

PART 8

Consumers

CHAPTER I Taking consumer interests into account

CHAPTER II Mediation report

CHAPTER III Universal directory

CHAPTER IV Telephone directory information services

CHAPTER V Number portability

Taking consumer interests into account

A. ARCEP's daily activities

B. Consumer support

A. ARCEP's daily activities

Taking consumer interests into account is a major concern of the Authority. Of the 14 joint missions that the legislature has assigned to the minister responsible for electronic communications and to ARCEP in their respective capacities, three concern consumers. Article L.32-1 II of the CPCE requires that the minister and ARCEP "must ensure: the provision and financing of all public-service components of electronic communication services, effective and fair competition among electronic communication network operators and service providers which benefits consumers," and "a high level of consumer protection afforded notably through the provision of clear information and in particular transparent tariffs and conditions for using electronic communication services accessible to the public".

Competition is only worthwhile if it first and foremost benefits the end user, whether an individual or a business. This is why the Authority remains vigilant to safeguard sound and fair competition that allows each player sufficient economic space to develop. The multiplicity of operators and service providers has thereby facilitated the emergence of innovative offerings both in services (as witnessed by broadband multiservice offerings involving voice, Internet, and television) and technically (as seen in higher speeds, voice over IP, and new wireless technologies such as WiFi and WiMAX). At the same time, pressure on prices has accelerated the development of fixed and mobile telephone services to provide greater benefit to consumers. The Authority believes that all consumers, whether in densely populated parts of the country or in rural areas, should have access to these new services and has therefore taken measures to encourage the extension of mobile and broadband geographic coverage via unbundling and bitstream services.

ARCEP also takes consumer interests into consideration when implementing tariff controls, especially in the context of universal service, or when imposing multiyear reductions on mobile network call-termination tariffs, which are designed to be passed on to voice and SMS retail tariffs.

Consumer interests are at the heart of the service-quality control mechanisms the Authority has put in place (for fixed, mobile, directory enquiry services and directories). Likewise, they are the regulator's concern when ensuring that operators comply with their obligations.

Also, ARCEP regularly consults consumers through their associations when it issues a public call for comments. Consumers have had input on matters directly relating to use of services (especially concerning the replacement of directory enquiries number "12", the message to be used on the day when the former directory services numbers were taken out of service, releasing the 09-prefix number block, caller identification, number portability, etc.) and on more technical matters concerning, for example, the cost model for residential and business unbundled access. The results of all of these public consultations have been summarised and published on the Authority's web site.

In addition to the bilateral meetings it has had with the various consumer associations, ARCEP also participates in various meetings in which the associations are present. Consequently, the Authority participated in the 27 October 2005 roundtable with operators and consumers, which was organised at the initiative of the minister-delegate of Industry for the parties to discuss telephone and Internet services.

1 See Part I.

In addition, ARCEP uses various tools¹ to keep consumers informed, which include in particular its web site and a newsletter. It also publishes studies. By making this information available, especially through its Observatories, ARCEP helps consumers to make choices.

B. Consumer support

Responding to direct queries from consumers is not ARCEP's primary function. This is the role of consumer associations and the government consumer protection agency, the DGCCRF (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*). However, consumers turn to the Authority to resolve problems or obtain information. In 2005, as in previous years, ARCEP's consumer affairs division supported consumers by responding to their various requests, half of which came in by phone and the remainder by mail (27%) or e-mail (22%). At nearly 9 000, the number of requests received in 2005 was 35% higher than in 2004 and contrasted sharply with the 2003 count of fewer than 1 500. They can be categorised by topic as follows. Nearly 65% concerned contractual disputes relating to the consumer code and therefore fell outside the Authority's jurisdiction; in such cases, consumers are directed to the operator's customer service or to a telecommunications or Internet ombudsman. Of the remainder, 17% were conventional information requests and 18% concerned disputes falling directly within the regulator's jurisdiction. These had to do principally with problems relating to preselection, partial and total unbundling, and mobile number portability.

The correspondence processed shows a steep reduction in complaints about mobile operators (13.5% versus 20% in 2004). From this, it can reasonably be deduced that operators have improved their customer service and have doubtless made their contracts clearer. On the other hand, complaints concerning broadband are clearly on the rise. For this reason, ARCEP convened a meeting of certain operators and access service providers to ask them to take steps to improve their customer service quality. In addition, operators and service providers have been asked to provide service quality indicators (see Part IX), which are regularly published on the ARCEP website.

PART 8
CHAPTER II

Mediation report

Roundtable on telephone and Internet services, held 27 September 2005.

2

In September 2005², the minister-delegate of Industry asked ARCEP to study the means by which mediation in the telecommunications and Internet sectors could be improved and independence in mediation guaranteed, to determine what resources would be needed, what methods would be practical, and what financing would be appropriate, including if necessary a new contribution from operators.

In response, he received a report in December 2005 written by Joëlle Toledano, a member of the Authority. In the introduction, the report emphasised that it appeared undesirable to drastically change the current system, which consumers may access free of charge and which is underpinned by two organisations:

- The telephony mediator, financed by a business association comprising nearly all of the largest companies in the sector and selected by them to serve for a definite and irrevocable term following consultation with the DGCCRF and consumer associations. This forum is reserved exclusively for disputes brought by the fixed and mobile telephone customers of these companies.
- The Internet mediation service in the *Forum des Droits de Internet*, a publicly funded consumer Internet rights association that is open to all. For willing businesses and their customers, it provides free mediation services in disputes concerning Internet use. The service is rendered by association personnel who are supported by an effective information system.

ARCEP observes however, that the telephony mediator still has limited visibility and there is little ongoing financing of the Internet mediation function, which makes it difficult to apply the principles of independence and efficiency.

Based on several examples in France and Europe, it appears that the differences in the way these groups are organised do not pose an obstacle to changes allowing for the adoption of widely-shared “best practices” in mediation. Such practices include fee-free access for consumers, which is made possible by companies assuming direct responsibility for the cost of mediation.

Mediation cannot serve consumers in a satisfactory way unless two conditions exist:

- higher consumer and operator confidence in mediator independence;
- improved upstream handling of disputes in companies as set forth in the best practice handbook *Guide des Bonnes Pratiques des Opérateurs*.

The Authority has given the minister its proposal for improvements to be implemented by 1 January 2007 and a timetable for achieving that objective.

ARCEP believes that the mediation system should have certain attributes, which to one degree or another are interdependent. Companies in the sector should therefore benefit from a measure of flexibility in structuring

mediation systems (with one or several company-financed mediators) and regulating themselves through the use of mediation charters that follow best practices for the amicable settlement of all commercial disputes.

Whenever possible, the mediation charters, which are to be defined jointly, should be harmonised and include standard provisions (date of filing the complaint, processing time, methods of communicating this information to the plaintiff, etc.). They should specify that recourse to mediation is permitted only after the company's internal complaint handling system has been exhausted. However, recourse to mediation must be possible, as of right, two months after the initial filing date of the complaint. The statute-of-limitations period should be suspended while mediation is in progress.

To guarantee the mediator's independence, he or she should be designated unanimously by a group of at least three members (a representative of the companies participating in the system, a consumer association representative designated by the associations from among their representatives to the CNC, and a representative of the ministry responsible for electronic communications), each of whom may propose a candidate. The mandate is for 3 years, is renewable, and must begin before age 65. The Authority recommends that the mediator have the resources necessary to fulfill his or her activity and that these be provided by the companies.

Finally, the group responsible for naming the mediator should be the guarantor of the mediator's independence. This group and the DGCCRF are recipients of the annual report. ARCEP proposes that the ministry define the channels by which mediation service quality will be controlled.

For the new mechanism to be in place at the start of 2007, companies should agree to have implemented improved internal procedures for complaint handling based on the *Guide des Bonnes Pratiques* and the ministry's recommendations before 1 July 2006. The complaint-handling procedure will have to have been integrated with the new mediation system as one of the system's basic elements. Likewise, all operators should have made the decision to adhere to the system by that date so that there is visibility with respect to its financing and the organisations providing mediation in the sector can be identified.

Before 31 December 2006, the new mediation charters should be adopted and mediators, which should be easily identifiable by consumers, named so that they can be operational as of January 2007. A large-scale awareness-raising campaign should be mounted to inform consumers of their new rights and obligations. Finally, if the minister's recommendations are not observed in the charters adopted, orders should be issued as provided for by the *Code de la Consommation*, the consumer code.

Universal directory

- A. General context
- B. Subscriber rights and operator and publisher obligations
- C. Access to universal directory data
- D. Establishing the universal directory

A. General context

1. Legislative framework

As provided in Article L.34 of the CPCE, anyone subscribing to telephone service has the right to appear free of charge in the lists operators assemble for purposes of compiling subscriber names in a single directory. Such a directory is called a universal directory.

At the same time, the legislature has made provision for any universal directory publisher or provider of universal directory information services to be able to acquire all of the lists making up the universal directory from the operators concerned. The acquisition of these lists is an obligation that falls particularly on the universal service provider in charge of the directory, which is currently France Telecom.

The obligation to make a universal directory available to consumers is longstanding - it was imposed in 1998 by a European Directive that used the equivalent term, "complete directory". But it was only in May 2005, with the publication of a decree concerning directories and directory services, that the French regulatory framework was finalised. The Authority's decision on the draft decree was rendered on 7 December 2004³.

2. ARCEP's actions

In fact, while the universal directory concept is simple, its implementation is complex. This complexity is above all due to the multiplicity of players: the multiplicity of telephony operators, since the universal directory is the product of compiling the subscriber lists of all operators, and the multiplicity of players wishing or obligated to offer a universal directory. In addition, the process has hardly been simplified by the juxtaposition of the two listing regimes in use - the one for fixed telephone subscribers and the other for mobile telephone subscribers. This diversity has made it both desirable and necessary to establish common standards, particularly for the content and format of directory listings. Accordingly, the Authority published guidelines in December 2004 to help players with the process of building and transferring subscriber lists.

The year 2005, which saw the publication of the decree on 27 May 2005, was marked by operator efforts to compile subscriber lists and arrange for their transfer to directory publishers and directory information service providers. However the process encountered a significant delay. As of the end of the year, numerous operators were not in a position to transfer their subscriber lists. In addition, certain lists, especially those compiled by mobile telephone operators, contained only a small number of subscribers compared to the actual size of the operators' customer bases. At the end of the year, these delays and the incompleteness of certain lists led the

ARCEP Opinion No. 04-1039 of 7 December 2004 concerning the draft decree amending Decree No. 2003-752 of 1 August 2003, which addressed universal directories and universal directory information services and the CPCE.

Authority to initiate a series of actions aimed at accelerating the process. These took effect at the start of 2006.

B. Subscriber rights and operator and publisher obligations

1. Subscriber rights

Every fixed and mobile⁴ telephone subscriber, whether a physical person or legal entity, has the option to decline publication of personal information in the directory listings of the operator providing service.

In addition, subscribers may ask to be included in the list but impose restrictions on how their personal information is published. The CPCE provides for four such restrictions⁵:

- withholding the postal address;
- substituting the first name with the initial;
- forbidding personal information to be used for commercial purposes;
- forbidding personal information to be used for reverse searches based on the telephone number.

Subscribers may also choose to associate other users with their number provided they have the users' consent.

Though all subscribers have identical rights, the registration system used for mobile subscribers is different from that used for fixed subscribers. In effect, mobile operators must obtain the prior consent of their subscribers in order to list them in the directory while fixed telephone subscribers are included automatically unless they indicate their preference to the contrary.⁶

2. Operator and publisher obligations

2.1. Subscriber listing choices

Operators are responsible for informing subscribers of their rights, especially their right to a restricted listing, and for obtaining subscribers' publishing preferences. This information obligation is a basic one for mobile operators given that a mobile directory listing requires explicit subscriber consent. In this case, the quality of the information mechanism is critical to enable subscribers to exercise their rights with full knowledge of the facts.

4 In particular, these rights extend to numbers associated with prepaid cards or assigned temporarily as well as to IP or Internet telephony services.

5 These user data rights also apply when the listing is for a user other than the subscriber.

6 Automatic listing occurs 6 months after the subscriber has been informed of these provisions if he or she has not indicated an objection by that date.

In addition, all operators should ensure that data contained in directory listings is accurate⁷ and up to date.

For their part, directory publishers and information services that use directory listings transmitted by operators are obligated to respect subscriber and user choices and process all data contained in such lists in a uniform and non-discriminatory way. In particular, in printed and online directories, each user's data should be edited using a common format and neutral sort orders (for example, alphabetically). Likewise, the information provided by directory information services should be of the same nature and should not favour certain subscribers. If the option of a preferential listing (in a customised format, including advertising, etc.) is given to subscribers, it must be offered to all subscribers on the same terms.

Publishers must coordinate with operators to keep their directory lists up-to-date with a frequency appropriate to the type of product provided.

CPCE Article R.10-3 requires that all operators, to the extent they are involved in this activity, take necessary precautions to ensure the accuracy of the data appearing in their lists and the quality – especially from a technical point of view – of these lists, except when the data relates to business and activity-related references that the operator includes but for which the requesting party is responsible.

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2.2. Transfer of lists between operators and publishers

According to the provisions of the CPCE, operators that assign one or more numbers to their customers are required to communicate their subscriber lists at a rate reflecting the cost of the service rendered and on a non-discriminatory basis to companies wishing to publish a universal directory or provide a universal directory information service.

Access to universal directory data

Consumers can access universal directory data via the various products offered by the different publishers. If these publishers wish to do so, they can offer services such as reverse search, assisted search, name filtering, advertising inserts, etc provided that the instructions given by the subscriber concerned are adhered to.

Other services, such as international directory information, can be offered either on the same platform as the universal directory (by dialling 118 for example) or on another (for example, using an abbreviated number in the format 3BPQ).

There is no restriction on the fees charged for these various services, but for purposes of universal service the selected provider⁸ must distribute a free paper directory covering the *département* to every telephone subscriber and make universal directory data available for a reasonable fee through an electronic service⁹ and a telephone inquiry service¹⁰.

The various universal directory products are edited and published in a non-discriminatory fashion, which is to say that subscribers appear in them in a uniform way. Thus, when consulting a directory, it is not possible to identify the operator(s) associated with any subscriber.

To date, France Telecom.

3611 in the case of France Telecom.

118711 in the case of France Telecom.

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D. Establishing the universal directory

In December 2004, after extensively consulting the sector, ARCEP published guidelines for the technical and financial terms for the transfer of listings.

Following publication of the May 2005 decree, which completed the legislative and regulatory measures, the Authority undertook a series of actions aimed at encouraging rapid implementation of the measures and making universal directory products and information services available to the public.

11 Press release dated 13 June.

On 13 June 2005, the Authority enjoined¹¹ operators to complete the following within the following four months:

- inform subscribers about their rights concerning publication in directories;
- obtain subscribers' preferences and consent for publication of their personal data;
- communicate the resulting subscriber and user listings to the directory publishers and directory information service providers.

At the end of the four-month period in October 2005, the Authority reviewed the status of operator efforts to compile the universal directory and make the directory available to consumers in printed directories, online, and via 118XYZ directory information services. This status review revealed that certain operators were significantly behind schedule in communicating their subscriber lists to publishers and that the number of subscriber listings provided by mobile operators was very low.

12 Press release dated 2 December.

To remedy the situation, ARCEP decided on 2 December 2005 to¹²:

- launch proceedings, effective December 2005, that would result if necessary in the imposition of sanctions on the main operators who failed to honour their obligation to communicate their subscriber and user lists to publishers;
- implement a monthly scoreboard, effective December 2005, to measure the progress of the universal directory;
- initiate proceedings, effective January 2006, to investigate the mobile operators whose compiled subscriber lists contained a very small number of listings and thereby shed light on any shortcomings in the operators' subscriber information systems and approach to capturing subscriber preferences.

The Authority thus began proceedings by meeting with ten or so operators over the course of January and February 2006. Several operators were put on formal legal notice. After these proceedings, notable progress was made in the transfer of lists to publishers.

At the same time, the Authority invited operators and publishers to resume, within the framework of the working group that originated the December 2004 guidelines, the coordination effort aimed at facilitating the work of making universal directories and directory information services available to the public. This working group addresses a variety of technical subjects with the aim of guaranteeing on the one hand that the rights and personal data of subscribers, users and consumers are protected and their directory content is relevant and consistent, and on the other hand, that the transfer of lists between operators and publishers occurs efficiently and dependably.

Finally, although the entire mechanism is not yet satisfactory, the universal directory is steadily becoming a reality. At the beginning of 2006, listings for about 80% of subscribers and users were potentially ready for publication in one or another publisher's directory¹³. In addition, some of the publishers that have obtained listings from the largest operators¹⁴ are able to offer consumers access to more than 95% of fixed and mobile numbers contained in the operators' directory lists.

Potentially, which is to say subject to subscribers either indicating their desire to be listed or not indicating opposition.

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The largest operators are either those whose subscribers include either a large number of mass market subscribers or leading businesses and agencies, which have the most-requested numbers.

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1. Work on technical provisions

Significant progress on the technical provisions has been achieved by consensus. However, certain aspects still need to be coordinated by the sector so that common rules can be specified and shared.

The "opt-out¹⁵" regime now in effect for fixed telephony requires that it be made clear which listing data can be used for subscribers who have not indicated any listing preference six months after receiving the offer to be listed.

Opt-out: The subscriber is passive and the subscriber's directory listing is automatic (unless he or she expresses a preference to the contrary). Opt-in: The subscriber is active and must give his or her consent in order to be listed in the directory.

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Other questions concerned how subscribers' personal data is processed in certain specific cases (subscribers on unbundled lines, preselection subscribers, subscribers living abroad, subscribers who have ported their numbers, users of abbreviated or non-geographic numbers, etc.).

2. List content

The scope of information to be contained in directory listings is relatively explicit in the case of subscribers or users in the residential or mass market. However, where companies or agencies with a large number of telephone, fax and other numbers are concerned, the matter of defining which data to include is more difficult. In particular, for consumers to be able to look up a given business, the information contained in the directory needs to be sufficiently detailed. To that end, the Authority had to strike a balance between a necessary minimum of information that is the same for all directories and the freedom of publishers to enhance the data in order to differentiate their services.

16 For example, with respect to the management of publishing restrictions.

In addition, certain customers may have multiple telephone numbers with various operators. The publisher therefore needs to guarantee that data coming from the various operators is reconciled¹⁶.

3. Affected operators

17 Affected operators are those which have assigned numbers to their own subscribers as well as those who have numbering resources for their own use which they wish to have published in the directory (such as 118 numbers).

All operators that assign¹⁷ one or more numbers and their distributors, where applicable, are affected by the provisions concerning the compilation and transfer of lists such as those described in Article L.34 of the CPCE.

Therefore, it is necessary to ensure that new operators in particular (especially alternative fixed operators, MVNOs, voice over Internet operators, etc.) have the resources in place to be able to gather and transfer their subscribers' personal data and that publishers are aware of these new-operator lists so that they can request their listings.

4. Identifying publishers with rights

Also, the operator obligation to transfer subscriber lists to publishers “upon any request received for the purposes of publishing a universal directory or providing a universal directory information service” has led operators to ask that a list of universal directory publishers be made available to them before they transfer any lists.

5. Fees and contracts

The operator obligation to transfer subscriber lists to publishers on a non-discriminatory basis and at a reasonable price that reflects the cost of delivering the service has been the subject of many a debate between operators and publishers. The players differ in the way they interpret the tariff guidance provided by current jurisprudence and the guidelines published by the Authority. Independent of the tariff itself, special attention needs to be given to the contract clauses used in order to ensure that competition is fair.

6. Universal directory data

Article R.10-4 of the CPCE states that use of the lists obtained by applying Article L.34 Indent 4 for purposes other than the provision of a universal directory or universal telephone directory information service is prohibited. Unless stipulated to the contrary by contract, all sales of lists obtained by applying Article 34 Indent 4 are prohibited. Discussions are being held concerning the nature of the contract stipulations¹⁸ that would allow a player to transfer all or part of lists obtained in this way to a third party for purposes of a universal directory or directory information services.

In particular, with respect to intellectual property rights of universal directory data.

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For economic and technical purposes, it could prove useful to ensure that certain publishers possessing all of the lists are able to provide publishers of online universal directories and providers of universal directory information services on-demand access to their databases¹⁹. These publishers will perform mutualised collection, compilation, integration, and enhancement services (where applicable) on all operator lists.

In particular, in order to provide directory information in response to requests from foreign directory information service providers.

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In addition, it may be useful to determine how certain publishers with a direct or indirect presence in foreign markets are able to use universal directory data in those markets.

E. A process underway

More generally, the implementation of the universal directory, which is currently operational and involves all the players, has brought to light a number of complex cases that still need to be treated and this will be an area in which the Authority will work in 2006. Among the other topics being addressed by the working group are how to control the overall quality of the process and of the published directories themselves, what update schedule to observe, the localization of data in other countries, reverse directory access for emergency services, subscriber rights to correct data in a given publisher's directory, and how universal directory implementation affects related domains (the launch of 118 services, offering the 118711 universal directory service, 3611 or free paper version, numbering plan evolution, etc.).

Telephone directory information services

- A. Legal context
- B. The new 118YXZ numbers
- C. Service launch
- D. Initial results

The opening of new 118XYZ telephone directory information services at the beginning of November 2005 offered consumers a much wider choice of service providers and services but also introduced much greater complexity of use compared to the traditional 12 service or the former 4- and 10-digit numbers. To assist consumers, ARCEP is ensuring that they are well-informed and has set up service-quality monitoring.

A. Legal context

To ensure that the conditions of competition are fair, the *Conseil d'État* in its order dated 25 June 2004 enjoined the Authority to define, within six months following the notification date of the *Conseil's* decision, the conditions for assigning numbers in a common format to all operators offering telephone directory information services and the revision of the numbering plan so that unless a transition period is found to be necessary, the number 12 can no longer be used for operator-assisted information services.

This order put an end to the use of the number 12, which had been accessible from both fixed and mobile networks, 4-digit numbers that had been assigned to mobile operators for their directory information services, as well as 10-digit numbers used by various service providers.

B. The new 118YXZ numbers

Following the *Conseil d'État* decision, the Authority launched a public consultation on 27 July 2004 aimed at receiving the sector's input on replacing the number 12. On 3 December 2004, the Authority published a summary of the contributions received and then defined a mechanism for replacing the former directory service numbers. In ARCEP's view, the new services should allow access to universal directory data, which is to say access to all fixed telephone numbers in France, mobile numbers, and special numbers (see Chapter 3).

Thus, on 27 January 2005, the Authority adopted three decisions on directory information services:

- a decision²⁰ establishing the new number format of 118XYZ;
- a decision²¹ concerning the 118XYZ number assignment procedure;
- a decision²² concerning the procedures for transitioning from the old numbers to the new.

The choice of numbers beginning with 118 is part of a European programme. Indeed, a large number of European countries have modified the numbering of their telephone directory information services and have adopted the 118XY or 118XYZ format in accordance with the 4 December

ART Decision No. 05-0061 of 27 January 2005 dedicating numbers in the 118XYZ format to be used as access numbers for telephone directory information services. 20

ART Decision No.05-0062 of 27 January 2005 concerning the initial process of assigning 118XYZ numbers and the specific provisions to be applied for the transition. 21

ART Decision No. 05-0063 of 27 January 2004, concerning procedures for migrating telephone directory information service numbers from the old format to the 118X format. 22

23 Which subsequently became the ECC (Electronic Communications Committee).

1997 recommendation from ECTRA²³ (European Committee for Telecommunications Regulatory Affairs).

To address the large demand, ARCEP established an exceptional initial assignment procedure so that numbers can be awarded objectively, transparently and on a non-discriminatory basis. The first 118XYZ numbers were assigned by drawing lots on 14 June 2005. Eight lottery rounds were required to assign numbers to all candidates needing numbers: 56 numbers were assigned in this way to 27 companies. Since this initial process, requests for new numbers have been handled according to the general procedures defined in the number administration rules, which is to say case by case, to the extent that numbers have remained available. Thus, several companies have obtained 118XYZ numbers since 14 June 2005 and others who were assigned numbers in the first round have returned theirs.

Plans have been made for a transition period lasting five months, from 2 November 2005 (when the first 118XYZ services were launched) through 3 April 2006 (when the old numbers were taken out of service). This addresses two main objectives. First, it allows operators enough time to implement their directory information services. Second, it gives users time to become familiar with the new numbers while still having access to the old ones. Indeed, the large quantity of new-format numbers requires that users have the benefit of a period during which they can become acquainted with the new services while still having access to those they already know.

C. Service launch

On 2 November 2005, the first 20 118XYZ numbers went into commercial service and began to be dialled by consumers. This launch gave rise to large-scale publicity campaigns to acquaint users with the new number format and the new service providers. On this occasion, the Ministry of Industry, in association with ARCEP, launched an institutional campaign aimed at informing consumers of the format change. Several million copies of an information pamphlet were distributed via the various public distribution networks of the Ministry of Economy, Finance and Industry and La Poste's network of post offices. A web site, <http://www.appel118.fr>, has been created containing all essential information, especially tariffs and services offered.

For transitional purposes, ARCEP in its Decision No. 05-0063 required that service providers using the numbers about to be retired from service inform consumers of the change of format. Following a public consultation launched at the end of January to determine what solution should be implemented, ARCEP decided, based on the 31 answers received, that it was inappropriate to require operators to provide randomly-selected voice messages to inform consumers about the new 118 services. However, the

Authority did decide²⁴ that operators should be required to inform consumers free of charge that the number dialled is no longer in service and that for directory information it is necessary from now on to dial a 6-digit number beginning with 118. Also, service providers must allow consumers to have access to a list of emergency numbers. The voice message is to be used for one year from the date that the old services are retired.

ARCEP Decision No. 06-0259 of 28 February 2006 specifying the content of the message that should be broadcast on directory information service numbers other than 118XYZ numbers.

D. Initial results

The Authority tracked the progress of cutting calls over from the old numbers to the new. As of the end of December 2005, or two months after 118XYZ services were launched, 9% of calls to directory information services were being made to the new services.

In addition, the Authority began monitoring the quality of directory information services in order to compare the new 118 services against each another (see Part IX, Chapter 1).

As of 1 January 2006, 19 118XYZ numbers were operating on 54 assigned numbers.

Number	Company	Open on 01/01/2006
118000	Le 118000	X
118001	IntraCall Center	X
118004	Tele2	
118006	Pixtel	
118007	Allo Bottin	X
118008	PagesJaunes	X
118012	L'Annuaire Universel	
118018	Telenet Hosting	
118050	Conduit	
118075	Le Numéro France	X
118088	PagesJaunes	
118200	123 Multimédia	
118212	Free	
118218	Le Numéro France	X
118220	Le Numéro France	X
118222	118 Teledis SARL	X
118247	Telegate France	
118300	Telemedia	
118318	Le Numéro France	X
118321	Telegate France	
118333	NRJ Mobile	
118400	Le Service Universel de Renseignements Téléphoniques	
118444	PCCI UK	

Number	Company	Open on 01/01/2006
118500	Conduit	
118555	Telegate France	
118600	118866 Ltd	
118612	Allo Bottin	X
118666	Ingénierie de Communication pédagogique	
118700	SRR	
118710	France Télécom	X
118711	France Télécom	X
118712	France Télécom	X
118713	Le Numéro France	X
118718	Free	
118777	SFR	X
118787	Telegate France	
118800	EDA France	
118808	PagesJaunes	
118810	France Télécom	X
118811	Pictures on Line	
118812	Bouygues Télécom	
118818	Free	
118822	Services de renseignements téléphoniques SAS	
118833	11883 Telecom GmbH	
118844	Free	
118855	123 Multimédia	
118866	Renseignement Téléphonique Français	
118870	Free	
118880	Le Numéro France	X
118888	Pixtel	
118900	118866 Ltd	
118910	Le Numéro France	X
118999	Belgacom SA	X

Number portability

- A. Legislative and regulatory changes
- B. Mobile number portability (MNP)
- C. Fixed number portability

Number portability, whether fixed or mobile, must allow customers changing operators to retain their numbers. This functionality is one of the determinants of market competitiveness. It requires the implementation of a flexible, speedy, and simple process for customers wishing to retain their numbers without implicitly strengthening customer-loyalty mechanisms used by operators.

A. Legislative and regulatory changes

The European Universal Service Directive requires that Member States ensure that all public telephone service subscribers who ask to keep their numbers be able to do so regardless of which company provides the service²⁵. This provision was transposed into French law in Article L.44 of the CPCE. Operators are required to offer their subscribers reasonably priced services that allow subscribers to keep their geographic numbers when they change operator without changing geographic location and keep their non-geographic fixed and mobile numbers when they change operator anywhere in Metropolitan France or within a given overseas *département*, Mayotte, or Saint-Pierre-et-Miquelon. Operators are to establish the provisions necessary for cost-based tariffs in their access and inter-connection agreements.

In February 2005, the minister-delegate of Industry requested ARCEP's opinion about changes required to facilitate the number portability process. In its 22 March 2005 opinion²⁶, the Authority declared itself in favour of a proposal aimed at reducing to less than 10 days, the period set by operators for advance notice of cancellation. The Authority pointed out that in the case of mobile telephony any reduction in the time to port would be ineffective without a corresponding reduction in the cancellation period²⁷. In the medium term, the Authority favours a "target solution" whose key attributes are the institution of a single point of contact for customers and the implementation of technical solutions based on a centralised database that is shared by the players and allows calls to be routed directly to ported numbers. Because of the complexity of these changes, ARCEP had indicated that a specific regulatory mechanism was necessary.

Two indents therefore were added to CPCE Article L.44 by the law dated 2 August 2005 law favouring small and medium enterprises²⁸. They state that the services mentioned in the preceding indent must allow the requesting subscriber to change operator without changing number and within a period of no more than 10 days unless the subscriber specifies otherwise. The subscriber addresses the number preservation request to the operator with which the new contract has been signed. The new operator then sends it to the subscriber's existing operator. Without prejudice to the contractual provisions governing minimum contract periods, actual porting of the number entails cancelling the contract that links the donor operator to the subscriber no later than the previously mentioned 10-day period.

Article 30 of European Parliament and Council Directive 2002/20/EC of 7 March 2002, concerning universal service and user rights with respect to electronic communication networks and services.

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ARCEP Opinion No. 05-1054 of 22 March 2005 concerning the draft decree on number preservation as provided by Article L.44 of the CPCE.

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The Authority had already asked mobile operators to reduce these times at the end of 2004. When MNP was launched in 2003, time to port a mobile number was established based on the average time to cancel existing offerings (about 2 months). This principally protected the customer from having to pay two bills at once for a single service. However, the length of the process seemed to have discouraged a number of users leading the Authority to re-examine the situation at the end of 2004.

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Article 59 of Law No. 2005-882 of 2 August 2005 favouring small and medium enterprises (Journal Officiel No. 179 of 3 August 2005).

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A decree issued after comments made by ARCEP, the *Commission Supérieure du Service Public des Postes et des Communications Électroniques* (French high commission for public electronic and postal communications services) and the *Conseil National de la Consommation* (national consumer council), specifies the ways in which the preceding two indents are to be implemented.

At a roundtable discussion initiated by the minister-delegate of Industry in which the leading operators, industry associations (AFORST, AFOM, AFORM, AFA) and consumer organisations participated in September 2005, the Authority gave a presentation on actions taken with respect to these legislative provisions concerning number portability. ARCEP reminded the participants that implementing these changes (a single point of contact, a porting and cancellation period of no more than 10 days, etc.) requires a great deal of work because of technical constraints inherent in the process. When the roundtable was concluded, the minister announced that the implementing decree provided for by the law would, in particular, indicate the deadlines for implementing these changes in the various geographic areas of France.

In a communication submitted to the minister-delegate of Industry in December 2005, the Authority delivered its opinion on the draft implementing decree on which it had been consulted and was pleased to note that the regulatory changes were having the effect of reducing the process - not just the porting process itself, but the cancellation notification process, as well - to less than 10 days.

In particular, Article D.406-18 of that decree²⁹ specifies that a decision by the Authority for the regulation of electronic and postal communications, made in application of Article L36-6, specifies the ways in which the article should be implemented, particularly as concerns:

- subscriber information;
- service-quality obligations relating to porting and the maximum duration of service interruption;
- time for one operator to transmit to another the information necessary to process the subscriber's request;
- other specifications necessary to implement portability.

In addition, the decree specifies when each of these regulatory provisions will take effect:

- 1 January 2007 for non-geographic mobile numbers used in Metropolitan France;
- 1 April 2006 for non-geographic mobile numbers used in the départements of Guadeloupe, Martinique and French Guiana;
- 1 January 2007 for geographic and non-geographic fixed numbers;
- 1 July 2007 for non-geographic mobile numbers used in the département of Reunion and the collectivités of Mayotte and Saint-Pierre-et-Miquelon

29 Implementing decree of 27 January 2006 published in the Journal Officiel on 28 January 2006.

B. Mobile number portability (MNP)

1. Metropolitan France

1.1. Identify required improvements

The MNP evaluation drawn up by ARCEP after public consultation of sector players³⁰ in October 2004 revealed that the dual-point-of-contact portability process launched in Metropolitan France in June 2003 was complex and drawn-out. The initial phase of portability did not fully satisfy customers wishing to take advantage of the offer.

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During the first quarter of 2005, the Authority worked together with the various market players to identify what improvements and modifications could be made to accelerate and simplify the MNP process for the benefit of consumers and the development of competition.

Several changes were adopted for the short term:

- removal of the clause concerning ineligibility for nonpayment;
- reduction of the porting time for prepaid services to one month;
- establishment of a single porting order for businesses and public entities that have fleets of mobile phones.

1.2. Impact of legislative and regulatory changes

Implementation of the new legislative and regulatory provisions requires a complete overhaul of the systems and architectures set up by mobile operators in June 2003 (MNPv1). In June 2005, under the aegis of the Authority, the eleven mobile operators involved made significant progress in evolving the system (MNPv2).

In this connection, a working group called the mobile portability group (MPG) was formed, comprising four subgroups organised around a steering body headed by the Authority (the MPG commission). Their missions were as follows:

- Customer processes subgroup: To define the portability process from the customer perspective and from the operator perspective.
- Information system subgroup: To implement the generic technical changes that all operators will be required to make once the process definitions are complete.
- Central entity subgroup: To select a central architecture dedicated to managing interoperator flows related to the new portability process.

- Routing subgroup: To study the impact of choices made concerning the routing of traffic to ported numbers.

This work made it possible to define technical and operational solutions for MNPv2 with the following key features:

- A single point of contact: The subscriber requests number porting directly from the new operator of choice (the recipient operator).
- Actual porting of the number occurs within a nominal period of 7 calendar days and a maximum of 10 days following the date of the customer's request (unless specifically requested otherwise).
- Without prejudice to the contractual provisions governing minimum contract periods, actual porting of the number entails cancelling the contract between the donor operator and the subscriber within the previously-mentioned 10-day period.

From a legal standpoint, though mobile number portability is a subscriber right, it entails certain operator obligations, one of which is the obligation to respond favourably to such requests.

ARCEP has worked on defining operator obligations and on ways to implement portability in accordance with Article D.406-18 I of the CPCE. The Authority's objective is to come to a decision consistent with the work performed by the members of the MPG, which will allow the players to undertake the investment and technical development necessary for MNPv2 implementation in a stable legal environment. This decision is to become effective on 1 January 2007, in accordance with the new legislative and regulatory provisions concerning mobile number portability.

Operators are subject to two types of obligation. The first category, which contains individual obligations, is primarily concerned with procedures for making available the information needed to port a subscriber number and informing subscribers about the consequences of requesting portability. These obligations are opposable to other operators. The second category governs relations between operators. These obligations mainly define the technical aspects of managing interoperator information flows once a subscriber requests porting.

Moreover, given the complexity of these changes, it is impossible for both portability systems (MNPv1 and MNPv2) to coexist. In its Opinion No. 05-1054 of 8 December 2005, the Authority indicated that there was a need to provide for the possibility that no porting operations could not be carried out for a period of one or two weeks.

1.3. the MNP process from the customer perspective

From the subscriber's viewpoint, the MNPv2 portability process involves three distinct stages:

- the subscription phase for a new offer with a porting request to the receiving operator;

- the tracking phase during which the request is confirmed as valid;
- the porting (changeover) phase corresponding to the period when the line is activated by the recipient operator, the donor operator's line is cancelled and the operator to which the number is assigned takes the porting into account.

1.3.1. Subscription for service with porting request

A subscriber signing up for a new mobile telephone offer with a recipient operator simultaneously requests that the current number be ported. Having received information from the recipient operator about the implications of the portability request, and having agreed to proceed, the subscriber authorises the recipient operator to perform all actions necessary to satisfy the request. On behalf of the new customer, the recipient operator assumes responsibility for all relations with the donor operator. By the same token, the recipient operator becomes the sole interface for the client with respect to the client's portability request and the client's subscription.

Within this context, the recipient operator informs the subscriber of the conditions necessary for successful porting (eligibility conditions) and the implications of a porting request:

- The right to portability is subject to certain eligibility criteria. In particular, the ported number must still be active on the day of porting.
- The request to port a number also serves as a request to cancel the subscriber's contract with the originating operator of the ported number.
- Without prejudice to the contractual provisions governing minimum contract periods, a contract is effectively cancelled once the number is actually ported.

The mass-market subscriber provides the recipient operator with his or her current mobile telephone number and corresponding *RIO* (*relevé d'identité opérateur*, or operator identity statement). To accomplish this, the subscriber calls an information server provided by the current operator and in response receives an SMS containing information needed for the porting request and information about current contract status with respect to time remaining before the minimum contract period is satisfied.

For "business" and "public entity" mobile subscribers, the system described above cannot meet expectations for a simpler portability process. In this regard, to implement the electronic multiline porting order provided for in 2005, operators must set up a system supporting overall management of *RIO* access for multiline contracts.

Thus, operators are to make *RIOs* for "business" and "public entity" mobile subscribers available:

- either electronically (via the customer's web account if necessary), given that the majority of businesses manage their mobile contracts in this way;

- or via the billing system employed for the particular mobile line – for example in the case of a very small business that has chosen not to manage its contract via the Internet.

On receiving this information, the recipient operator verifies that the subscriber is entitled to file a porting request.

If these conditions are satisfied, the recipient operator finalises the subscriber's request by informing the subscriber of the date when porting will take place, which will be a workday (Monday through Saturday exclusive of holidays). The nominal time to port is 7 calendar days and may not exceed 10 days unless the customer provides the recipient operator with a specific date (corresponding, for example, to the end of the subscriber's contract period with the donor operator).

However, if consumer code provisions concerning the right to retract or renounce apply, the aforementioned 10-day period does not begin until that right expires.

1.3.2. Monitoring porting requests

Once a new subscription contract has been signed along with a porting request to preserve the subscriber's number, two situations can arise depending on whether the request is eligible. The recipient operator must send the porting request to the donor operator to confirm that the request is eligible. The donor operator must ensure that the porting request includes the mobile number and corresponding *RIO* operator identity statement and that the number is active on the day of porting.

If these eligibility criteria are met, the donor operator validates the request and notifies the recipient operator so that the subscriber request may be finalised. However, if any of the eligibility criteria are not met, the donor operator notifies the recipient operator of the reasons why the request is ineligible.

The recipient operator then informs the subscriber as soon as possible as to why the porting request is ineligible and, if applicable, how the line may be made eligible for porting.

1.3.3. On the day the number is ported

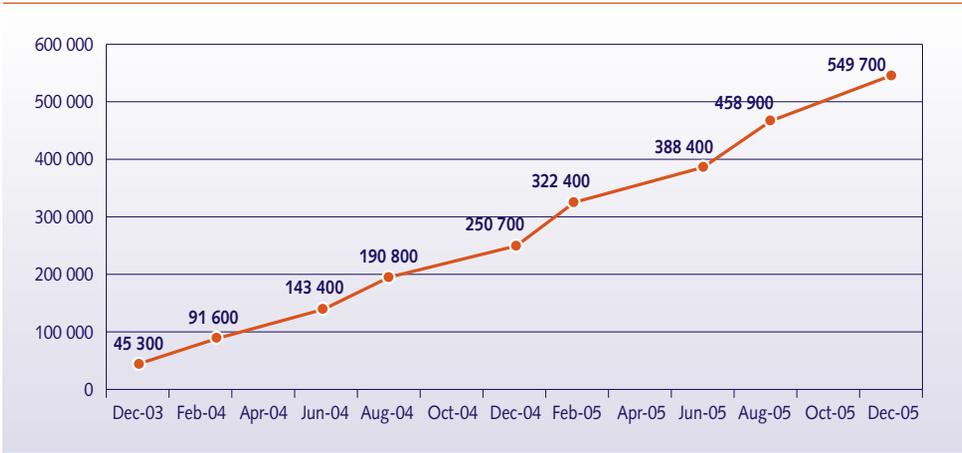
On the day that the number is actually ported, the subscriber, having changed SIM cards, is ready to place calls on the new (recipient) operator's network and receive calls made to the unchanged number. Service interruption for these purposes may not exceed 4 hours.

1.4. Mobile numbers ported in 2005

1.4.1. In France

As of 31 December 2005, 549 700 numbers had been ported in Metropolitan France since the launch of number portability in 1 July 2003. This represented about 1.14% of all mobile customers.

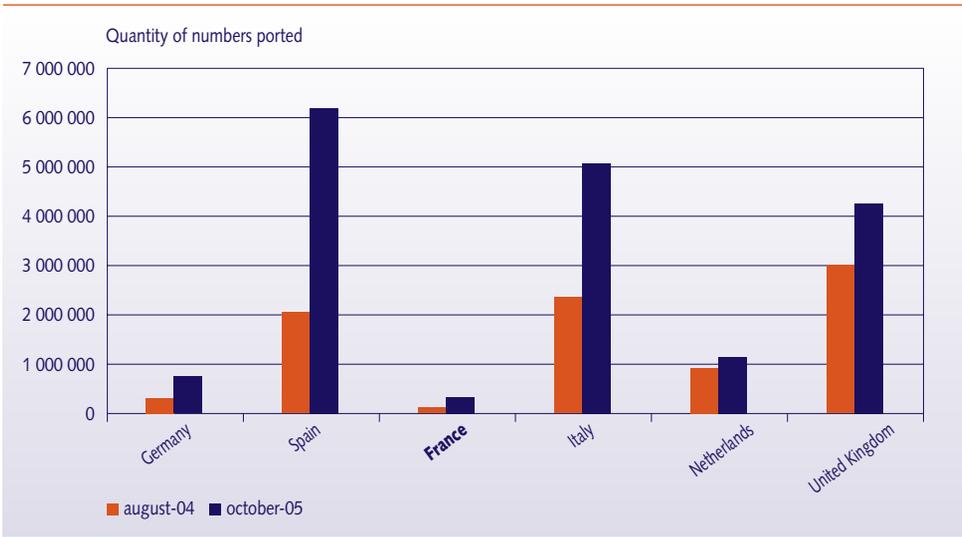
Evolution of mobile numbers ported (cumulative count since July 2003)



Source: ARCEP

1.4.2. European comparison

Mobile portability



Note: Figures for Germany and Spain are for June 2004.
Source: 11th Report of the Commission.

2. Départements of the French Antilles and French Guiana

Mobile operators in the French Antilles and French Guiana asked the Authority to mediate in a matter concerning mobile number portability implementation, specifically with respect to which customer process to adopt - single-point or dual-points of contact.



The Authority ruled in favour of a single point of contact given that mobile operators had not yet invested significantly in commercialising such a service. It also drew attention to the mechanism for implementing such a process, which - to meet the objectives established for portability - should be identical for all operators involved and meet customer expectations for simplicity.

Under the aegis of ARCEP, work was undertaken to ensure that MNP would be launched in the French Antilles and French Guiana on 1 April 2006 (after a testing period) in accordance with the schedule established by the January 2006 decree.

The key characteristics of the customer process adopted for this region are the following:

- The recipient operator is the direct and sole customer interface. The customer authorises the recipient operator acting in this capacity to undertake porting and cancel the former contract with the donor operator. The recipient operator must verify the requesting customer's identity. The recipient operator provides the requesting customer with an indicative porting date, confirming that the date is consistent with the average time to port, which is 7 to 10 calendar days. Then, within 2 (working) days at the most, the recipient operator must transmit the subscriber request to the donor operator.
- On receiving this request, the donor operator must analyse it (to ensure that the subscriber request meets the eligibility criteria) and notify the recipient operator that it accepts the request or, as the case may be, refuse it (declaring the porting request ineligible and stating explicitly why the request is refused). The donor operator has a maximum of 3 (working) days to respond to the recipient operator's request.
- The recipient operator provides the requesting customer with confirmation that the request has been received and the actual date when the customer's number will be ported. In accordance with the parameters agreed upon by the mobile operators, service may not be interrupted for more than 2 hours on the day that the number is actually ported.

3. Département of Reunion

The commercial launch of number portability in Reunion took place on 31 March 2005, following the December 2004 signing of the final agreement and amendment by the operators involved. The customer process employed uses dual points of contact, which means that:

- the customer requests a porting order from the operator the customer wishes to leave.
- the customer presents the porting order to the new operator upon subscribing for service.
- number porting becomes effective on the date that the contract with the first operator (the donor operator) expires.

Given the latest legislative and regulatory changes regarding implementation of a process using a single point of contact and taking less than 10 days, work with the mobile operators involved will be relaunched in order to meet the 1 July 2007 deadline set for this *département*.

C. Fixed number portability

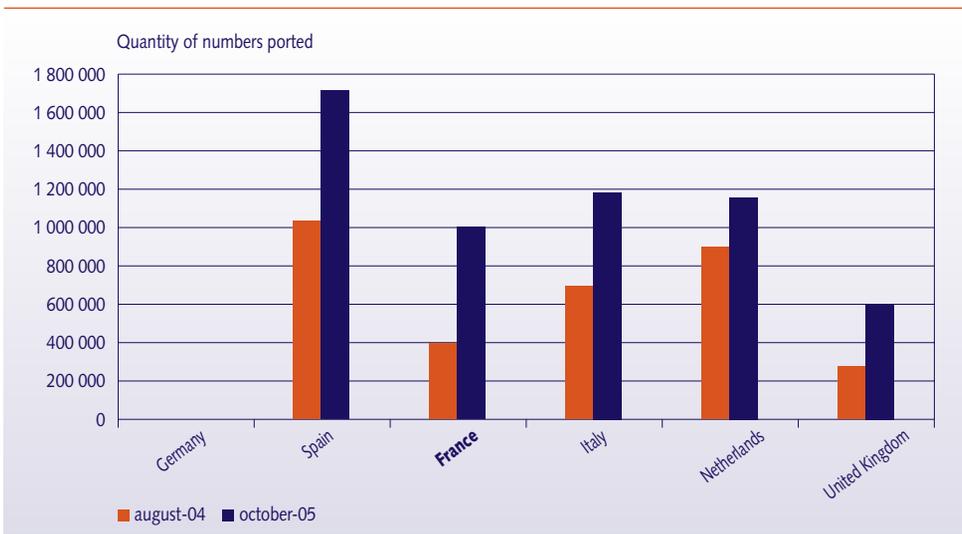
1. Affected numbers

Portability for fixed telephone numbers became available in 2003. It affects fixed geographic numbers (of the type 0Z AB PQ MC DU, where Z is equal to 1, 2, 3, 4 or 5) and fixed non-geographic numbers (of the type 08 AB PQ MC DU), including the freephone, shared-cost and shared-revenue numbers used by businesses and service providers.

2. Fixed numbers ported in 2005

The significant growth in unbundled fixed lines was a decisive factor in the development of fixed number portability. Thus, one million fixed numbers were ported in October 2005. For fixed telephony, portability does not make sense unless the new customer line is wholly managed by the new operator; number portability does not affect carrier preselection in instances where the customer maintains the subscription with the incumbent operator and in fact keeps his or her number.

Fixed portability



Note: Figures for Germany unavailable; figures for Spain from June 2004.
Source: 11th Report of the Commission.

3. Outlook and impact of legislative and regulatory changes

The ways in which fixed numbers are ported in Metropolitan France are determined in cooperation with the players. The first multilateral meeting of fixed operators and the Authority, held on 6 October 2005, provided an opportunity to establish the status of the current situation.

Certain points were raised concerning the customer process in connection with interoperator relations, in particular:

- time to port as viewed by the customer and, more generally, how operators manage customer requests;
- ways of porting blocks of numbers;
- implementation of a system for “bulk” porting of fixed numbers between alternative operators.

With respect to the routing of traffic to ported numbers, it was pointed out that implementing a system allowing the subscription operator to be identified by any operator should, in particular, simplify call routing and the relationships between players.

Finally, the Authority considered it necessary to dissociate interoperator (wholesale) tariff issues from end-customer (retail) tariff issues.

Further coordination meetings with the players will be organised over the course of 2006 to improve the operational aspects of porting fixed numbers.