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PRESS RELEASE

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# 2023-PAC-01
# Mobile telecoms:
# The Authority imposes interim measures on the company Onati

*https://autorite-concurrence.pf/wp-content/uploads/2023/04/2023.03.31-2023-PAC-01-Mesures-conservatoires-Viti-Onati-VF.pdf*

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## Key Points

Pending a decision on the merits of the case, the Polynesian Competition Authority (APC or Authority) has ordered interim measures against Onati. Onati must submit a price offer for roaming access (voice and SMS) on the islands of the 'remote archipelagoes' in order to allow Viti to compete effectively.

## The interim measures procedure

Faced with a situation requiring rapid intervention, the APC may be asked to adopt interim measures pending a decision on the merits of the case.

Article LP. 641-1 of the Polynesian Competition Code provides that The Authority may, at the request of the persons, undertakings or entities referred to in Article LP.620-5 and after hearing the parties concerned, take the interim measures requested of it or which it considers necessary. These interim measures may only be taken if the practice complained of is causing direct and serious damage to the economy as a whole, to the sector concerned, to the interests of consumers or to the environment.

They may include the suspension of the practice in question and an injunction against its continuation. and an injunction requiring the parties to return to the previous situation. They must be strictly limited to what is necessary to deal with the emergency'.

In order to determine whether practices are such that precautionary measures may be ordered, it is therefore necessary to assess :

- The serious and immediate nature of the damage caused to :
    - the economy as a whole,
    - the sector concerned,
    - the interests of consumers,
    - the undertaking making the referral.
- Seriousness, directness and the existence of a causal link between the facts complained of and the infringement are three cumulative criteria.

## Onati's practices cause serious and immediate damage to the sector, to consumers and to the telecom operator Viti.

SAS Viti (Viti) referred to the APC the practices of OPT and SAS Onati (Onati) in the telecommunications markets.

In addition to the referral on the merits, Viti requested interim measures.

In French Polynesia, local roaming is known as "asymmetric". Onati is the only operator with a network covering the whole territory. It is therefore the only provider of a service that enables its competitors (PMT-Vodafone and Viti-Ora) to provide mobile telephony services on islands where they have not deployed their own network. Viti considers that Onati's pricing conditions for roaming services in the outlying archipelagos (Tuamotu, Gambier, Marquesas, Australes) are excessive and manifestly disproportionate. As a result, it has ceased to provide this service and has not offered mobile telephony services in the remote archipelagos since 1 November 2022 and has applied to the Autorité for interim measures.

At this stage, and subject to an examination of the substance of the case, it appears that the pricing conditions proposed by Onati, which require Viti to bear one third of the cost of covering these islands with a telephone network, regardless of market share, are likely to constitute a practice prohibited by Art. 200-2 of the French Competition Code, in particular since Onati has abolished the tariff reduction of 75% initially granted to take account of Viti's size.

The practices complained of consist of the refusal to grant Viti a roaming agreement on fair and non-discriminatory tariff conditions. They are designed to protect the customer base of the dominant operator and its main competitor (PMT) from competitive pressure from the new entrant. The result is a restriction of competition in the retail market for mobile telephony services, irrespective of the market and irrespective of the efficiency of the operators, at a critical time for the development of Viti.

In particular, they deprive the inhabitants of the remote archipelagos, but also all those who wish to go there and benefit from a package allowing them to use mobile telephony services, of the possibility of using Viti's services and of benefiting fully from the opening up of the sector to competition. In addition, Onati's refusal to offer Viti other methods of determining the cost of coverage and the end of the tariff reduction, which has been fully effective since 8 January 2023, are likely to exacerbate the effects of these practices and lead to Viti being squeezed out of the market in the short term.

The conditions laid down by case law for the adoption of interim measures are therefore met, in view of the serious and immediate harm that these practices are causing to the mobile telephony sector, to consumers and to the sector, to consumers and to Viti.

# The decision

The Authority has enjoined Onati to propose to Viti, within a maximum period of ten weeks from the notification of this decision, a tariff offer for access to voice and SMS roaming in the islands of the 'remote archipelagos' in which it has deployed a mobile telephony network allowing Viti to exercise effective competition.

Pending acceptance by both parties of the tariff offer, Onati will apply to Viti, to take account of its small market share, the discount on the proposed coverage tariff implemented between 8 January 2020 and 7 July 2022.

Onati will provide the Authority with several reports to verify that the precautionary measures have been properly applied.

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