

**OPINION N°2023-A-01 OF MAY 17, 2023
ON SETTING REFERENCE INTERCONNECTION TARIFFS
OF MOBILE OPERATORS' MOBILE SMS CALL TERMINATIONS
ONATI, PMT AND VITI FOR 2022 AND 2023**

The Polynesian Competition Authority,

Having regard to the letter received on April 25, registered under number 22/0020 A, by which the President of French Polynesia referred to the Polynesian Competition Authority for an opinion on the setting of reference interconnection tariffs for SMS mobile call termination for the mobile telephony operators ONATI, PMT and VITI for 2022 and 2023;

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

Having regard to the other documents in the file;

The Deputy General Rapporteur and the Government Commissioner heard on the basis of the provisions of article LP. 630-5 of the French Competition Code at the May 17, 2023 meeting;

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

I. INTRODUCTION

1. By letter dated April 18, 2023, registered on April 25 (referral) and April 27, 2023 (attachments), under number 22/0020 A, the President of French Polynesia referred the matter to the Polynesian Competition Authority (hereinafter referred to as "the Authority") for an opinion on the reference interconnection rates (hereinafter referred to as "IRR") for mobile call termination (hereinafter referred to as "MCT") and SMS for the mobile operators Onati (Vini brand), PMT (Vodafone brand) and Viti (Ora brand), for 2022 and 2023.
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 Autorité 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"*.

II. THE CONTEXT

A. SETTING MOBILE TERMINATION RATES

3. 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.
4. 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.
5. 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 opinion¹ on the method used to set these tariffs. It made a number of proposals, some of which were taken up by the government in local law no. 2021-4 of January 7, 2021 and decree no. 504 CM of April 1^{er} 2021, amending the French Polynesian Post and Telecommunications Code (hereinafter "CPT").
6. 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 holder of an authorization."* Article LP. 212-25-1 stipulates that: *"Interconnection tariffs respect the principle of cost-orientation of tariffs / A decree issued by the Council of Ministers sets 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*

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 system for approving admitted telecommunications installers).

evolve according to the degree of maturity of the Polynesian telecommunications market, with a view to ensuring effective and fair competition.

7. 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 establishing interconnection to its network, including in particular: the cost of connection equipment and links."*
8. 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"*.
9. 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.
10. 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.
11. If the tariffs are adopted by the Council of Ministers, each operator draws up its own cost model, using a common methodology known as "CMILT complete *bottom up scorched node*"². The proposed model is then audited by an external consultant on behalf of the DGEN, and exchanges are held with the operators to ensure a degree of consistency in the determination 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

12. 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, concerning the regulatory cost base, stipulated that it should include *"all network costs"* but exclude *"any purchase of interconnection or roaming services"*.
13. On this basis, decrees were issued on December 9, 2021 to set the tariffs applicable to each of the operators³.
14. 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.

² Please refer to APC notice no. 2020-A-02 of June 17, 2020 for a detailed examination of the various models and their implications.

³ Order no. 2712 CM for Onati-Vini tariffs, no. 2807 CM for PMT-Vodafone tariffs and no. 2713 CM for Ora-Viti tariffs.

1. Challenging the rate-setting method and the TAPF ruling of March 29, 2022

15. 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.
16. 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.
17. 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.
18. Point 6 of the judgment of March 29, 2022 states that :

"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 operator". 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".⁴

2. New rates for "voice" services

a) Repeal of tariff decrees

19. The method having been partially invalidated, 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 reference interconnection tariffs 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.

⁴ Tribunal administratif de la Polynésie française, judgment no. 2100234 of March 29, 2022.

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

20. 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.
21. Its opinion⁵ 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.
22. 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 balance and to favor abundance offers.
 - 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).
23. 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 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.

3. SMS rates and the TAPF ruling of November 22, 2022

24. 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.
25. 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.
26. 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.
27. 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

⁵ 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.

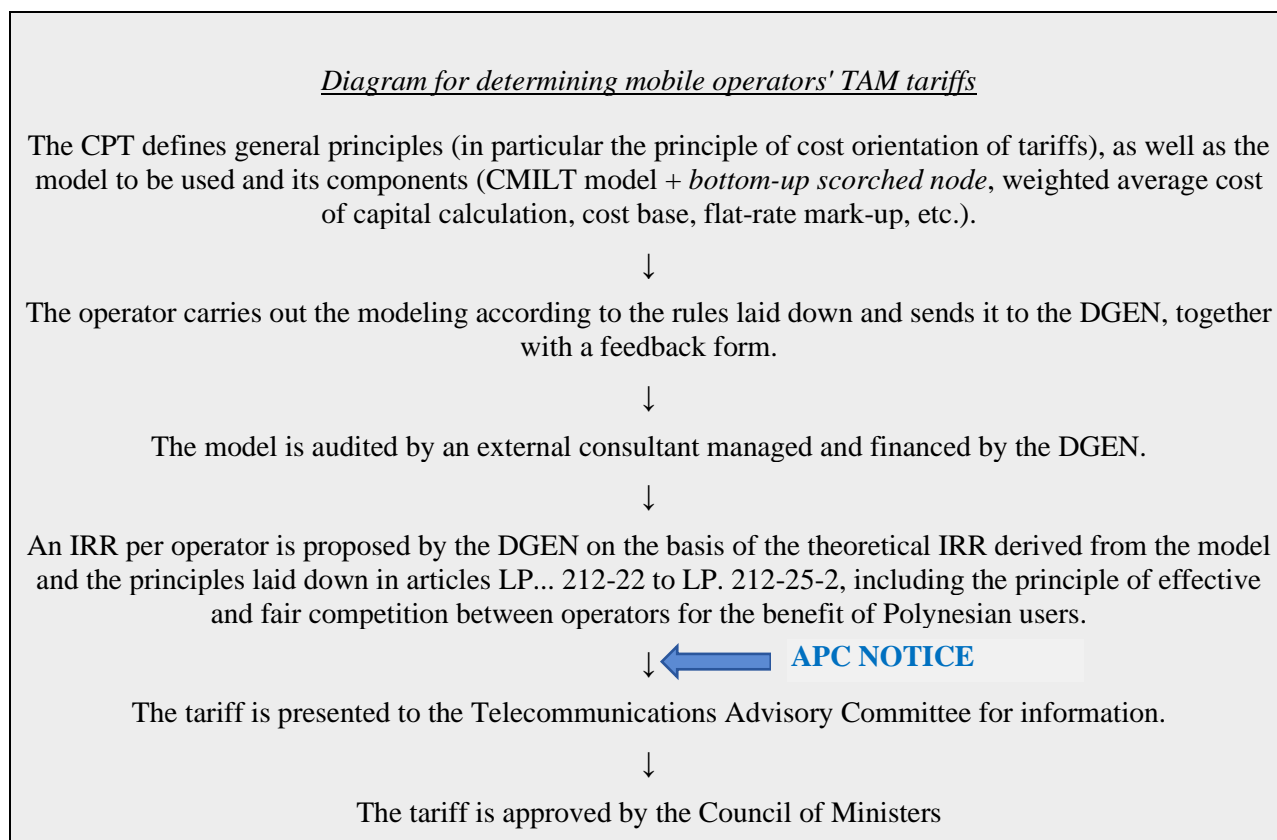
*cost, it does not establish, by maintaining that this pricing was the subject of a consensus between operators, which is contradicted by the present action, that it determined the IRR by seeking a fair balance between, on the one hand, the operators' margin necessary for maintenance, renewal and return 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."*⁶

28. 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.
29. 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.

⁶ Tribunal administratif de la Polynésie française, judgment no. 2200067 of November 22, 2022.

C. REQUEST FOR ADVICE

30. The procedure for setting mobile termination rates involves various stages, as shown in the diagram below:



31. Following the judgment and the repeal of the tariff decrees, the DGEN proceeded to set new tariffs in accordance with this procedure. In particular, in liaison with the firm commissioned by the Pays, the three operators updated their models between December 14, 2022 and January 15, 2023.
32. The new tariffs proposed by the referral are as follows:

<i>In francs per SMS</i>	Tariff proposed and submitted for consultation	
	2022	2023
Onati	0	0
PMT	0	0
Viti	0,28	0,18

33. Before presenting these tariffs to the three operators at a forthcoming Consultative Committee on Telecommunications, and then adopting them in the Council of Ministers, the government wished to obtain the opinion of the Autorité de l'Autorité de France on these tariffs, as it is entitled to do under the French Competition Code.

III. COMPETITIVE ANALYSIS

A. THE COMPETITIVE CHALLENGES OF MOBILE TERMINATION RATES

34. From a competitive standpoint, no other service can replace call termination services on mobile networks⁷. 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 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 (see, for example, opinion no. 05-A-10 of May 11, 2005, § 26).
35. 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.
36. 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.
37. It is these same objectives that will be examined in this opinion. While the Authority is neither in a position nor competent to verify for itself the appropriateness of the amount chosen for the new tariffs, it has assessed the competitive nature of the method chosen, and in particular the following two points: the principle and procedures for determining tariffs in line with the costs incurred (B), and the appropriateness of the government's choice to reduce the tariffs of two of the three operators to zero (C).

B. COST ORIENTATION REDUCES SMS UNIT COSTS AND ASYMMETRY BETWEEN OPERATORS

38. As explained above, interconnection tariffs between operators for voice and SMS have been cancelled for different reasons.
39. The "voice" TAM tariffs were annulled because, although the regulator had intended to respect the principle of cost orientation, with asymmetry between operators, 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. Drawing on the consequences of the Administrative Court's ruling of March 2022, the Pays therefore repealed the previous tariff decrees, asked operators to integrate these roaming charges into their models, and then proposed

⁷ See Conseil de la concurrence, opinion no. 07-A-05 of June 19, 2007 on a request for an opinion from the Autorité 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.

new tariffs. These were approved by the Autorité on October 17, 2022, and adopted by decrees no. 2623 and 2624 of December 8, 2022.

40. In the case of SMS, on the other hand, the lack of cost orientation of these tariffs and the uniform application of a tariff set at one franc per SMS are grounds for cancellation.
41. This amount appeared doubly problematic because :
 - (i) it is significantly higher than the cost of routing an SMS from a third-party operator, for all three operators;
 - (ii) 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.
42. On the first point (i), in its referral, the government notes that the market is unstable, with tariffs at one franc per SMS, which even leads to financial flows between operators that are greater than the revenues associated with SMS in their telephony offers.
43. On the second point (ii), it is important to note that the incumbent operator's network is *a priori* more amortized, and that it benefits from significant economies of scale, given the high weight of fixed costs in the network industries. As a result, the unit cost of calls is lower than for new entrants. The idea behind asymmetrical tariffs is that the economies of scale enjoyed by the majority operator should be reflected in the tariffs of the TAMs, to the benefit of the latest entrants, whose tariffs and consequently unit revenues will be higher, leading to a positive balance. These revenues enable them to cover their costs and make the investments needed to establish a sustainable foothold in the network industry.
44. The government's initial choice was therefore particularly advantageous for the incumbent operator, with the lowest costs per unit of consumption thanks to its economies of scale (Onati), and particularly penalizing for the last entrant (whose real costs per SMS are the highest) and for the intermediate operator (with lower unit costs but very high volumes).
45. This is all the more the case given that, in the case of SMS, as in the case of voice, the main operator's subscribers receive more incoming SMS from smaller operators - between 52% and 65% depending on the operator and the year - than they send outgoing SMS to the smaller operators⁸. With identical tariffs, interconnection financial flows would therefore be very favorable to the incumbent operator, Onati. For the other operators, on the other hand, the balance would be negative, and would weigh proportionally more heavily on their operating costs, given their smaller market shares.
46. For these reasons, following the TAPF decision, the DGEN determined costs according to the same methodology used to determine "voice" tariffs and described above (see §§ 30 et seq.)

⁸ Based on DGEN data. With identical offers, however, this balance should be close to equilibrium, with customers receiving on average as many calls as they make. This imbalance, observed for all operators, is perhaps due to the architecture of the offers (with smaller packages or more prepaid packages at the incumbent operator, which would encourage its customers to give priority to receiving rather than making calls). See in particular opinion no. 2022-A-03, § 82.

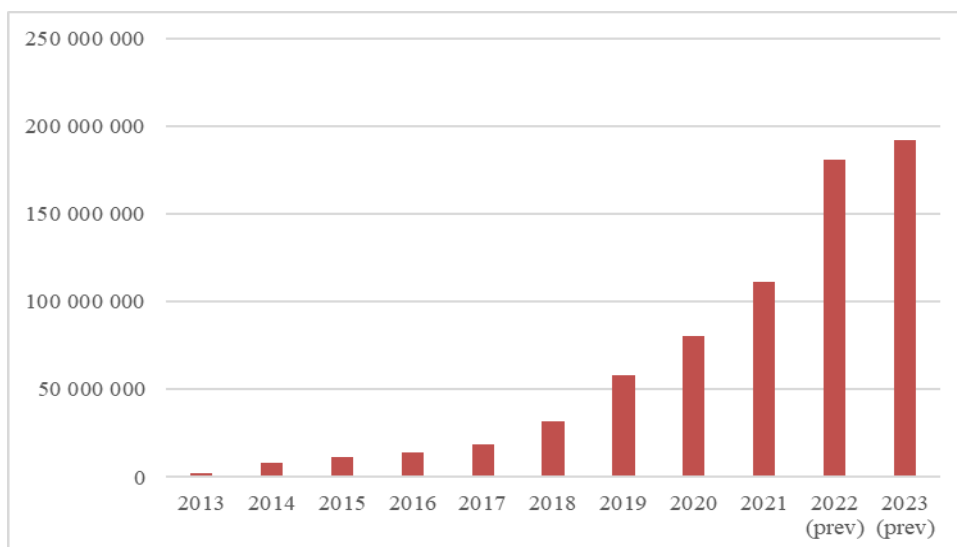
47. It resulted in the following costs, which varied from operator to operator but were all well below one franc:

<i>In francs per SMS</i>	Model-calculated rates (exposed costs)	
	2022	2023
Onati	0,0005	0,0003
PMT	0,0270	0,0271
Viti	0,2822	0,1803

48. There are many reasons for this considerable drop in costs:

- A very significant increase in the number of text messages exchanged between operators, which are unlimited in most packages, reducing the unit cost (nearly 200 million per year, compared with 100 million in 2021);
- An upward trend in the share of mobile data in data flows, reducing the relative share used by voice and SMS and the associated fixed costs;
- The reduction of certain service rates.

Total number of SMS exchanged between operators



49. In the Authority's view, 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. In fact, they enable tariffs to be brought down to a level in line with the costs incurred by operators, taking into account their different market situations.

50. With regard to the method used, the Authority refers to its opinion no. 2022-A-03 of October 17, 2022, in particular with regard to the discussions concerning the date on which roaming charges are taken into account, which was carried out according to the same principles as those used to determine tariffs for "voice" services, for which it gave a favorable opinion.

51. However, it is clear from the request for an opinion that, having determined these tariffs, Pays then wished to depart from a purely "theoretical" cost orientation for two of the three operators concerned (Onati and PMT). While the TAPF, in its judgment no. 2200067 of November 22, 2022,

recognized that regulatory reasons could in some cases lead to a departure from strict cost orientation, in order to meet the objective of "effective and fair competition between operators" (article LP 212-25-1 of the CPT), it is worth examining whether this is the case for the tariffs proposed for the Authority's consideration.

C. THE PROPOSED AMENDMENT TO COST ORIENTATION FOR TWO OF THE THREE OPERATORS

52. For two of the three operators (Onati and PMT), the project submitted to the Authority provides for a move away from pure cost orientation, with zero tariffs. However, it appears to the Authority that this proposal is to the detriment of one of the operators (PMT).

1. The challenges of asymmetry and downward tariff trends

53. 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.

54. 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 tariffs to be reduced at lower cost

55. As a result, the Autorité 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.

56. 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. But 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 zero⁹, 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.

⁹ 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.

57. Such an assumption is provided for in the CPT¹⁰, 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 conditions¹¹.
58. 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).
59. In its opinion 2020-A-02, the Autorité had proposed - after the phase of temporary tariff asymmetry between operators - to determine a gradual reduction in tariffs (*glide path*) to be 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.
60. The proposed process was therefore progressive:
- First, choose a model that allows us to determine lower costs (CILT type), but still asymmetrical;
 - in a second phase, in a mature market, introduction of a symmetrical but very low tariff.

2. The proposed pricing plan

61. The project proposes retaining the model rate for Viti, but reducing the rate applied to Onati and PMT to 0.
62. The tariffs submitted to the Council of Ministers would be as follows (last column):

<i>In francs per SMS</i>	2020	2021	Repealed rates		Model-calculated rates (exposed costs)		Tariff proposed and submitted for consultation	
			2022	2023	2022	2023	2022	2023
Onati	1,00	1,00	1,00	1,00	0,0005	0,0003	0	0
PMT	1,00	1,00	1,00	1,00	0,0270	0,0271	0	0
Viti	1,00	1,00	1,00	1,00	0,2822	0,1803	0,28	0,18

63. There are several reasons for this proposal:
- an increase in the number of SMS messages, driving unit rates close to 0 ;
 - Increasingly symmetrical flows between Onati and PMT ;

¹⁰ CPT, article LP. 212-25-1: "Interconnection tariffs comply with the principle of cost-orientation of tariffs / A decree issued by the Council of Ministers sets out 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.**

¹¹ 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).

- the deregulation of SMS tariffs in mainland France since 2015¹², which can be seen as a first step towards tariff freedom.

64. On the other hand, the Pays considered the situation of the last operator to enter the market, Viti, to be specific. Viti is much less developed than its competitors (less than 1% of the market), and is still exposed to high unit costs. It has therefore decided to maintain tariff asymmetry for this player alone, by retaining the tariffs derived from the cost model.

3. Very different financial consequences for different players

65. The Authority can only welcome the pragmatic decision to move towards lower TAM tariffs, which we have seen are likely to increase usage for consumers. However, it feels that, in detail, the proposal submitted to it is not adapted at this stage to the competitive situation on the Polynesian market, and should be amended.

66. In fact, the consequences of the decision to reduce the tariffs of two of the three operators to zero are very different depending on the operators concerned, and actually give the incumbent operator an unfair advantage.

67. With rates like these :

- tariff flows between PMT and Onati for SMS call terminations would be zero (i.e. balanced);
- PMT and Onati would pay the rate derived from the cost model for their outgoing SMS messages to Viti, without charging the equivalent service for incoming SMS messages from Viti;
- symmetrically, Viti would not pay interconnection charges for outgoing calls, but would be remunerated on the basis of its costs for incoming SMS from the other two operators.

68. At first sight, if the dominant operators were in equivalent situations, such a choice would be judicious. It could be seen as a first step towards a gradual alignment of all tariffs towards zero cost.

69. It turns out, however, that the consequences are very different for Onati and PMT.

¹² ARCEP, Press release "SMS call termination", January 29, 2015.

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

LITERARY VERSION - NON-CONFIDENTIAL

	Initial rate (1 F)	Billing based on "theoretical" costs	Tariff at 0 for Onati and PMT and according to costs for Viti
Onati	<u>Surplus balance</u> <i>Symmetrical tariffs for lower costs and positive flows</i>	<u>Deficit balance</u> <i>Prices well below competitors</i>	<u>Balance close to equilibrium</u> <i>Pays only for outgoing SMS messages to Viti</i>
PMT	<u>Very negative balance</u> <i>Symmetrical tariffs for higher costs and negative flows</i>	<u>Surplus balance</u> <i>Higher rates at Onati</i>	<u>Balance close to equilibrium</u> <i>Pays only for outgoing SMS messages to Viti</i>
Viti	<u>Very negative balance</u> <i>Symmetrical tariffs for higher costs and negative flows</i>	<u>Surplus balance</u> <i>Much higher rates but moderate flows</i>	<u>Surplus balance</u> <i>Low volumes but only revenues</i>

ENCRYPTED VERSION - CONFIDENTIAL (BUSINESS SECRET)

en MF		Solde 2022	Solde 2023	Solde total
ONATI	Tarif 1 F	-0,4	8,0	7,6
	Tarif coût réel	-2,5	-2,6	-5,1
	Tarif Gvt	-0,2	-0,2	-0,4
PMT	Tarif 1 F	1,1	-7,6	-6,6
	Tarif coût réel	2,2	2,1	4,3
	Tarif Gvt	-0,2	-0,3	-0,5
-	Tarif 1 F	-0,7	-0,4	-1,1
VITI	Tarif coût réel	0,4	0,4	0,8
	Tarif Gvt	0,4	0,5	0,9

71. As can be seen, the project leads to flows close to equilibrium for PMT and Onati, but in surplus for Viti.
72. However, 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.
73. 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 (0.027 F per SMS for Onati, and between 0.0003 and 0.0005 F for PMT), it nevertheless remains extremely different. Thus, PMT's cost is between 54 times (in 2022) and 90 times (in 2023) higher than Onati's.
74. Given that around 200 million SMS messages are exchanged every year between operators, mainly PMT and Onati, if we assume that incoming SMS messages are split into two equal parts, setting the tariff at zero rather than adopting a cost-oriented tariff would not deprive Onati of any

significant revenues (F50,000 in 2022 and F30,000 in 2023), but would deprive PMT of significant revenues (F2.7 million in 2022 and F2.71 million in 2023).

75. The effects of this proposal are therefore unbalanced between operators, to the detriment of PMT and to the benefit of Onati.
76. What's more, the justifications put forward by Pays do not appear to be such as to remove the need for cost orientation. In particular, 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%)¹³ and although costs are low, they are still far apart between the two operators.
77. Thus, according to the Authority, Onati's tariff could eventually be reduced to zero, given that it has become virtually nil, and that the financial flows generated by the implementation of the model and the collection of TAMs are certainly much higher than what it would earn from billing incoming flows (its total revenues linked to this service are estimated at only 50,000 F in 2022 and 30,000 F in 2023).
78. For PMT, on the other hand, it seems premature to opt for zero billing, even if the financial stakes remain modest, with losses estimated at around F5 million over the two years (to the benefit of Onati). It should also be noted that such an asymmetry could legally weaken the choice made by French Polynesia in the event of litigation.
79. On the other hand, 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.

4. Proposed move towards deregulation of SMS rates appears premature

80. 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, and in particular in the case of monopoly services such as 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).
81. The request for an opinion submitted to the Authority thus explicitly presents the setting of tariffs at zero for two of three operators as a first step towards deregulation of SMS tariffs, in favor of simple monitoring by the Country. It argues that this has been the practice in France since 2015, and that flows are symmetrical between the two main operators.
82. However, the situation of the Polynesian market does not allow such deregulation at this stage.
83. Admittedly, it may seem desirable, at least in the medium term, for tariffs to converge towards zero financial flows between operators. This is a judicious regulatory choice, as the costs of different operators converge.
84. But deregulated tariffs, envisaged in the referral as the next step, do not mean zero tariffs. They mean tariffs freely negotiated between operators. The implications are therefore very different. To be fair, such negotiation implies relatively balanced flows or balances of power between the various operators. Otherwise, in the case of monopoly services, the risk is 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, strengthening the position of the leader, or if one of them counters the excessive tariffs with its own excessive tariffs, leading to an inflationary spiral.

¹³ Decision no. 2023-PAC-01, § 70.

85. The consequences would be more expensive services to the detriment of Polynesians, less generous rate plans or plans favoring 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.
86. 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.
87. In particular, the Autorité 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, 2021¹⁴ and Viti in decision¹⁵ 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, in order to implement tariffs more in line with fair competition as quickly as possible.
88. 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 Ministers¹⁶. 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 Autorité to resolve these disputes. On several occasions, and most recently in its opinion no. 2022-A-03 of October 17, 2022, the Autorité 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.
89. 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, as well as 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.
90. This question also raises the issue of how to exercise regulation.
91. 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 subject to contentious appeals, as pointed out in §§ 12 à 29 of the opinion.
92. This current combination of regulatory and supervisory functions has a negative impact on competition and incentives to invest in the telecommunications sector in French Polynesia, and is

¹⁴ 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.

¹⁵ 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.

¹⁶ 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 telecommunications 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.*" .

likely to undermine the integrity of the way public authorities operate in the sector. For its part, the French Competition Authority is confined to purely advisory opinions, or to the contentious procedure (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 intervene too late to re-establish competition on its merits in a market that is in the process of being structured, and cannot, in the field of network economies that are in the process of being opened up, replace independent *ex-ante* regulation, which would make it possible to overcome these various pitfalls.

93. Entrusting the task of regulating French Polynesia's telecommunications sector to an independent entity is a sufficient solution to these problems. This entity will need to be independent in its operations, with powers of coercion, human and technical resources commensurate with the complexity of the task, and subject to judicial control.

Recommendations:

In order to limit the risk of litigation, to enable the telecommunications regulator to fully exercise its 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 for consumers (individuals and businesses), the country could :

1. In the short term, SMS tariffs for 2022-2023 :
 - Set SMS rates based on the "theoretical" costs derived from the model for all operators
2. In the medium term, with regard to tariff regulation in general :
 - Opt for a cost model that allows you to obtain lower tariffs (of the CILT type, i.e. without taking average network costs into account).
 - Set up a system for the transmission of regular, accurate information from operators on flows, usage and their position in the market, and ensure the effective implementation of an observatory to process this information.
3. Set up independent telecommunications regulation.

Deliberated on the oral report of Antoine Callot, Deputy General Rapporteur, by Johanne Peyre, Chairman, Youssef Guenzoui and Jacqueline Riffault-Silk, members.

The President

Johanne Peyre