AUTORITÉ POLYNÉSIENNE DE LA CONCURRENCE

TE MANA TATA'URA'A MĀTETE I PŌRĪNETIA

[FREE TRANSLATION]

OPINION N°2023-A-06 OF DECEMBER 15, 2023

CONCERNING THE SETTING OF REFERENCE INTERCONNECTION TARIFFS FOR MOBILE MOBILE CALL TERMINATION TARIFFS OF MOBILE TELEPHONY OPERATORS ONATI, PMT AND VITI FOR 2024 AND 2025

The Polynesian Competition Authority,

In view of the letter dated November 28, 2023, registered on December 05, 2023, under number 23/0023 A, the President of French Polynesia referred the matter to the Polynesian Competition Authority (hereinafter "the Authority") for an urgent opinion on the interconnection reference tariffs (hereinafter "IRR") for mobile call terminations (hereinafter "MCT") of the mobile telephone operators Onati (Vini brand) Pacific Mobile Telecom (hereinafter "PMT", Vodafone brand) and Viti (Ora brand), for 2024 and 2025;

Having regard to the Polynesian Competition Code and in particular article LP. 620-1 ;

Having regard to the other documents in the file;

The rapporteur, the general rapporteur and the representatives of the Digital Economy Directorate General, heard on the basis of the provisions of article LP. 630-5 of the French Competition Code at the meeting of December 15, 2023;

Is of the opinion to respond to the request presented in the sense of the following observations:

I. INTRODUCTION

1. By letter dated November 28, 2023, registered on December 05, 2023, under number 23/0023 A, the President of French Polynesia referred the matter to the Polynesian Competition Authority (hereinafter "the Authority") for an urgent opinion on the interconnection reference tariffs (hereinafter "IRR") for mobile call terminations (hereinafter "MCT") of mobile operators Onati (Vini brand) Pacific Mobile Telecom (hereinafter "PMT", Vodafone brand) and Viti (Ora brand), for 2024 and 2025.

2. Consulted on the basis of the provisions of I and 3° of II of article LP. 620-1 of the French Competition Code, the Authority can give its opinion on "*any question relating to competition*", but also, more specifically, "*in the context of regulating a sector where competition is lacking, with the aim of ensuring the opening up and smooth operation of the markets concerned, to the benefit of the end consumer*", which includes in particular the question of "*setting public tariffs for connection or interconnection to networks*".

3. Section V of this article also stipulates that the Authority must give its opinion *"within a period of one month, unless, at its request, the referring authority grants it a longer period, in particular because of the complexity of the question raised; this period is reduced to fifteen days in cases of urgency*". In this case, the date by which the Polynesian Competition Authority must deliver its opinion is therefore set for December 19, 2023.

II. CONTEXT

A. SETTING MOBILE TERMINATION RATES

4. A telephone call, whether fixed or mobile, voice or SMS, is made up of a call origination by the calling party's operator, followed by a call termination by the called party's operator, responsible for delivering the call.

5. Call termination refers to the service of routing calls (voice or SMS) provided by an operator operating a network open to the public to another operator operating a network open to the public to which it is interconnected, when the calls are made between the respective customers of these two operators. It is therefore a reciprocal service provided by the two operators. In concrete terms, the operator charges for incoming calls or SMS messages (made by another operator's customer to one of its customers), to offset the cost of this call termination, which is routed over its network but for which it receives no revenue, either from its customer (who receives the call), or from the other operator's customer.

6. In French Polynesia, this interconnection tariff is regulated and set by order of the Council of Ministers. On June 17, 2020, the French telecoms regulator issued an opinion[1] on the method used to set these tariffs. It made a number of proposals, some of which were taken up by the

[1] Opinion no. 2020-A-02 of June 17, 2020 on a draft law of the country amending the Post and Telecommunications Code (determination of the reference interconnection tariff for mobile telecommunications operators and abolition of the approval system for telecommunications approved installers).

government in local law no. 2021-4 of January 7, 2021 and decree no. 504 CM of April 1er 2021, amending the French Polynesian Post and Telecommunications Code (hereinafter "CPT"). Subsequently, on October 17, 2022 and May 17, 2023, the Authority also issued two opinions on the setting of the respective IRRs for the "voice" and SMS TAMs, in which it assessed compliance with the principle of free competition in the tariff-setting procedure, as well as the competitive consequences of the tariffs thus determined and possible changes[2] .

7. In the current CPT, article LP. 212-22-1 provides that "*A reference interconnection tariff for networks open to the public is established by the Council of Ministers for each licensee*". Article LP. 212-25-1 stipulates that: *"Interconnection tariffs shall comply with the principle of cost-orientation of tariffs / A decree issued by the Council of Ministers shall set the terms and conditions for the application of this article. / The Council of Ministers also specifies the methodology of the technico-economic model used to determine tariffs. / This methodology may evolve according to the degree of maturity of the Polynesian telecommunications market, with a view to ensuring effective and fair competition.*

8. The "Arrêtés" section of the same code sets out the principles for determining tariffs. Under the terms of article A. 212-22-1: "*A reference interconnection tariff for networks open to the public, provided for in articles LP. 212-22 and LP. 212-22-1 of this code, is established for each telecommunications operator. / In the case of reciprocal services offered by two operators of networks open to the public within the meaning of the provisions of article D.211 6°, the tariff reference includes: / - The cost of the voice and/or SMS call termination service on the operator's telecommunications network; / - The additional costs incurred in setting up interconnection to its network, including in particular: the cost of equipment and connection links.*"

9. Article A. 212-22-15 stipulates that *"The department in charge of telecommunications shall also base its decisions on the operator's model, the "Fiche de restitution", the audit firm's report, the economic regulation ensuring effective and fair competition for the benefit of users, and the principles set out in articles LP. 212-22 to LP. 212-25-2, to propose a reference interconnection tariff per call termination for approval by the Council of Ministers".*

10. Thus, TAM tariffs must be cost-oriented according to a methodology laid down by decree, a methodology that may evolve in the interests of effective and fair competition.

11. The provisions of articles A. 212-22-9 to A. 212-22-17 detail the methodology to be adopted by operators to determine the cost of these services. They are supplemented by a methodological guide to mobile call termination rates, produced by the DGEN and sent to operators, which details each stage of the rate-setting procedure and recalls the main features of the expected model. A common feedback form is sent by each operator.

12. If the tariffs are adopted by the Council of Ministers, each operator produces its own cost model, based on a common methodology known as "CMILT complete *bottom up scorched node*"[3] . The proposed model is then audited by an external consultant on behalf of the DGEN, and discussed with the operators in order to achieve a degree of homogeneity in the determination

[2] Notice no. 2022-A-03 of October 17, 2022 and Notice no. 2023-A-01 of May 17, 2023 concerning, respectively, the setting of reference interconnection tariffs for mobile "voice" and SMS call terminations for mobile operators Onati, PMT and Viti.

[3] Please refer to APC notice no. 2020-A-02 of June 17, 2020 for a detailed examination of the various models and their implications.

of these tariffs. The result is a theoretical tariff, i.e. one derived from the model, which may nonetheless differ from the tariff finally adopted by the Council of Ministers, since the latter must also ensure that these tariffs are compatible with the objectives of regulation, and in particular the exercise of effective and fair competition to the benefit of users. In other words, within the limits of respect for these principles, the Pays has a certain margin of discretion in setting each operator's tariff.

B. THE REPEAL OF THE VOICE AND SMS TARIFF DECREES DECEMBER 9, 2021

13. In 2021, following the amendment of the texts in January and April 2021, the procedure for drawing up TAMs was implemented in accordance with these new provisions. In particular, article A. 212-22-12 of the new text, relating to the regulatory cost base, stipulated that it should include *"all network costs"* but exclude *"any purchase of interconnection or roaming services"*.

14. On this basis, decrees were issued on December 9, 2021 to set the tariffs applicable to each of the operators[4] .

15. Both the method and the pricing decrees have been the subject of contentious appeals before the Administrative Court of French Polynesia (hereinafter "TAPF"), in separate proceedings.

1. THE QUESTIONING OF THE RATE-SETTING METHOD AND THE TAPF RULING OF MARCH 29, 2022

16. According to article D. 211 of the CPT, mobile roaming is the service *"provided by one mobile telecommunications service operator to another mobile telecommunications service operator to enable the latter's customers to use the former's network"*. Today, two of the three operators, PMT and Ora, provide local roaming services to Onati on all islands not covered by their own mobile network. However, in the initial decree detailing the methodology for determining operators' costs in order to set TAM tariffs, this expense was excluded from the cost base.

17. In a ruling no. 2100234 handed down on March 29, 2022, the TAPF partially annulled order no. 504 CM concerning the determination of tariffs. It ruled that operators' roaming costs should not be excluded from the regulatory basis of the interconnection tariff, in order to ensure that *"competition is effective and fair between, on the one hand, the operator who has control over the essential infrastructure that is the network, and on the other hand, the service operator who does not"*. This service has therefore been removed from the exclusions to the regulatory cost base.

18. It is clear from the TAPF's reasoning that the applicant relied in particular - in requesting the annulment of the disputed provision - on a proposal made by the Authority in its opinion no. 2020-A-02 of June 17, 2020.

19. Point 6 of the judgment of March 29, 2022 states that :

[4] Order no. 2712 CM for Onati-Vini tariffs, no. 2807 CM for PMT-Vodafone tariffs and no. 2713 CM for Ora-Viti tariffs.

"This authority [the APC] *states that the model chosen by French Polynesia for mobile telephony presents a competitive advantage for Onati, which will be able to "integrate coverage costs" and "investments made by the public operator in remote islands, according to the existing network topology, even when this is not optimal in terms of coverage or technology". The authority points out that this model "penalizes operators with poor network coverage, especially as the roaming expenses they pay, which are intended precisely to offset the costs of coverage of remote islands by the public operator, are excluded from the cost base used by the decree. The practical result is that only the incumbent operator can charge the cost of covering the archipelagos to its TAM (mobile call termination) tariff". The authority goes on to point out that this model "has an impact on retail prices and penalizes customers of operators competing with the incumbent". The TAM base should therefore include the cost of roaming, since "the cost of roaming appears to be a network cost, in the same way as if the customer operator had developed its own network". The authority proposes modifying the model provided for in article A 212-22-12 of the French Post and Telecommunications Code, which "should reintegrate into the cost base a share of the roaming charges paid by Onati's competitor operators" "*[5] .

2. NEW RATES FOR "VOICE" SERVICES

a) Repeal of tariff decrees

20. The method having been partially invalidated, the Pays had to draw the consequences. As a result, Order no. 685 CM of May 12, 2022 repealed Orders no. 2713 CM and no. 2807 CM of December 9, 2021, approving the IRRs for the years 2022-2023 of mobile operators Viti (Ora Mobile) and Pacific Mobile Telecom (PMT Vodafone). Onati's tariff order was upheld. As the operator does not use the roaming service, the tariff was unchanged.

b) Authority notice no. 2022-A-03 of October 17, 2022

21. On September 21, 2022, the Authority received a request for an opinion on the new interconnection tariffs, determined to take account of the consequences of the Administrative Court's ruling, by integrating roaming services into costs.

22. Its opinion[6] was issued on October 17, 2022. However, it concerned only the tariffs for "voice" services, and not those for SMS services. An appeal was still pending before the administrative court concerning the specific SMS tariff.

23. In this opinion, the Authority considered that the DGEN had, in determining its tariff proposal for the 2022-2023 tariffs, made an assessment of the two operators' tariffs in line with the principles of fair and effective competition. However, it considered that - for the future - certain changes could be envisaged, in particular the following:

- Deviate further from the "theoretical" tariff derived from the model to establish asymmetrical, but lower, tariffs, so as not to excessively penalize operators with a deficit

[5] Tribunal administratif de la Polynésie française, judgment no. 2100234 of March 29, 2022.

[6] Opinion no. 2022-A-03 of October 17, 2022 on the setting of reference interconnection tariffs for mobile call termination for mobile operators PMT/VODAFONE and ORA/VITI for 2022 and 2023.

balance and to encourage abundance offers (*i.e.* unlimited calls or text messages for a fixed price);

- Opt for a lower-cost model (of the CILT type, i.e. without taking average network costs into account);

- Move away from the cost model and opt for an explicit approach to gradual rate reduction, drawing inspiration from rates in equivalent markets (benchmarking).

24. She also reiterated that the Polynesian regulator should give priority to the question of market segmentation into dense areas - where infrastructure-based competition could possibly take place (subject to its economic and ecological rationality) - and less dense areas (areas where private initiative is lacking) - where only service-based competition should take place. Once these zones have been determined, she felt that the regulator should draw the necessary conclusions, and take on a more active role in determining how the infrastructures concerned are to be shared, and in setting roaming charges.

3. SMS RATES AND THE TAPF RULING OF NOVEMBER 22, 2022

a) The TAPF judgment

25. In the decrees of December 9, 2021, unlike those used to set the rates for voice services, SMS rates have not been set on a strictly cost-oriented basis, but on the basis of the previously applicable interconnection rate of 1 F per SMS for the three operators.

26. This amount was contested by PMT, on the grounds that it was out of line with the costs incurred, and that there was no asymmetry between operators, which would favor the incumbent.

27. Validating this reasoning, by judgment no. 2200067 of November 22, 2022, the TAPF annulled the provisions of the three tariff decrees setting the TAM tariff of the three Polynesian operators at one franc per SMS.

28. It considered that :

> *"The applicant company maintains that the reference interconnection tariff (TRI) for mobile call termination (TAM) is out of line with costs (...) The TRI in dispute remains at 1 F CFP per SMS for the years 2022 and 2023. The applicant company maintains that the cost of producing an SMS is around 0.03 F CFP, whereas it is billed at between 8 and 10 F CFP to the user and at 1 F CFP between operators. However, in order to justify the rate used, French Polynesia (...) has not produced any evidence to show that no significant change had been identified in 2021 and 2022, even though a new operator had entered the market. Furthermore, while French Polynesia maintains that cost orientation does not necessarily imply that the IRR is equal to the operator's cost, it does not establish, by maintaining that this pricing was the subject of a consensus between operators, which is contradicted by the present action, that it determined the IRR by seeking a fair balance between, on the one hand, the operators' margin necessary for maintenance, renewal and return on capital of the cost of infrastructures and, on the other hand, the approximation of the cost of production. Under these conditions, Pacific Mobile Télécom is entitled to*

argue that the President of French Polynesia has disregarded articles LP. 212-25-1 and A 212-22-12 of the French Post and Telecommunications Code insofar as he set the reference interconnection tariff for SMS call termination at 1 F CFP per SMS for the years 2022-2023."[7]

29. The reason for the annulment is therefore different from that which led to the repeal of voice tariffs. It is not that roaming costs were not taken into account in the tariffs set for Viti and PMT, but that these tariffs were not cost-oriented. For this reason, it is not only the tariffs of these two operators that have been cancelled and must be the subject of a new tariff decree, but also those of Onati.

30. As a result, the TAPF annulled articles 2 (setting SMS tariffs) of the three decrees of December 9, 2021 (no. 2712 CM, 2713 CM and 2807 CM), leading the Country to enter a new process for determining SMS tariffs.

b) Avis de l'Authority du n°2023-A-01 of May 17, 2023

31. On April 18, 2023, the Authority received a request for an opinion on the new SMS IRR interconnection tariffs of mobile operators Onati, PMT and Viti for 2022 and 2023.

32. Its opinion[8] was issued on May 17, 2023. This opinion focused specifically on SMS tariffs, in order to draw the consequences of the November 22, 2022 ruling.

33. In this opinion, and in order to limit the risk of litigation, the Authority recommended that the telecoms regulator be allowed to exercise its full control and monitoring functions, to ensure the development of competition on its merits, and ultimately to promote the development of digital uses at a lower cost to consumers (individuals and businesses).

34. In this respect, the Authority has recommended that the Country should :

- In the short term, with regard to SMS rates for 2022-2023, set the SMS rate while maintaining the "theoretical" costs resulting from the model for all operators;

- In the medium term, with regard to tariff regulation in general, (i) opt for a cost model enabling lower tariffs to be obtained (without taking average network costs into account) and (ii) set up a system for the transmission of regular and accurate information from operators on flows, usage and their position on the market, and ensure the effective implementation of an observatory to process this information;

- Set up independent telecoms regulation, entrusted to an independent body with powers of coercion and human and technical resources commensurate with the complexity of the task, and subject to judicial control.

35. She also reiterated that the Polynesian regulator should give priority to the question of market segmentation into dense areas - where infrastructure-based competition might be possible (subject to its economic and ecological rationality) - and less dense areas (areas where private

[7] Tribunal administratif de la Polynésie française, judgment no. 2200067 of November 22, 2022.

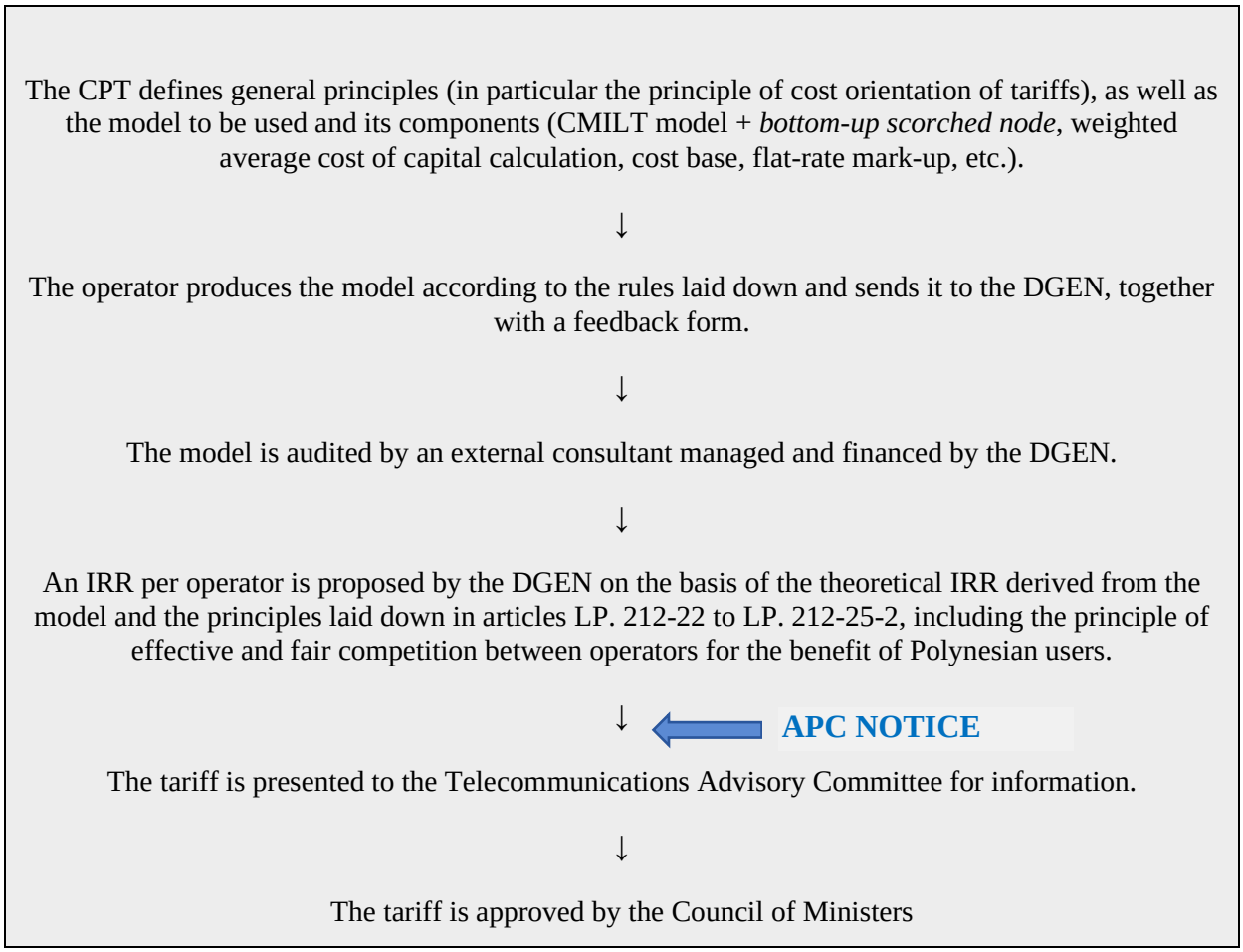
[8] Opinion n° 0023-A-03 of May 17, 2023 on the setting of reference interconnection tariffs for SMS mobile call termination for mobile operators ONATI, PMT and VITI for 2022 and 2023.

initiative is lacking) - where only service-based competition should be possible. Once these zones have been defined, she felt that the regulator should draw the necessary conclusions and take on a more active role in determining how the infrastructures concerned are to be shared, and in setting roaming charges.

C. REQUEST FOR ADVICE

36. The procedure for setting mobile termination rates involves the following stages:

37. *Diagram for determining mobile operators' TAM tariffs*



38. Following the judgment and repeal of the tariff orders, the DGEN proceeded to set new tariffs using this procedure.

39. As part of the implementation of this procedure relating to the determination of mobile operators' (*i.e.* Onati, PMT and Viti) voice and SMS call termination IRRs, work has therefore been launched to determine the new tariffs for the 2024-2025 period. To this end, the DGEN has drawn up a methodological guide detailing all the technical elements required to implement this regulatory model. This guide was sent to all operators concerned on May 30, 2023.

40. This guide had been updated (already for the 2022-2023 financial year), following the TAPF ruling of March 29, 2022, to take account of the costs associated with roaming services.

41. The new tariffs proposed by the referral are as follows:

- For voice call termination :

CFP per minute	**2024**	**2025**
ONATI VINI	0,49	0,46
PMT - VODAFONE	2,38	2,12
VITI - ORA MOBILE	16,13	10,18

- For SMS call termination :

CFP by SMS	**2024**	**2025**
ONATI VINI	0,00013	0,00013
PMT - VODAFONE	0,02590	0,02943
VITI - ORA MOBILE	0,3204	0,19015

42. Before presenting these tariffs to the three operators at a forthcoming Consultative Committee on Telecommunications, and then adopting them by the Council of Ministers, the government wished, as permitted by the French Competition Code, to obtain the Authority's opinion on these tariffs as a matter of urgency. This opinion therefore covers both mobile "voice" and SMS termination rates.

III. COMPETITIVE ANALYSIS

A. THE COMPETITIVE CHALLENGES OF MOBILE TERMINATION RATES

43. From a competitive standpoint, no other service can replace call termination services on mobile networks[9] . Each operator therefore holds a monopoly on the market for voice and SMS call termination to the numbers it manages, and there is no countervailing buyer power to

[9] See Conseil de la concurrence, opinion no. 07-A-05 of June 19, 2007 on a request for an opinion from the Authority de régulation des communications électroniques et des postes (ARCEP) as part of the procedure for analyzing the wholesale market for voice call termination on mobile networks.

counterbalance this market power. On several occasions, the French Competition Council and then the French Competition Authority (hereinafter "ADLC") have considered that call termination services have the characteristics of an essential facility[10] .

44. It is this monopoly character that justifies regulation. This regulation is essentially concerned with tariffs, and not with access conditions. Indeed, as this is a reciprocal service between operators, it is not in their interest to cut off access altogether. On the other hand, in the absence of interconnection tariffs, the operator could be tempted to overcharge its competitors for the service, with detrimental effects on tariff levels and changes in market share not resulting from the operators' merits alone. The aim of tariff regulation is to force operators to bill these services according to their costs, and to make their margins on retail services only, which is in the interests of consumers and competition, since it simplifies the comparison of offers.

45. In its opinion no. 2020-A-02, the French telecoms regulator recalled the main principles and objectives on which regulation of these tariffs should be based: cost orientation; avoidance of distortions between *on-net* and *off-net* calls (between operators); support for the emergence of new operators, notably through asymmetrical tariffs based on respective market shares; preservation of operators' investment capacities. It then examined the various models in the light of these objectives and their competitive implications, and concluded that, while the choice of a "CMILT +" cost model made it possible to take into account the asymmetrical situation of operators, it led to a high overall level of tariffs, which would eventually have to change.

46. While it is not the role of the Authority, which is not the sector's regulator and whose mission it is not to give an opinion on the pricing proposals submitted to it by the DGEN for the IRRs for "voice" mobile call terminations and the IRRs for "SMS" mobile call terminations respectively, On the other hand, it is up to the Board to assess compliance with the principles of free competition in the tariff-setting procedure (B), as well as the competitive consequences of the tariffs thus determined and possible changes (C), in the light of the above-mentioned objectives.

47. As explained above, the IRRs between operators for voice and SMS have been cancelled for different reasons.

48. The TAM "voice" tariffs were cancelled because the charges linked to the cost of roaming services had been omitted from the models, leading to an underestimation of the tariff that PMT and Viti were able to charge other operators. In the case of SMS, on the other hand, the cancellation was based on the lack of cost orientation of these tariffs and the uniform application of a tariff set at one franc per SMS.

49. For these reasons, the procedure used to set the tariffs, and their competitive impact, will be analyzed separately for mobile voice termination rates, on the one hand, and mobile SMS termination rates, on the other.

[10] See for example opinion no. 05-A-10 of May 11, 2005, § 26.

B. ON THE METHOD USED TO DETERMINE RATES FOR 2024-2025

1. REFERENCE INTERCONNECTION RATES FOR MOBILE VOICE CALL TERMINATION

50. This section examines the principle and procedures for including roaming services in the cost base (a), and the issue of traffic forecasts (b).

a) Integrating local roaming services into costs

i. The principle

51. Article A. 212-22-12 of the CPT no longer excludes roaming charges from the cost base, and the methodological guide sent to operators provides for them to be taken into account as follows:

> *Roaming and interconnection costs :*
>
> *Roaming-related purchases are included in the regulatory base. They must be divided between the various services using a relevant traffic allocation (in particular between voice, SMS by type of call and data).*
>
> *Purchase amounts are included in the total base for calculating the TAM rate, in proportion to the relevant traffic (incoming voice and SMS, i.e. voice and SMS call terminations).*

52. As recommended by the Authority in its opinion no. 2020-A-02 and then in its opinion no. 2022-A-03, this reintegration of roaming services into the costs of alternative operators appears to be conducive to undistorted competition. Indeed, the previous model penalized operators with low network coverage - particularly new entrants, whose rollout obligations are progressive - to a greater extent, since the roaming expenses they paid, which were intended precisely to offset the costs of coverage of remote islands by the public operator, were excluded from the cost base adopted by the decree. In practice, this meant that only the incumbent operator could charge the cost of covering remote archipelagos to its tariffs, while everyone else was subject to these costs[11] .

53. This exclusion was likely to have an impact on retail prices, penalizing the offers of operators competing with the incumbent, or on the investment capacity of these operators, which is crucial to their deployment in the years following their entry into the market.

ii. Terms and conditions

54. These roaming tariffs have a dual component: a variable part based on consumption (price per minute or per SMS) and a flat-rate part designed to compensate for network coverage, with an annual network access price. They are no longer excluded from the cost base.

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[11] Avis n°2022-A-03 of October 17, 2022 on the setting of reference interconnection tariffs for mobile call termination for mobile operators PMT/VODAFONE and ORA/VITI for 2022 and 2023, § 34.

55. The result is a higher tariff for both operators, but one that is more in line with their actual costs[12] .

56. This new tariff reinforces the tariff asymmetry between operators, to the benefit of the latest entrants. Indeed, the less extensive an operator's network, the more it needs to resort to roaming in order to offer services to its customers throughout the Polynesian territory. This asymmetry - which is intended to be temporary - should help maintain the investment capacity of new operators and, in the long term, reinforce competition on merit alone.

57. It is also clear from the data provided by Pays that roaming costs have been taken into account to determine tariffs in the same way as other network costs, i.e. in proportion to the share of the latter concerned by mobile call terminations. As with other network elements, roaming costs are broken down into voice and SMS, and only those costs allocated to "incoming *off-net"* calls, i.e. calls from another operator to the operator's network, are taken into account. This total amount was then divided by the number of minutes concerned, using "traffic" data, to obtain a rate per minute.

58. Both the principle and the method of including roaming charges in the costing models already used in previous work for the 2022-2023 period appear to be in line with the text and the spirit of the text, in that they reinforce undistorted competition between operators.

b) Traffic forecasts and operators' market shares

i. The challenge of traffic forecasts

59. Article A. 212-22-10 states that the model used must *"contain the following steps: / 1. simulation of the operator's traffic on the basis of business models and traffic development projections for the territory of French Polynesia"*.

60. The methodological guide specifies that: *Operators must carry out the following steps in their Operator Models*: */ Traffic estimation. This estimate must be based on business models and projections (including future commercial offers) to determine traffic for each group of services (Voice, SMS, Data) and each case of call (On-net, In-net, Out-net, Others including Roaming, Special numbers etc.)".*

61. This forecast traffic data represents the denominator of the formula used to determine tariffs, which consists of dividing the costs allocated to "incoming" calls (those from another operator) by the total duration of the calls in question.

$$Tarif\ théorique\ du\ TAM\ d'un\ opérateur = \frac{Coût\ des\ TAM\ (d'après\ le\ modèle)}{Trafic\ entrant\ prévisionnel}$$

62. Traffic data are also included indirectly in the numerator of the formula. On the one hand, they have an effect on the variable costs included in the model. On the other hand, even in the case of fixed costs, the methodological guide specifies that the estimation of network size is based on the traffic estimates for the years under consideration.

[12] *Ibid*, §37.

63. As a result, during the tariff preparation process, operators were expected to make realistic traffic forecasts for 2024 and 2025, and the DGEN was expected to validate or correct these estimates.

64. However, it emerges from the referral that while the various operators have submitted traffic forecasts for the years 2024 and 2025, some major inconsistencies have been noted by the DGEN, particularly in the case of one of the three operators.

65. Consequently, a traffic projection exercise was carried out by the DGEN, based on actual historical data as well as on the overall evolution of the market over the last 3 years. In addition, a gain in market share was incorporated for the Viti operator, as well as constant market shares between PMT and Onati. This traffic projection follows the previous year's trend, allowing us to model a gain in market share due to the acquisition of new customers.

66. It is up to the Authority to determine whether the corrections made by the DGEN using a projection exercise are likely to jeopardize fair treatment between operators, and consequently competition.

ii. Major inconsistencies in operators' forecasts

67. When the tariffs were first drawn up for 2021, difficulties arose with the operators' forecasts. According to the information provided at the time, while each operator had produced forecasts for mobile "voice" and SMS services in 2022 and 2023, both in terms of subscriber numbers and traffic, *"these projections presented some major inconsistencies"*.

68. A similar observation was made by the DGEN for the 2024-2025 period, particularly for one of the three players.

69. These inconsistencies underline the difficulty of making projections. As already pointed out in Opinion no. 2022-A-03, the opening up of the Polynesian market is still relatively recent, and the market is still far from stabilized:

- The third operator, Viti, only launched its first offerings in 2020. Its market share is therefore necessarily small, and its development uncertain;

- While *a priori*, there is a trend towards a gradual increase in the market share of new operators, certain disputes - such as the one concerning mobile data roaming services in remote archipelagos - may, on the contrary, have a negative impact on the growth of operators wishing to make use of these services. For example, when Viti filed a request for interim measures, the Authority wrote*:* "*The alleged practices therefore have an impact on competition in the sector, by having the effect of depriving a competing player of all access to a significant segment of the market, or at least delaying access to it, and reducing its prospects for development and, consequently, investment in networks*."[13] ;

[13] APC, decision no. 2023-PAC-01 of March 31, 2023 relating to a request for protective measures submitted by Viti for practices implemented in the telecommunications sector, concerning roaming services in remote archipelagos.

- Changes in commercial strategies are underway, including at the main operator, which could potentially lead to a stabilization of market shares, or at least to unforeseeable developments.

70. For this reason, traffic forecasts for the coming years are extremely delicate, and would inevitably be open to question. In this respect, among the inconsistencies identified during the present exercise, the DGEN noted in particular that the traffic forecasts included - for one of the three players - an assumption of decline over the years 2023 to 2025, which the latest traffic data available at the end of August did not allow to be corroborated. This finding would also affect the market share prospects of two of the three operators present on the market.

71. Nevertheless, to remedy these inconsistencies, the DGEN proposes that the TAM of the operator concerned by these inconsistencies be adjusted, in particular in light of traffic projections and the valuation of network assets.

72. The DGEN has carried out a traffic projection exercise based on the latest available data (at the end of August 2023) for each operator. On the basis of this data, which comes directly from the management software of the various operators, the DGEN has estimated overall traffic at the end of December 2023, prorated over 12 months.

73. To this overall traffic, the DGEN has applied a market growth equal to the average of the last 3 years for 2024 (8%) and equal to 50% of the growth of the last 3 years for 2025 (4%). This decision to apply a lower growth rate in 2025 is justified in particular by the anticipated stabilization of the market, due in particular to the increased use of data with the envisaged arrival of 5G on this horizon.

74. This method is coherent and means that the traffic base used to define 2024-2025 tariffs is that of the last known year, i.e. 2023.

75. Finally, the associated risk of not taking into account changes in market share since that date has been anticipated by the DGEN, as a gain in market share has been taken into account for the operator Viti (in the same trend as for the previous year) as well as constant market shares between PMT and Onati.

76. The aim of these adjustments is also to protect Viti from overestimated TAMs, in order to maintain a healthy competitive situation.

77. It should also be remembered that the text explicitly states that the regulator has a margin of discretion to deviate from the so-called theoretical tariffs in order to promote, in particular, *"effective and fair competition to the benefit of users"* (article A.212-22-15 of the CPT).

78. This choice also has the merit of bringing greater consistency between operators, by respecting the principle of proportionality of changes between operators, highlighted in particular by Arcep for metropolitan France[14] . It also limits the distortions that would have arisen from using different bases for different operators.

79. What's more, the effect on the unit rate is relatively limited, because while traffic has a direct impact on the denominator (forecast number of minutes of incoming traffic), it also has an

[14] See, for example, ARCEP decision no. 2010-0211 dated February 18, 2010.

impact in the same sense, albeit less so given the fixed costs unrelated to network sizing, on the numerator.

80. In the final analysis, although approximate by nature because it is "theoretical", this choice is in line with competition principles, on the understanding that the tariff thus defined will of course only apply to incoming calls actually made and routed during the years 2024 and 2025.

> ⇨ **It is clear from all these elements that, in determining its tariff proposal for the 2024-2025 tariffs, the DGEN has made an assessment of operators' tariffs in line with the principles of fair and effective competition.**

2. REFERENCE INTERCONNECTION RATES FOR MOBILE SMS CALL TERMINATION SMS" MOBILE CALL TERMINATION

81. As a reminder, in the case of SMS, the basis for the TAPF's annulment of the December 9, 2021 decrees was the lack of cost orientation of these tariffs, and the uniform application of a tariff set at one franc per SMS.

82. In its opinion no. 2023-A-01, the Authority also pointed out that the 1-franc fare was doubly problematic because :

- it is significantly higher than the cost of routing an SMS from a third-party operator, for all three operators;

- it is identical for all three operators, even though their costs are different, which means that regulated tariffs are unable to play their role of rebalancing between emerging and mature operators.

83. Thus, following the TAPF decision, the same methodology as that used to determine "voice" tariffs and described above (see § 50 et seq.), has been used to determine the TAM IRRs for SMS for the years 2024 and 2025.

84. The following tariffs have been proposed and submitted for consultation:

In francs per SMS	Tariffs proposed and submitted for consultation	
	2024	2025
Onati	0,00013	0,00013
PMT	0,02590	0,02943
Viti	0,3204	0,19015

85. It appears to the Authority that the costs thus determined are such as to meet the objections of the administrative court and enable the restoration of free and undistorted competition between operators.

86. In fact, they enable us to bring tariffs down to a level in line with the costs incurred by operators, taking into account their different market situations.

a) Tariffs that reflect operators' costs

i. The challenges of asymmetry and downward tariff trends

87. In its opinion no. 2020-A-02, and then again in its opinion no. 2022-A-03, the Authority made a number of proposals concerning the trajectory of fare increases.

88. Indeed, TAM tariffs have a direct effect on usage. The higher they are, the more expensive the packages will be, and the less "abundant" the packages offered by operators will be. However, the method adopted at the beginning of 2021, followed by the first exercise in setting uniform TAM tariffs, appeared to be incomplete, for the following reasons:

- the development of the model is cumbersome, complex and costly due to the use of external consultants;

- The CMILT + model adopted uses a very broad cost base, close to a full-cost model, and leads to very high TAM tariffs, which are only acceptable if they allow for tariff asymmetry between operators;

- alternatives (CILT model without taking average investment costs into account; benchmark) would enable us to reduce tariffs at lower cost.

89. As a result, the Authority recommended that the government take stock of the situation and consider how the model might evolve, with a view to initiating a downward trajectory in tariffs. The question of how the model should evolve in the future is all the more acute given that asymmetry is only likely to be temporary, and will gradually disappear as new entrants become established and begin to amortize their initial investments.

90. In fact, as the market develops, tariffs are initially bound to fall as a result of the model, as the business develops (economies of scale) and the assets of new entrants are depreciated. However, the regulator may also encourage this reduction, in order to promote the development of abundance offers, which are favored by low tariffs. In a mature market with relatively homogeneous market shares, it is even possible to set mobile termination rates at zero[15] , the cost of routing incoming calls for one operator being offset by the fact that the cost of outgoing calls to other operators is not billed.

[15] This billing system, known as "bill and keep", is used in the United States, for example. It limits competition on the retail market and encourages productive efficiency.

91. Such an assumption is provided for in the CPT[16] , which allows the regulator to depart from the so-called "theoretical" tariffs, i.e. those set by the model on the basis of the costs incurred, to take account of market maturity and competitive conditions[17] .

92. This gradual reduction in tariffs is intended to reduce both operators' costs and tariffs. However, it must go hand in hand with other objectives, such as fair remuneration for operators and encouraging investment in modernization (e.g. 4G) and coverage (remote archipelagos).

93. In its opinion no. 2020-A-02, the Authority thus proposed - after the phase of temporary tariff asymmetry between operators - to determine a gradual reduction in tariffs (*glide path*) made public in order to offer operators greater visibility. It considered that, in the long term, the biennial revision of the technical-economic model could be replaced by a crystallization of tariffs at a low or even zero level.

94. The proposed process was therefore progressive:

- First, choose a model that allows lower costs to be determined (CILT type), but still asymmetrical;

- in a second phase, in a mature market, introduction of a symmetrical but very low tariff.

ii. The proposed pricing plan

95. The project proposes that operators retain the tariffs derived from the cost-oriented model of each operator according to their own assessment.

96. The tariffs, well below those applied for the 2020-2021 period, are nevertheless (for two of the three market operators) higher than those applied for the 2022-2023 period.

97. The tariffs submitted to the Council of Ministers would be as follows (last column):

In francs per SMS	**2020**	**2021**	**2022**	**2023**	**Tariffs proposed and submitted for consultation**	
					2024	**2025**
Onati	1,00	1,00	0,0005	0,0003	**0,00013**	**0,00013**
PMT	1,00	1,00	0,0005	0,0003	**0,02590**	**0,02943**

[16] CPT, article LP. 212-25-1: *"Interconnection tariffs comply with the principle of cost-orientation of tariffs / An order issued by the Council of Ministers sets out the terms and conditions for the application of the present article. / The Council of Ministers also specifies the methodology of the technico-economic model used to determine tariffs. /* ***This methodology may evolve according to the degree of maturity of the Polynesian telecommunications market, with a view to ensuring effective and fair competition***.

[17] For the record, the French Conseil d'Etat has already recognized the ability of a regulator to impose asymmetrical tariffs between different operators, notably on the basis of effective and fair competition, a principle which is precisely enshrined in the Polynesian text (CE, decisions no. 324642 and 324687 of July 24, 2009).

Viti	1,00	1,00	0,0270	0,0271	**0,3204**	**0,19015**

98. There are several reasons for this proposal:

(i) an increase in the number of SMS messages, driving unit rates close to 0 ;

The DGEN has noted that the retail market in French Polynesia has seen unprecedented momentum over the course of 2022, with the rise of unlimited all-net SMS offers driving exponential growth in usage. Outgoing SMS volumes have been multiplied by 3 between 2019 and 2022, with 60% growth between 2021 and 2022. This growth is expected to remain high, but to slow between 2023 and 2025, notably due to the rise of data.

(ii) Increasingly symmetrical flows between Onati and PMT ;

99. In the final analysis, the Pays has opted to use tariffs based on the cost model for all three operators. Note the specific situation of the latest operator to enter the market, Viti, which is much less developed than its competitors (market share estimated at around 1%) and is still exposed to high unit costs.

100. It has to be said that the use of the cost model maintains a pricing asymmetry between this player and the other two.

b) Different financial consequences for different players

101. The Authority can only welcome the pragmatic decision to aim for lower TAM tariffs than for the 2020-2021 period, even if they appear to be partly higher than for the 2022-2023 period. This reduction is likely to increase usage for consumers, in line with operators' cost orientation.

102. In this respect, it should be noted that the rates used are those proposed by the operators in application of the calculation methodology imposed on them. The rates applicable to "SMS" TAMs correspond to the theoretical costs proposed by the operators, without the DGEN having to make any readjustments.

103. Nevertheless, the financial impact of these tariffs varies greatly from one operator to another.

104. The effects of the proposed tariffs on the various operators can be summarized as follows:

- Onati: Loss-making balance (far lower rates than competitors) ;
- PMT: Surplus balance (rates higher than Onati) ;
- Wine: surplus balance (much higher prices but moderate flows).

In millions of francs		**Balance 2024**	**Balance 2025**	**Total balance**
Onati	Gvt tariffs corresponding to actual costs	[...]	[...]	[...]

PMT	Gvt tariffs corresponding to actual costs	[...]	[...]	[...]
Viti	Gvt tariffs corresponding to actual costs	[...]	[...]	[...]

107. As a reminder, the aim of TAM regulation should not be to achieve balanced balances between operators. If this were the case, a zero tariff could have been introduced in the first year. But an operator whose costs are significantly higher than those of its competitors (a new entrant) would be exposed to significant charges that it would be unable to bill to other operators, reducing its ability to grow. Such a solution is therefore only valid in the case of a relatively balanced market.

108. However, the Polynesian market is still unbalanced, even between the two main operators. In reality, PMT and Onati are not in comparable situations. In particular, even if the cost of SMS routing is very low for both operators (0.02590 F in 2024 and 0.02943 F in 2025 per SMS for PMT, and 0.00013 F for 2024 and 2025 for Onati), it nevertheless remains extremely different. Thus, the cost of PMT is between 200 times (in 2024) and 226 times (in 2025) higher than that of Onati.

109. Given that over 200 million SMS messages are exchanged every year between operators, mainly PMT and Onati, and assuming that incoming SMS messages are split into two equal parts, adopting a cost-oriented tariff as in the present case would not deprive Onati of any significant revenue, and would also enable PMT to contribute to covering its costs through non-negligible revenues.

110. This cost-oriented methodology also makes it possible to take into account the respective market shares of the two main operators, Onati and PMT, and the respective costs incurred by these two operators, which remain significantly apart. Onati's market share is still much higher than PMT's (Onati's market share is between 55% and 60%, PMT's between 40% and 45%)[18] and although costs are low, they are still far apart between the two operators. In the case of Viti, which is continuing to expand in the Polynesian market, the adoption of TRIs for "SMS" TAMs based on its actual costs will accelerate its network investments and market growth.

111. The question of choosing a more appropriate cost model, notably one based on variable costs only (CILT), remains unanswered, and would allow both a reduction in financial flows and the maintenance of a temporary asymmetry.

112. The Authority also notes that the current cost-oriented model leads to relatively high tariffs for TAMs. The involvement of external consultants does not seem to allow for a sufficiently detailed analysis of the accounting data communicated by operators for their respective real costs, thus making (i) the DGEN's regulatory mission more difficult, and (ii) the risk of unjustifiably high TAMs real.

[18] Decision no. 2023-PAC-01, § 70.

C. ON POSSIBLE DEVELOPMENTS

1. POSSIBLE CHANGES TO THE METHOD FOR SETTING MOBILE VOICE TERMINATION RATES

113. In its opinion no. 2020-A-02, the Authority made a number of proposals to amend the texts, only some of which were adopted. While the purpose of this opinion is not to go back over the texts adopted, which are now definitive, it may be relevant to remind the government of certain developments concerning possible medium-term changes in tariff determination, provided they remain fully relevant.

114. In this respect, in its previous opinions no. 2022-A-03 and no. 2023-A-01, the Authority had occasion to stress that :

- the development of the chosen model is complex and costly, requiring the services of outside consultants;

- the model leads to relatively high tariffs for TAMs, including for the incumbent operator, with the result that - even though standardization had been requested by alternative operators - they challenged the results before the courts.

115. For this reason, this new exercise provides an opportunity to reiterate the assessment made by the Authority in its 2022 and 2023 opinions respectively (a), so that the discussions underway on certain changes to the model can continue, particularly with regard to the predictability of downward tariff changes (b), the question of infrastructure-based competition in sparsely populated areas (c) and the priority question of the transmission and use of operator information (d).

a) The principle of gradation and flexibility in economic regulation measures

116. While the setting of regulated tariffs for access to certain telephone services is justified in the face of certain market failures (e.g. for services provided by a monopoly), it must remain flexible. To limit market distortions, the least intrusive instruments should be used in the first instance, and measures such as tariffs should only be used as a last resort when other instruments cannot guarantee effective competition (principle of efficiency or economy of resource).

117. By way of example, this gradation of measures is applied by the ACCC (Australian Competition and Consumer Commission) in Australia and the Commerce Commission in New Zealand. These two authorities, which are competent for both competition and regulation, each have different regulatory regimes at their disposal, with a gradation from the least to the most intrusive[19] . In the experience of these two authorities, the mere ability to move towards a more coercive regime is enough to influence behavior, and proves to be much lighter and less costly, since the lightest and most flexible mechanism is always chosen to achieve the desired goal.

118. Both authorities also insist that transparency of information is an effective way of reducing barriers to market entry, and helps public authorities to define their policies. Sometimes, the

[19] See opinion no. 2022-A-03 of October 17, 2022, paragraphs 70 et seq.

simple transmission of information by operators and its publication by the regulatory authority is even sufficient to discipline operators, and avoid recourse to more coercive measures.

Recommendations:

1. **As part of the regulation of the Polynesian telecommunications sector, the Polynesian regulator must carry out a regular review (at least on an annual basis) of the relevance of the tools used, as well as their possible relaxation over time, to take account of markets recently opened to competition.**

2. **To keep costs as close as possible to actual costs, it is recommended that the setting of "Voice" and SMS TRIs be reviewed on an annual basis, rather than every two years. This assumes, however, that the DGEN has the necessary human resources to carry out this task properly.**

b) A scalable model designed to gradually reduce tariffs

119. In the telecoms sector, developments are rapid and ongoing, requiring regular adjustments to the regulatory framework and the actions of the regulator.

i. The current model leads to asymmetrical but high tariffs

120. The choice of cost model and cost base has obvious competitive implications. The CPT (article A 212-22-11) provides for the use of the *bottom-up scorched node* long-term incremental average cost (LTIAC) model. This model adopts a broad cost base, integrating the variable and fixed costs of the service, including network coverage costs, operating costs, joint costs related to this service and common costs allocated to the network.

121. The result is a much higher tariff than in most territories where the sector has been open to competition for longer, even if it does have the advantage of allowing real asymmetry between operators.

Comparison of "voice" TAM tariffs (2023)

in F CFP / minute	TAM "voice" tariffs 2023
Polynesia (average)	7,19
France	0,40
Antilles-Guyane	0,40
Reunion-Mayotte	0,40

Sources: Lexpol, ARCEP

122. With identical tariffs, this choice would be likely to penalize smaller operators very heavily. Today, the largest operator *a priori* receives more calls internal to its network (*on-net* calls). It also receives more inbound calls from smaller operators - around 60% - than outbound calls to smaller operators - around 40%[20] . If tariffs were identical, his interconnection flow would therefore be very positive, while representing a relatively small proportion of his sales. Conversely, small operators have few *on-net* calls (their network is underdeveloped), and a high proportion of outgoing calls, which are billed at TAM rates. At identical tariffs, the balance for small operators would therefore be very negative, and would weigh proportionally more heavily on their operating costs.

123. But the rates are not identical for two reasons:

- On the one hand, because of the parameters of the model, the incumbent's network is a priori more amortized, and it also benefits from significant economies of scale. As a result, the unit cost of calls is lower than for new entrants. In other words, the economies of scale enjoyed by the majority operator are partially reflected in TAM tariffs, leading to an asymmetry favorable to minority operators, whose tariffs and consequently unit revenues will be higher;

- Secondly, because the CPT allows the regulator to depart from the so-called "theoretical" tariffs, i.e. those set by the model, to take account of market maturity and competitive conditions.

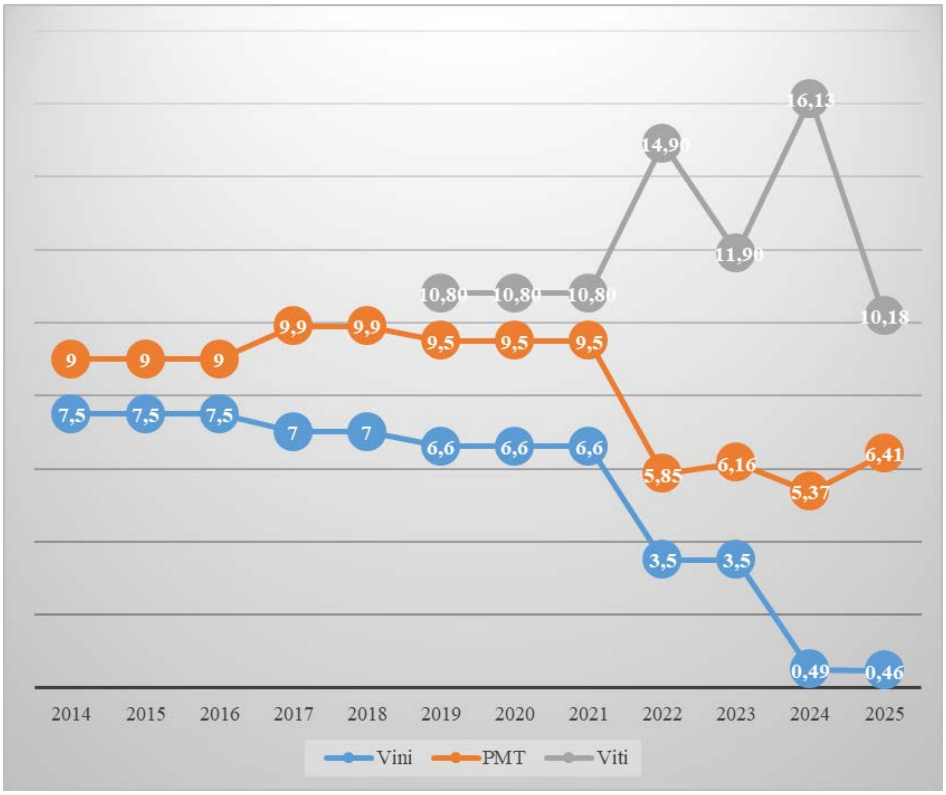
124. The overall balance is therefore relatively uncertain, depending on whether or not the incumbent operator's lower unit cost offsets the physical interconnection balances, which are in its favor.

125. Thanks to this mechanism, TAM tariffs should ensure a balance between the various objectives sought: lowering prices, developing competition, fair remuneration for operators and

[20] With identical offers, this balance should be close to equilibrium, with customers receiving on average as many calls as they make. This imbalance, observed for both operators, is perhaps due to the architecture of the offers (with smaller packages or more prepaid packages at the incumbent operator, which would push its customers to give priority to receiving calls).

encouraging investment in modernization (4G, for example) and coverage (remote archipelagos).

Evolution of "voice" TAM tariffs in French Polynesia



126. Thus, as in 2022, the Authority considers that the principle of a single model has the advantage of homogenizing the conditions for calculating TAM fares, and that the choice of the CMILT + model is consistent with the maturity of the Polynesian market. That said, this model is not conducive to lower fares (CILT-type models, for example, would lead to a far greater reduction in fares, while also allowing for fare asymmetry). The question arises as to its future evolution, given that the asymmetry is temporary and diminishes as new entrants establish themselves and amortize their initial investments.

ii. The evolving nature of tariffs has been included in the texts.

127. In its opinion no. 2020-A-02, the Authority made proposals concerning both the evolutionary nature (gradual reduction) of tariffs over time, and the temporary asymmetry between operators depending on the maturity of the Polynesian market, in order to guarantee their adequacy to the conditions of competition on this market. These suggestions have been partially taken up in the loi du Pays, since the CPT (article LP. 212-25-1) reiterates the evolving nature of the model based on competition considerations, but without any further details on how it will evolve.

128. Given the difficulties encountered by the DGEN in setting rates, it would seem appropriate to consider, at least in the medium term, clarifying the objectives pursued and simplifying the method.

c) In the medium term, these developments could lead to a simplification of the model and a much lower alignment of tariffs.

129. As the Authority emphasized in its opinion no. 2022-A-03 of October 17, 2022, as the market develops, asymmetry is reduced, and is generally accompanied by a gradual but sharp reduction in tariffs. This reduction is primarily due to the development of the business (economies of scale) and the depreciation of fixed assets, but it can also be encouraged by the regulator, in order to promote the development of abundance offers, which are favored by low tariffs. In this way, interconnection balances should gradually balance out and tariffs approach zero.

130. In fact, when setting TAM tariffs, the regulator often aims to achieve relatively balanced interconnection balances, in particular so as not to penalize the development capacities of small operators (which would be the case if their balances were very negative), without having the incumbent operator finance this development (which would be the case if their balances were positive). In fact, if the aim is to obtain relatively homogeneous balances, i.e. close to zero for each operator, we could even envisage setting mobile termination rates at zero, with the cost of routing an operator's incoming calls offset by the fact that the cost of its outgoing calls to other operators is not invoiced[21] . Without going to this extreme, which could lead to distortions in a market that is in the process of opening up, by encouraging operators to favor outgoing calls to other operators and artificially modify the architecture of their offers, we can universally observe a downward trend in tariffs towards a very low level.

131. Changes in this direction will therefore be necessary in French Polynesia. For example, in 2008 (decision no. 08-0176 of December 2, 2008), ARCEP decided to move from a full-cost model to a purely incremental model, taking into account only the network expansion required by TAMs, but not the costs of territorial coverage, in order to take account of network maturity and operator convergence. ARCEP then *"pursued its policy of gradually and proportionately lowering tariff ceilings"*[22] . Tariffs remained asymmetrical for a few years, but less and less so. Indeed, after a while, even if market shares don't necessarily have to balance out, market maturity should allow competition on operators' merits alone (in terms of network coverage, quality of service and tariffs).

132. This downward convergence could be gradual and explicit, in order to encourage operators to prepare for the end of asymmetry, both in terms of investment and the development of their tariff grids (we can imagine the development of abundance offers). Once convergence has been achieved, tariffs would be crystallized at a very low level, in order to dispense Pays from the need for regular audits of its technical and economic models, which are costly and time-consuming, except in the event of the arrival of a new entrant, whose tariffs could be temporarily higher in line with its costs. The advantage of such a choice would also be to limit litigation.

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[21] This billing method, known as "*bill and keep*", is used in the United States, for example. It limits competition to the retail offer and encourages productive efficiency.

[22] ARCEP, decision n°2010-0211 dated February 18, 2010.

Recommendations:

In order to limit litigation and encourage the development of uses and competition on the merits, the Polynesian regulator could - on the occasion of future tariff-setting exercises (starting with the 2024-2025 tariffs) - take various courses of action:

3. **Deviate further from the "theoretical" tariff derived from the model to establish asymmetrical but lower tariffs, so as not to excessively penalize operators with a deficit balance, and to favor abundance offers.**

4. **Opt for a lower-cost model (of the CILT type, i.e. without taking fixed costs into account).**

5. **Move away from the cost model and opt for an explicit approach to gradual rate reduction, drawing inspiration from rates in equivalent markets (benchmarking).**

d) The issue of infrastructure competition in sparsely populated areas of Polynesia

i. A priority project

133. Providing telephone coverage for all the Polynesian islands, some of which are both remote and sparsely populated, is a real challenge. In a number of opinions[23] , the French telecoms regulator has already concluded that it would be unrealistic for several mobile operators to achieve economic equilibrium by rolling out their own networks throughout the territory, unless they were to charge very high rates, to the detriment of usage. The deployment of a telephony network is not justified when it is located in sparsely populated areas, both for reasons of investment cost and environmental protection.

134. To address this issue, we need to define a "dense" zone, where the three operators would be physically present and could compete on infrastructure (e.g., quality of coverage, links, etc.), and a "sparse" zone, where pooling of coverage infrastructure would be the norm (these are islands currently covered only by the OPT/Onati group, which offers local roaming services to its competitors), and where competition between the different operators would take place solely on services. Indeed, apart from Tahiti, and possibly Moorea and Bora Bora, it is highly unlikely that there will be any real infrastructure-based competition on the other islands (for example, network coverage generally targets the same areas, the centers of the main towns, and the masts or antennas of the different operators are located in close proximity to each other).

135. To date, the Polynesian regulatory framework still requires the deployment of all operators on all archipelagos, and no "private initiative deficiency zones" have been defined, despite their existence. In this respect, even the incumbent operator, which is able to offset part of its rollout costs through roaming services, has obtained a subsidy to roll out the 4G network in remote archipelagos (250 M F CFP, for example, was granted for this purpose in July 2022). In these circumstances, it would be a delicate matter to require other operators to roll out on these islands, *especially* if they do not receive subsidies of their own.

[23] In this respect, see the Authority's three opinions: Opinion no. 2022-A-03 of December 17, 2022, opinion no. 2023-A-01 of May 17, 2023 and opinion no. 2023-A-02 of July 24, 2023.

ii. Opinion no. 2023-A-02 of July 24, 2023 on determining the conditions for deploying and financing telecommunications networks in the sparsely populated islands of French Polynesia.

136. The DGEN has nonetheless taken on board the Authority's recommendations on the need to initiate work on infrastructure-based competition in sparsely populated areas of the Polynesian territory. In June 2023, the Authority was asked to give its opinion on the conditions for deploying and financing telecommunications networks in the sparsely populated islands of French Polynesia, and on the segmentation methodology between dense and sparsely populated areas.

137. In opinion no. 2023-A-02 of July 24, 2023, the Authority recommended the following approach for determining dense and sparsely populated areas:

1- Carry out profitability simulations by distinguishing - according to operators' market shares - three zones:

- Sparsely populated areas requiring public support: these are areas where no operator is profitable without a substantial increase in rates (the least populated islands for telephony; the whole country for fixed Internet networks). A single operator would then be appointed to roll out and operate the local network, in the form of a public service delegation. Roaming charges could be set by the local authorities;

- Low-density areas, profitable for one or two operators, but not all three, and requiring shared infrastructure:

    - With a single operator, roaming would remain unilateral, requiring strict control and even tariff setting by the country;

    - With two operators (e.g. Raiatea), the principle of commercial negotiation of roaming could be maintained, but with increased vigilance on the part of the Authority with regard to the behavior of operators providing roaming and a capacity for *ex ante* arbitration on roaming tariffs and conditions by the Country;

- Competitive areas, with three operators (e.g. Tahiti): any residual roaming services would be freely negotiated, with simple information to the regulator and under the ex-post control of the Authority with regard to competition rules.

2- This delimitation could be accompanied by a number of regulatory measures, including :

- Graduated control of roaming charges by zone:

    - tariffs set by decree for zones (i) and zones (ii) with a single operator ;

    - controlled tariffs with the possibility of arbitration by the government in zones (ii) with two operators;

    - free tariffs, but with an obligation to provide information, or with the regulator's ability to mediate in three-operator zones.

- Review clauses, with a revision of the mapping, would be possible at regular intervals (2 years), notably with the aim of calibrating operators' deployment obligations, according to changes in their market share or technological developments (e.g. 5G...);

- Finally, to stimulate competition through services, the government could consider the implementation of virtual operators (MVNOs) rather than forcing all operators to deploy physical networks, including in Tahiti and Moorea where capacity is sufficient (environmental and economic advantage).

3- The government will also have to work out ways of financing low-density areas, so as to ensure access at reasonable prices throughout the country.

The aim is to ensure the transparency of coverage costs, in order to put an end to the opacity of the internal equalization system and put retail operators on an equal footing.

A range of options is available:

- Purely public financing of the network, which would then be leased to operators;

- Give priority to public aid to compensate for the structural deficit, in order to guarantee fair and reasonable tariffs for all retail operators;

- Implement an administered equalization mechanism between dense and sparsely populated areas (for example, in the form of a flat-rate tax on Tahitian residents, as is the case for electricity distribution);

- Use a bidding mechanism for coverage in areas not yet covered by a broadband network (competition for the market);

- It could also look into the possibilities offered by satellite broadband links, and open them up to alternative operators, including on islands where a 4G network is available.

4- Beyond the strict question of zone delimitation, the effectiveness of the reform necessarily implies regulatory changes on the following points:

- The separation of Onati's network and retail activities, not just in accounting and financial terms, but at least in functional terms, leading to the creation of two completely separate and autonomous entities (as in the case of RFF and SCNF in rail transport, for example);

- The implementation of independent telecoms regulation and a strengthening of the regulator's resources, possibly within a single independent administrative authority responsible for competition and network industry regulation.

138. On the strength of this opinion, a change in the regulatory framework, or at the very least in the methodology envisaged (in particular, operators' specifications and their actual deployment), should take place in the short term.

Recommendation:

6. Given that the government has stated its desire to maintain equivalent prices in different parts of the country, the approach used to determine dense and sparsely populated areas could be as follows:

(i). Carry out profitability simulations by distinguishing - according to operators' market shares - three zones:

- Sparsely populated areas requiring public support: these are areas where no operator is profitable without a substantial increase in rates (the least populated islands for telephony; the whole country for fixed Internet networks). A single operator would then be appointed to roll out and operate the local network, in the form of a public service delegation. Roaming charges could be set by the local authorities;
- Low-density areas, profitable for one or two operators, but not all three, and requiring shared infrastructure:
  - With a single operator, roaming would remain unilateral, requiring strict control and even tariff setting by the country;
  - With two operators (e.g. Raiatea), the principle of commercial negotiation of roaming could be maintained, but with increased vigilance on the part of the Authority with regard to the behavior of operators providing roaming, and the ability of the Country to arbitrate ex ante on roaming tariffs and conditions.
- Competitive areas, with three operators (e.g. Tahiti): any residual roaming services would be freely negotiated, with simple information to the regulator and under the ex-post control of the Authority with regard to competition rules.

(ii). This delimitation could be accompanied by a number of regulatory measures, including :

- Graduated control of roaming charges by zone:
  - tariffs set by decree for zones (i) and zones (ii) with a single operator ;
  - controlled tariffs with the possibility of arbitration by the government in areas with two operators.

iii. Informing the regulator

139. The use of any of the instruments available to the regulator is highly dependent on the situation and maturity of the regulated markets, the respective positions of players in the sector, the architecture of existing packages and the use of digital tools by businesses and individuals. In particular, the regulator must strike a fine balance between moderating rates for users (through productive efficiency and competitive incentives), maintaining a competitive balance between operators (by regulating access to certain services) and guaranteeing their ability to balance their books (by gearing rates to costs), while ensuring identical conditions for all. This is a prerequisite for the expansion of digital uses, which is vital to the economic dynamism of French Polynesia.

140. This presupposes that the regulator has satisfactory regulatory tools at its disposal, but also that it has sufficient relevant data to assess the state of the market and the network. However, it appears that the DGEN does not have all this information up to date and on a regular (infra-annual) basis.

141. The issue is not so much legal as one of resources.

142. Indeed, the CPT already makes it possible to request a certain amount of information from operators. In the general provisions of the code, article D. 212-3 stipulates that "*In order to carry out their missions, the competent authorities of French Polynesia may collect from telecommunications operators the information or documents necessary to ensure compliance by these persons with the principles defined in articles D. 212-1 and D. 2 12-2, as well as the obligations imposed on them by the texts in force in French Polynesia or by the authorization issued to them. / The competent authorities of French Polynesia shall ensure that the information gathered in application of this article is not disclosed*." Recent amendments to the CPT also enable the DGEN to obtain all the information used by operators to draw up their cost models and meet their obligations to separate the accounts of activities subject to interconnection (article LP. 212-25-2: "*Within the framework of control by the competent authorities of French Polynesia, telecommunications operators transmit regular and accurate data to the department in charge of telecommunications, in accordance with the procedures defined by order of the Council of Ministers*"). Other regulatory provisions also require data to be transmitted (frequency usage, number resources, submarine cable speeds, quality of service indicators, etc.).

143. However, not all this information is actually collected or processed, due to a lack of resources. As long ago as 2020, the DGEN informed the Authority of its wish to set up a telecommunications observatory, which would provide precise, up-to-date market data (on market share, operator revenues, investments, network deployment, customer base, actual network use, etc.). This observatory was initially intended to be an internal tool for the DGEN, before becoming an official version for public authorities, operators and consumers. The process has been initiated, 41 priority indicators have been defined and data have been collected, but they have not yet been processed due to a lack of resources.

144. The Authority believes that the full deployment of this observatory is a priority if we are to provide the regulator with the resources it needs to carry out its supervisory role, and guarantee the development of effective and fair competition.

Recommendation:

7. **The Polynesian regulator, in order to provide itself with the means for effective and appropriate control, should implement a system for transmitting regular (at least on an annual basis) and accurate information from operators on flows, usage and their position on the market, and ensure the effective implementation of an observatory within the DGEN to process and, if necessary, publish this information.**

2. PROPOSED MOVE TOWARDS DEREGULATION OF SMS RATES REMAINS PREMATURE

145. Setting regulated rates for access to certain telephone services is a matter for economic regulation. This is justified in the face of certain market failures, particularly in the case of services provided by a monopoly, as is the case with mobile call termination. However, it must be flexible. Preference should be given to the least intrusive instruments, to limit market distortions, and only as a last resort to measures such as tariff setting, when other instruments are not likely to guarantee effective competition. It is also important to use the lightest, most flexible tool available (the principle of efficiency or resource saving).

146. In the request for an opinion submitted to the Authority, it is recalled that the DGEN had recommended that regulation be lifted during the 2022-2023 cycle, but this proposal was criticized by opinion no. 2023-A-01 of the Polynesian Competition Authority dated May 17, 2023.

147. Once again, the Authority wishes to emphasize that the situation of the Polynesian market does not allow for such deregulation at this stage.

148. Even if it's still too early, it may seem desirable, at least in the medium term, for tariffs to converge towards zero financial flows between operators, which is a judicious regulatory choice as the costs of different operators converge.

149. But deregulated tariffs would require them to be freely negotiated between operators. To be fair, such negotiation implies relatively balanced flows or balances of power between the different operators. Otherwise, in the case of monopoly services, there is a risk that the operator with the most significant market power will take advantage of the situation to set tariffs that exceed its costs, leading to a significant increase in the costs of its competitors, without the latter being able to retaliate effectively because of their minority position, or if one of them counters the excessive tariffs of another with its own excessive tariffs, leading to an inflationary spiral.

150. The consequences would be more expensive services to the detriment of Polynesians, less generous rate plans or the introduction of so-called *on-net* calls (within an operator's network) rather than off-net calls (between operators), a strengthening of the position of the already dominant operator, reinforcing club effects to the benefit of the most powerful operators and limiting mobility between operators. In other words, the virtuous circle towards more competition, lower tariffs and more generous packages for consumers, which has been underway since 2013 and accelerated with the arrival of Viti on the market in 2020, could be called into question.

151. Such a risk is not merely theoretical. There is already a deregulated service based on commercial negotiation between operators in the mobile telephony sector. This is roaming. This has given rise, and continues to give rise, to an abundance of litigation.

152. In particular, the Authority recently issued two decisions denouncing Onati's roaming practices. In both cases, and for both operators (PMT in decision no. 2021-PAC-01 of December 8, 2021[24]

[24] Decision no. 2021-PAC-01 of December 8, 2021 relating to a request for interim measures submitted by Pacific Mobile Telecom in the telecommunications sector, concerning roaming services for mobile data access.

and Viti in decision[25] no. 2023-PAC-01 of March 31, 2023), the Authority found that Onati was likely to have engaged in anti-competitive practices as a result of its dominant position. In the second case, it also considered that the infringement was sufficiently serious and immediate to justify interim measures against Onati, with a view to implementing tariffs more in line with fair competition as soon as possible.

153. In theory, however, while roaming is initially freely negotiated between operators, in the event of disagreement between them, the texts provide for mediation and, ultimately, for the tariff to be set by the Council of Ministers[26] . However, in practice, this power is not exercised by the regulator, notably due to a lack of resources in the DGEN departments, which explains why operators turn to the Authority to resolve these disputes. On several occasions, and most recently in its opinion no. 2022-A-03 of October 17, 2022, the Authority has relayed the DGEN's wish to be equipped with a system for transferring and processing market information, in order to better carry out its mission of monitoring and supervising the market and its operators.

154. In contrast to European markets, the balance of power on the Polynesian market is still too unbalanced between the players, to the benefit of Onati, which still has more customers, a monopoly on international routes and networks serving the islands, and wider coverage of the territory due to its historical presence. Competition therefore does not yet appear to be able to be based on merit alone, without active intervention by the regulator.

155. This question also raises the issue of how to exercise regulation.

156. Today, regulation under ordinary law is assigned to the Council of Ministers, after technical instruction by the DGEN. The Council of Ministers therefore plays both a regulatory role (draft country laws and decrees) and a role as sector regulator, while at the same time being a stakeholder in the OPT, of which Onati is a subsidiary (members of the government have a majority on its Board of Directors). The DGEN, for its part, suffers from a lack of resources, and most of its decisions, particularly in the area of tariffs, are the subject of contentious appeals, as mentioned in § 13 to 30 of this opinion.

157. The Authority de concurrence (French competition authority), for its part, is confined to purely advisory opinions, or to contentious proceedings (cartels and abuse of dominant position). Although the latter can lead to the sanctioning of companies responsible for anti-competitive practices, it is an *ex-post* procedure, which can therefore only intervene too late to re-establish competition on its merits in a market that is in the process of being structured, and cannot replace independent *ex-ante* regulation in the field of network economies that are in the process

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[25] Decision no. 2023-PAC-01 of March 31, 2023 relating to a request for interim measures submitted by Viti for practices implemented in the telecommunications sector, concerning roaming services in remote archipelagos.

[26] Article D. 212-26 of the CPT stipulates that *"(...) In the following cases, the mobile telecommunications service operator may be required to comply with a reasonable request for roaming services made by another mobile telecommunications service operator: / a) When roaming is provided between two mobile telecommunication service operators authorized in French Polynesia, they may be required, in the general interest, to enter into a roaming agreement;/ b) A mobile telecommunications service operator wishing to offer its subscribers roaming services in French Polynesia is entitled to enter into such an agreement. /* ***If the parties reach an agreement within two months of the date of the request, the roaming agreement entered into by the operators is communicated to the administration. In the event of disagreement, the latter will ask the parties for their positions, with the aim of reaching an amicable agreement; failing this, the Council of Ministers will set the roaming terms****.*

of being opened up, which would make it possible to overcome these various pitfalls.

Recommendations:

In order to limit the risk of litigation, enable the telecoms regulator to fully exercise its control and monitoring functions, ensure the development of competition based on merit and, ultimately, promote the development of digital uses at a lower cost to consumers (individuals and businesses), the country could, in the medium term, regulate tariffs in general:

8. **Opt for a cost model that results in lower tariffs (of the CILT type, i.e. without taking average network costs into account).**
9. **Set up a system for the transmission of regular, accurate information from operators on flows, usage and their market position, and ensure the effective implementation of an observatory to process this information.**
10. **Consider setting up an independent telecommunications regulator.**

SUMMARY OF RECOMMENDATIONS

1. As part of the regulation of the Polynesian telecommunications sector, the Polynesian regulator must carry out a regular review (at least on an annual basis) of the relevance of the tools used, as well as their possible relaxation over time, to take account of markets recently opened to competition.

2. To keep costs as close as possible to actual costs, we recommend that TAM "Voice" and SMS rates be reviewed annually rather than every two years. This assumes, however, that the DGEN has the necessary human resources to carry out this task properly.

3. Deviate further from the "theoretical" tariff derived from the model to establish asymmetrical but lower tariffs, so as not to excessively penalize operators with a deficit balance, and to favor abundance offers.

4. Opt for a lower-cost model (of the CILT type, i.e. without taking fixed costs into account).

5. Move away from the cost model and opt for an explicit approach to gradual rate reduction, drawing inspiration from rates in equivalent markets (benchmarking).

6. Carry out profitability simulations by distinguishing - on the basis of operators' market shares - three zones: low-density, requiring public support; low-density, profitable for one or two operators, but not all three, and requiring infrastructure pooling; competitive, with three operators.

7. In order to provide itself with the means for effective and appropriate control, the Polynesian regulator should implement a system for transmitting regular (at least on an annual basis) and accurate information from operators on flows, usage and their position on the market, and ensure the effective implementation of an observatory within the DGEN to process and, if necessary, publish this information.

8. Opt for a cost model that results in lower tariffs (of the CILT type, i.e. without taking average network costs into account).

9. Set up a system for transmitting regular, accurate information from operators on flows, usage and their market position, and ensure the effective implementation of an observatory to process this information.

10. Consider setting up an independent telecommunications regulator.

Deliberated on the oral report by Maxime Hebting, Rapporteur, and the intervention of Sophie Bresny, General Rapporteur, by Johanne Peyre, Chairman, Ingrid Izquierdo, Pierre Frébault and Enzo Silvestro, full members.

The Chairman

Johanne Peyre