.

related to access to its cable network.[62] In addition, on 2 April 2015 the FCA conducted unannounced dawn raids at SFR-Numericable offices following suspicions that the two telecom operators had commenced their merger before the FCA gave the green light to the transaction ('gun-jumping'). Both companies could face potentially sizeable fines if they are found to have implemented the merger prior to the authorisation.

Altice's acquisition of Virgin Mobile

On 27 November 2014, the FCA authorised Numericable-SFR's acquisition of Omer Telecom Limited, which is active in the mobile sector under the Virgin Mobile brand.[63] The main competition issue raised by this merger would be the risk of market pre-emption by the new entity, which could now provide innovative multiplay offers combining access to super-fast internet and mobile services. However, the FCA found that the remedies undertaken by Numericable during its prior merger with SFR were sufficient to prevent such a risk.

Bouygues Telecom and SFR

On 31 January 2014, SFR and Bouygues Telecom signed a network sharing agreement covering 57 per cent of the French population (excluding the dense population areas). In addition to network sharing, the agreement includes 4G roaming services provided by Bouygues Telecom to SFR for a period of two-and-a-half years. Orange's request to suspend the agreement was rejected by the FCA in Decision No. 14-D-10 dated 25 September 2014, and was later confirmed by the Paris Court of Appeals in a decision dated 5 February 2015.[64]

In addition, in June 2015, Bouygues rejected Altice's €10 billion offer for its telecom business. The deal would have combined two of France's largest mobile providers – Numericable-SFR and Bouygues Telecom – and overtaken Orange as France's largest cellphone company. The transaction would also have changed the telecommunications landscape in France, reducing the number of main mobile providers from four to three. Bouygues held that there were significant risks in terms of competition law for a transaction that would be examined closely by the FCA, and that it thought Bouygues Telecom was well positioned to take advantage of the growth in the telecommunications sector being driven by consumers' increasing use of digital devices.[65]

iii Data protection and security

2014 saw the adoption of new legal provisions on data protection and security. Law No. 2014-1353 of 13 November 2014 reinforcing the dispositions related to the fight against terrorism provides new offences with regard to security on the internet. In particular, being a terrorism apologist on an online communication service is

62 FCA, Decision No. 15-DAG-02 of 29 July 2015.

63 FCA, Decision No.14-DCC-179 of 27 November 2014.

64 Court of Appeals of Paris, 5 February 2015, No. 2014/21492.

65 www.bouygues.com/wp-content/uploads/2015/06/cp_bouygues_23062015_va.pdf.

now recognised as a *délit*[66] and is punishable with seven years of imprisonment and a €100,000 fine.[67] In addition, websites considered to be apologising for terrorism can now be subject to administrative blocking.[68] Furthermore, the recently promulgated Law No. 2015-912 of 24 July 2015 on Intelligence substantially expands the administrative prerogatives regarding data processing (see Section III.iv, *supra*).

With regard to internet trackers and cookies in particular, the CNIL announced in July 2014 that controls would be carried out as from October 2014 to ensure compliance with Article 32-II of the French Data Protection Act, which requires clear and complete information to be provided to internet users. Since October 2014, 27 online controls and 24 onsite controls have been carried out by the CNIL.[69] Finally, in 2014 the CNIL imposed a €150,000 fine on Google for the non-compliance of its confidentiality policy with the French Data Protection Act, and forced Google to publish a link to this decision on its homepage for 48 hours,[70] while Orange was subject to a public warning for lack of security and data protection.[71]

iv Judicial proceedings

In June 2014, SFR and its subsidiary SRR (based in La Réunion and Mayotte) were sentenced to a €45.9 million fine by the FCA for anti-competitive practices after a complaint by Orange in 2009. SRR was accused of maintaining abusive prices for calls made to its competitors' networks.[72]

Further to complaints by Bouygues Telecom and SFR, the FCA formally charged Orange on 10 March 2015 with discriminatory practices on the fixed wholesale market, loyalty practices in the mobile enterprise market and exclusive discounts in the enterprise data markets. In parallel to this ongoing investigation, Numericable-SFR filed a lawsuit before the Paris Commercial Court on 18 June 2015 seeking €512 million in damages against Orange based on accusations that Orange would have engaged into anti-competitive practices in business-to-business services.

In addition, on 16 March 2015, the Paris Commercial Court[73] ordered Orange to pay €8 million as compensation for the damages Outremer Telecom suffered as a result of Orange's anti-competitive practices in the mobile and fixed-to-mobile markets in the French Caribbean and in French Guyana, which were punished by the FCA in 2009.[74]

66 The second most serious offence in the French criminal system.

67 Article 421-2-5 of the Penal Code.

68 Article 706-23 of the Penal Procedure Code.

69 CNIL Annual Report, 2014.

70 CNIL, Decision No. 2013-420 of 3 January 2014.

71 CNIL, Decision No. 2014-298 of 7 August 2014.

72 FCA, Decision No. 14-D-05 of 13 June 2014.

73 Paris Commercial Court, 16 March 2015, RG 2010073867.

74 FCA, Decision No. 09-D-36 of 9 December 2009. On 6 January 2015, the Supreme Court confirmed the decision of the Paris Court of Appeals, reducing the fine from €63 million to €7.5 million.

Appendix 1

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Mr Colahan is based in Latham & Watkins' London office and divides his time with the Brussels office. Prior to joining Latham & Watkins, Mr Colahan was the international antitrust counsel, based in London, for The Coca-Cola Company, where his responsibilities included advising all operating groups on strategic planning and implementation of a wide variety of international joint ventures and acquisitions as well as the conduct of international antitrust litigation and investigations. Mr Colahan has also served as a legal adviser on European law to the European secretariat of the UK Cabinet Office and has represented the UK in numerous cases.

He represents clients before the European Commission, national authorities in Europe and internationally, as well as conducting litigation in the European courts and numerous national courts. He has advised on a wide variety of international antitrust matters, including structuring and implementation of international mergers, acquisitions and joint ventures, cartel enforcement, single firm conduct and compliance counseling. Mr Colahan has worked in a broad range of sectors including fast-moving consumer goods, alcoholic and non-alcoholic beverages, retail, media and publishing, pharmaceuticals, aviation, manufacturing, agricultural, defence, bulk chemicals, maritime, energy, software, supply of professional services, telecommunications and finance.

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Gail Crawford is a partner in the London office. Her practice focuses primarily on technology, data privacy and security, intellectual property and commercial law, and includes advising on technology licensing agreements and joint ventures, technology procurement, data protection issues, and e-commerce and communications regulation. She also advises both customers and suppliers on multi-jurisdictional IT, business

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John P Janka is a partner in the Washington, DC office of Latham & Watkins LLP, where he served as a global leader of the communications law practice group for a decade. For almost three decades, Mr Janka has counselled international telecommunications operators and ISPs, content providers, investors and banks on a variety of regulatory, transactional and controversy matters. His experience includes the purchase, sale and financing of communications companies, the procurement and deployment of communications facilities, global spectrum strategies and dispute resolution, the provision of communications capacity, content distribution, strategic planning, and effectuating changes in legal and regulatory frameworks. His clients include satellite operators, broadband providers, wireless and other terrestrial communications companies, video programming suppliers, ISPs, television and radio broadcast stations, and firms that invest in and finance these types of entities.

Mr Janka has served as a United States delegate to an ITU World Radiocommunication Conference in Geneva, and as a law clerk to the Honorable Cynthia Holcomb Hall, United States Court of Appeals for the Ninth Circuit. Mr Janka holds a JD degree from the University of California at Los Angeles School of Law, where he graduated as a member of the Order of the Coif, and an AB degree from Duke University, where he graduated *magna cum laude*.

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Jean-Luc Juhan is a partner in the corporate department of the Paris office of Latham & Watkins.

His practice focuses on outsourcing and technology transactions, including business processes, information technology, telecommunications, systems and software procurement and integration. He also has extensive experience advising clients on all the commercial and legal aspects of technology development, licensing arrangements, web hosting, manufacturing, distribution, e-commerce, entertainment and technology joint ventures.

Mr Juhan is in particular cited in *Chambers Europe 2014*, *Option Droit & Affaires 2014* and *The Legal 500 Paris 2014*: 'Great negotiator' Jean-Luc Juhan, who is 'very sharp and down-to-earth' and has 'very good knowledge of the industry', advises high-profile French and international groups on large outsourcing, telecommunication and integration system projects'.

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Mr Lipsky is a partner in the Washington, DC office of Latham & Watkins. He is internationally recognised for his work on both US and non-US antitrust and competition law and policy, and has handled antitrust matters throughout the world. He served as Deputy Assistant Attorney General for Antitrust during the Reagan Administration. Having served as chief antitrust lawyer for The Coca-Cola Company from 1992 to 2002, Mr Lipsky has incomparable experience with antitrust in the US, EU, Canada, Japan and other established antitrust-law regimes, as well as in new and emerging antitrust-law regimes in scores of jurisdictions that adopted free-market policies following the 1991 collapse of the Soviet Union. He has been closely associated with efforts to streamline antitrust enforcement around the world, advocating the reduction of compliance burdens and the harmonisation of fundamental objectives of antitrust law.

Mr Lipsky was the first international officer of the American Bar Association Section of Antitrust Law. He served on the editorial board of *Competition Laws Outside the United States* (2001), the most ambitious annotated compilation of non-US competition laws yet produced. He has held a variety of senior positions among the officers and governing council of the Section of Antitrust Law and continues to serve as co-chair of its International Task Force. He is admitted to practise before the US Supreme Court and various federal appellate courts.

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Shintaro Ojima is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. Mr Ojima's practice focuses on mergers and acquisitions and general corporate matters. His representative experience in the telecommunications industry includes representing the underwriters in a US$4.4 billion senior notes offering by SoftBank Group Corporation, the largest high yield bond offering in Asia by a leading mobile phone carrier in Japan. Prior to joining Latham & Watkins, Mr Ojima served as an associate in the corporate department of a major international law firm in Tokyo. Mr Ojima is admitted to practise in Japan and is a member of the Tokyo Bar Association.

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Simon Powell is the managing partner of the Hong Kong office of Latham & Watkins and the chair of the litigation department in Asia.

Mr Powell's practice focuses on complex contentious regulatory, commercial litigation and arbitration matters, including contentious technology, media and telecommunications regulatory issues and disputes; financial and corporate regulation and investigation; antitrust and competition law; and contentious insolvency and business restructuring and reorganisation.

Mr Powell represents numerous multinational and local corporations in connection with a wide range of multi-jurisdictional and cross-border issues, including those operating in the telecommunications industry, and in relation to antitrust and competition issues and regulatory matters generally, with a particular focus on Hong Kong.

Mr Powell is one of only a few solicitor-advocates in Hong Kong, giving him full rights of audience before all the Hong Kong civil courts (including the newly instituted Competition Tribunal, which has been set up as a part of the judiciary). He is also a fellow of the Chartered Institute of Arbitrators, and a CEDR accredited mediator. He sits on the Hong Kong Law Society's competition committee, which focuses on reviewing and commenting upon competition-related issues within Hong Kong.

MYRIA SAARINEN

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Myria Saarinen is a partner in the Paris office of Latham & Watkins. She has extensive experience in IP and IT litigation, including internet and other technology-related disputes. She is very active in litigation relating to major industrial operations and is involved in a broad range of general commercial disputes.

She has developed specific expertise in the area of privacy and personal data, including advising clients on their transborder data flows, handling claims raised by the French Data Protection Authority, and setting up training sessions on the personal data protection framework in general and on specific topics. She also has expertise in cross-border issues raised in connection with discovery or similar requests in France.

Ms Saarinen is named among leading practitioners in commercial litigation, data privacy and IT (*The Legal 500 Paris 2014*, *Chambers Europe 2013*, *Chambers Global 2013*).

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Daniel Senger is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. Mr Senger's practice focuses on project finance and general corporate matters. He has worked on a number of large international project financings in Japan and the greater Asia-Pacific region, as well as several M&A, corporate finance and other general corporate matters across various industries. Prior to joining Latham & Watkins, Mr Senger served as an associate at a major international law firm in New York. Mr Senger is admitted to practise in New York.

OMAR SHAH

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Omar Shah is a partner in Latham & Watkins' London office. He advises clients in the media and communications sector on antitrust and regulatory issues, and represents them before UK, EU and other regulatory and competition authorities, courts and tribunals. His experience includes acting for a UK broadcaster in an Ofcom investigation into licensing of digital terrestrial television; acting for a major UK telco in an Ofcom investigation into consumer broadband pricing; acting for a leading provider of electronic programme guides in securing UK licensing from Ofcom; representing various telcos in securing merger control clearance from the Office of Fair Trading (now part of the Competition and Markets Authority), the European Commission and other regulators for several transactions; and defending a major advertiser and provider of online music services in an investigation by the Advertising Standards Authority, including subsequent judicial review proceedings in the High Court.

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Jarrett S Taubman is counsel in the Washington, DC office of Latham & Watkins LLP, where he represents providers of telecommunications, media, internet and other communications services (and their investors) before the Federal Communications Commission, state public utilities commissions and various courts. Mr Taubman assists clients in implementing strategies to facilitate the development of favourable regulatory policy, structuring transactions and securing required regulatory consents, and ensuring ongoing compliance with complex regulatory requirements. Much of his practice involves the navigation of the complex legal and policy issues raised by the advent of broadband services. Mr Taubman also represents both communications and non-communications clients before the Committee on Foreign Investment in the United States, a multi-agency group with the statutory authority to review and block proposed investments in critical US infrastructure from non-US sources.

Mr Taubman received his JD from New York University School of Law, a master's degree in public policy from Harvard University's Kennedy School of Government, and a BS from Cornell University's School of Industrial and Labor Relations.

GABRIELE WUNSCH

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Dr Gabriele Wunsch is an associate in the Hamburg office of Latham & Watkins LLP, practising IP and media law in the firm's litigation and corporate departments. She is a graduate of the Westphalian Wilhelms University at Münster, and completed parts of her studies and work in Germany, England, Spain, Switzerland and the United States. Furthermore, Dr Wunsch studied on the Humboldt University of Berlin's European and civil business law postgraduate programme, promoted by the German Research Foundation, where she wrote her doctoral dissertation on the harmonisation of EU law.

During her legal traineeship, she worked, *inter alia*, for the Ministry of Foreign Affairs, in the IP and unfair competition department of another major law firm, and in the legal department of a well-known online auction house. Subsequently, Dr Wunsch completed a master's degree (LLM) at the Technical University of Dresden and Queen Mary, University of London, specialising in intellectual property law.

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