Presentation of the argument of the parties

Laurent Flochel

Professor of Economics

University Lyon 2

Information exchanges

Reference to the case law John Deere (UK tractors)

Transparency is pro competitive in a competitive market but can be anticompetitive on a highly concentrated oligopoly.

- Analysis of the effect of information exchanges on competition

3 criteria :

1) market structure
2) confidentiality of information
3) nature and periodicity of exchanged information

Information exchanges - Arguments of the parties

Market structure and competition intensity (1)

- High volatility of market shares both in the short and in the long run

- John Deere : oligopolistic, concentrated and mature market, stable or declining demand.

Mobile services : differentiated products, growing market, no reprisals possible.

- Intensive competition even after 2000. A lot of example to (try to) show that competition was effective.

Information exchanges - Arguments of the parties

Market structure and competition intensity (2)

- International comparisons to show that prices on the French market are low.

- Volatile demand with a large part of consumers changing of providers.

- The smallest (Bouygues) is not able to implement reprisals.

Information exchanges - Arguments of the parties

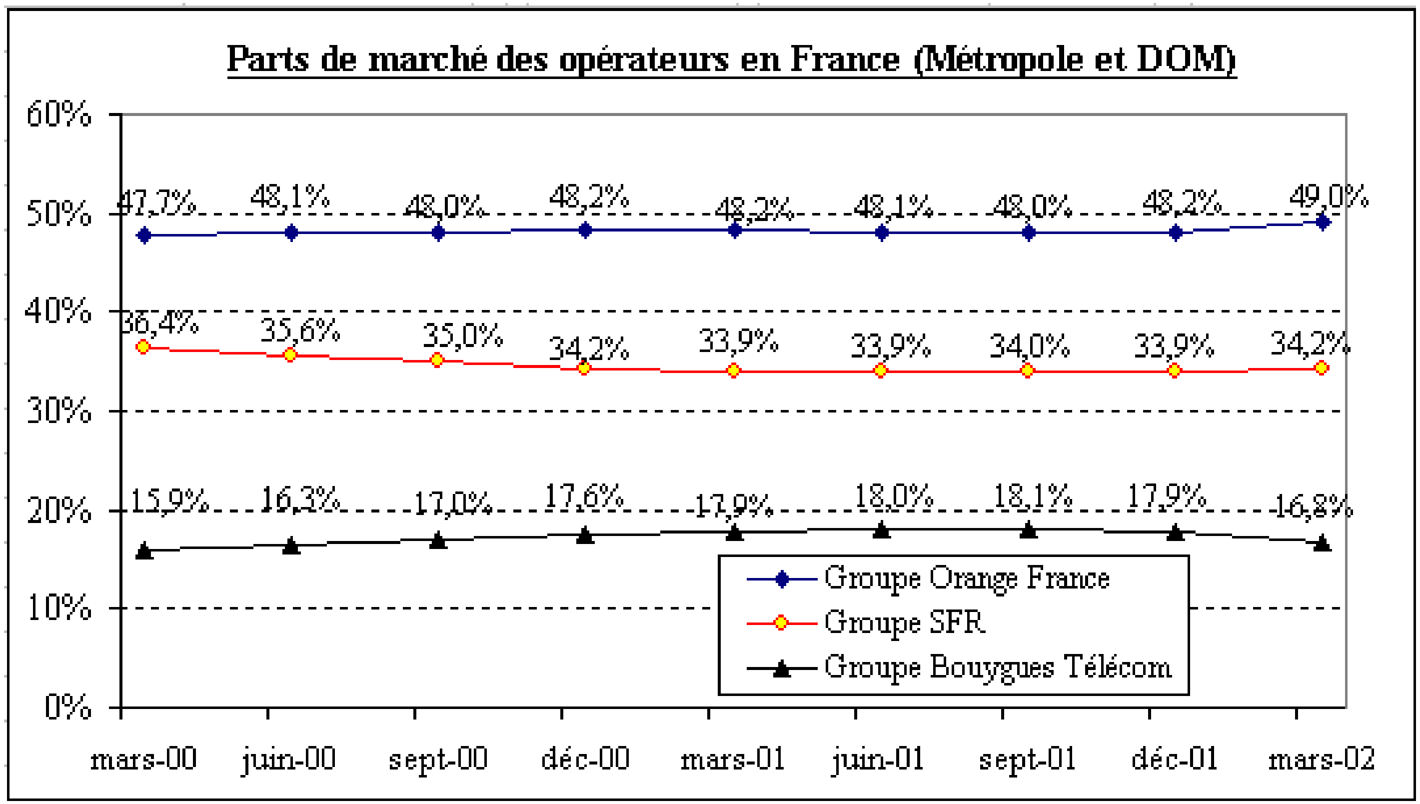
Nature of exchanged information (1)

- Exchanged information have not contributed to increase market transparency.
- The telecom regulatory agency (ART) publishes monthly or quarterly a survey of the mobile market : parties argue that all exchanged information were public or could be recomposed using this survey.
- Market is already transparent on market shares and sales volume (data published by ART, distributors, marketing panels…).

Information exchanges - Arguments of the parties

Nature of exchanged information (2)

Information publicly available on the ART web site until december 2004



Information exchanges - Arguments of the parties

Nature of exchanged information (3)

Information publicly available on the ART web site until december 2004

MOBILES PANEL : NATIONAL MARKET
Public Networks (Metropolitan France, overseas departements, Mayotte and St Pierre et Miquelon)
dece-2004

(values rounded to the nearest hundred)

	dece-2003	march-2004	june-2004	sept-04	dece-2004
Total customers (1)					
Orange France	20 328 600	20 371 200	20 395 800	20 605 200	21 251 500
SFR	14 724 400	14 827 800	14 942 200	15 139 400	15 819 800
Bouygues Télécom	6 630 100	6 740 400	6 903 500	7 123 000	7 468 400
Dauphin Telecom	-	1 400	1 900	2 600	5 300
Outremer Telecom	-	-	-	-	6 800
OVERALL TOTAL	41 683 100	41 939 400	42 241 500	42 870 200	**44 551 800**
Postpaid customers					
Orange France	11 762 500	11 934 600	12 169 800	12 492 400	12 878 400
SFR	8 501 400	8 672 200	8 886 400	9 142 500	9 601 600
Bouygues Télécom	4 272 600	4 400 400	4 526 800	4 697 700	4 938 600
Dauphin Telecom	-	0	0	100	300

Information exchanges - Arguments of the parties
Nature of exchanged information (4)

The same information after december 2004

MOBILES PANEL IN METROPOLITAN France Open public Netwoks March 2005					
(values rounded to the nearest hundred)	march-2004	june-2004	sept-2004	dece-2004	march-2005
- **Total customers (1)**	40 631 400	40 923 800	41 527 600	43 139 700	43 484 300
- **Quaterly net growth (3)**	242 700	292 400	603 800	1 612 100	344 600
- *Quaterly net growth in %*	*0,6%*	*0,7%*	*1,5%*	*3,9%*	*0,8%*
- **Postpaid customers**	24 391 400	24 942 600	25 670 400	26 714 800	27 140 200
- **Quaterly net growth (3)**	453 600	551 200	727 800	1 044 400	425 400
- *Quaterly net growth in %*	*1,9%*	*2,3%*	*2,9%*	*4,1%*	*1,6%*
- **Postpaid in % of total customers**	60,0%	60,9%	61,8%	61,9%	62,4%

Information exchanges - Arguments of the parties

Nature of exchanged information (5)

- Exchanged information were not strategic : past data, not precise data, on volumes not values, and did not allow to supervise individual firms behaviors.

Information exchanges - Arguments of the parties

Reduction of commercial autonomy

- Orange argues that providers defined their commercial objectives independently, which were not uniform and were rational.
- Crucial point : information and data can be exchanged if they are not used for a non competitive purpose, such as supervising competitors behavior or exercising reprisals in case of deviation from the collusive path.
- Transparency of this dynamic and innovating market shall reduce barriers to entry since potential competitors can better evaluate their profitability.

Agreement - Arguments of the parties

Beam of indices :

1) Firms documents relating the agreement : not detailed here

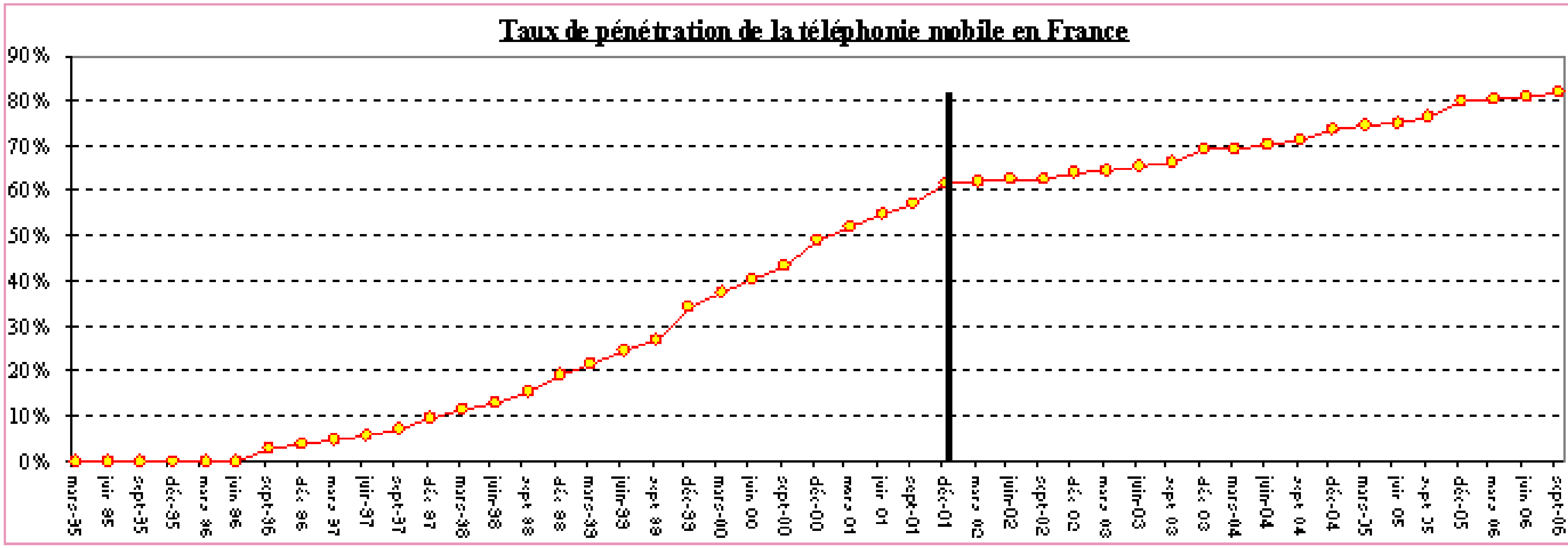
2) Observation of market shares : high volatility of market shares

Monitoring a freeze of market share should be difficult since a majority of sales are indirect through distributors.

3) Similitude of commercial policies : decrease of acquisition cost of new subscribers is rational : S curve

Agreement - Arguments of the parties

3) The S curve : decrease of acquisition cost of new subscribers is rational



<u>Phase 1</u> : competition on new subscribers => access subsidized

<u>Phase 2</u> : competition on existing consumers

Agreement - Arguments of the parties

- The smallest provider (Bouygues) argues that there exists a duopoly (Orange and SFR) and a competitive fringe (Bouygues)
- A theoretical model is provided which shows that an agreement at 2 with a fringe is more profitable than an agreement at 3.
- Similar parallelism in other European markets.

Econometric study provided by SFR

competition | agreement ? | competition

2000 — 2002 — t

$$Price_{i,k,t} = \lambda \, agreement + \underbrace{\alpha X_{i,k,t}}_{\text{Exogenous observable variables}} + \varepsilon_{i,k,t}$$

i = provider

k = product (192 !)

Exogenous observable variables

$$agreement = \begin{cases} 1 \text{ between 2000-2002} \\ 0 \text{ before 2000, after 2004} \end{cases}$$

Statistical significance of λ ?

Econometric study provided by SFR

competition | agreement ? | competition → t

2000 | 2002

$$Price_{i,k,t} = \lambda \, agreement + \underbrace{\alpha X_{i,k,t}} + \varepsilon_{i,k,t}$$

Exogenous observable variables

i = provider
k = product (192 !)

$$agreement = \begin{cases} 1 \text{ between 2000-2002} \\ 0 \text{ before 2000, after 2004} \end{cases}$$

Statistical significance of λ ? → NO !

French Mobile Cartel case

Discussion

Laurent Flochel

Professor of Economics

University Lyon 2

Discussion :

- Information exchange
- Why doing an agreement on market shares and not on prices ?
- Why doing an agreement on market shares in volume ?
- Competitive analysis : Collusion or low competition ?
- Final remark

Discussion : Information exchange

- John Deere : information exchange on individual sales.

- Information exchange is condemned without any need of proof of its anticompetitive use.

- Need to prove that information exchange reduces uncertainty on the possibility to forecast competitor's behavior.

Discussion : Information exchange

Information exchanges can induce efficiency gains

• If demand or cost uncertainty : information exchanges allow to better rationalize production and investments.

• Benchmarking : helps firms devising incentive schemes (Kühn 2001).

• Information exchanges on prices or quantities is a more effective collusive device than about demand.

=> No need to exchange individual and disaggregated information to reap efficiency gains.

Discussion

- John Deere : secret rebates, prices non observable : information on sales is necessary to supervise individual behavior and to detect eventual deviation.
- Mobile : prices are public and there are no secret rebates.
- Economic theory : agreement on prices, not on market shares.

Why should providers have done an agreement on market shares and not on prices ?

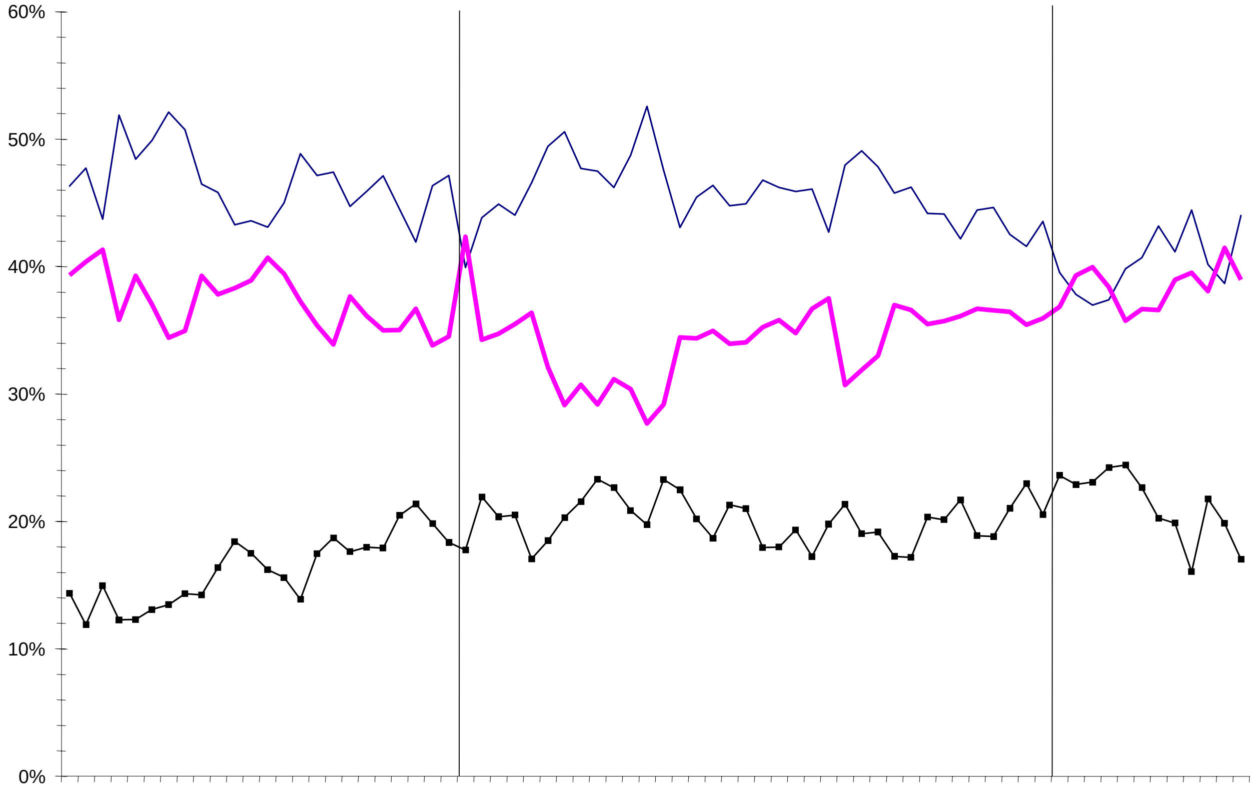
Discussion : why doing an agreement on market shares and not on prices ?

• Prices are so opaque that it is too complicated even for providers to supervise an agreement on prices: only an agreement on market shares can be implemented.

• Providers choose freely their tariff in order to adjust their market shares to the agreement.

• Forecasts on demand reaction are not very precise. Agreement on market shares in annual average, with fluctuations around it.

Discussion : Fluctuations of market shares around annual average



Discussion : why doing an agreement on market shares and not on prices ?

- Exchanged information needed to sustain such an agreement : individual flow of new subscriptions, cancellations and net flow of subscriptions.

- Only net flows are publicly available on the ART survey. => Knowing gross flows and cancellations (privately exchanged) allows to better supervise the competitors' competitive strategy.

Discussion : why doing an agreement on market shares in volume ?

- The condemned cartel was on market shares in volumes (number of consumers), not values, nor sold minutes.

- Consumers are very heterogeneous. Cheating on targeted big consumers should be profitable without violating the agreement on market shares.

This is a strong factor of instability of the hypothetical cartel.

Discussion : why doing an agreement on market shares on volume ?

- An agreement on market shares in value should have been more stable.
- Exchanged information concerns only volumes not values.

If the information exchanges was for anticompetitive purpose, why not having exchanged information on values ?

Discussion : Competitive analysis (1)

• 2 phases competition :

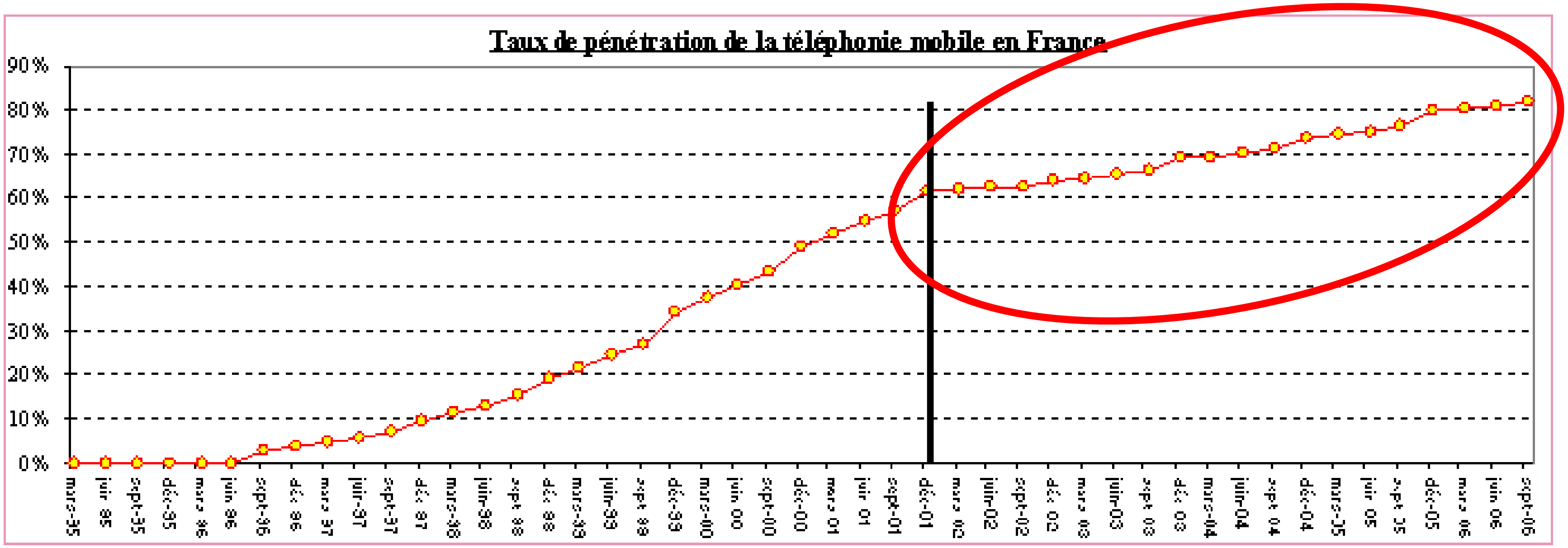
- Phase 1 (1997-2000) : Competition on new subscribers: building the installed base.

Subsidy of access (mobile phone) by providers to attract new subscribers. In counterpart, minimum term contracts (12 or 24 months).

- Phase 2 (2000-2003) : Competition on consumers with switching cost between 2000 and 2003.

Decrease in the subsidy of access (acquisition cost of a new consumer) along the period.

Discussion : Competitive analysis (2)



Phase 1 : competition on new subscribers

Phase 2 : competition on existing consumers

Discussion : Competitive analysis (3)

The two proofs of the agreement for the Council:

- Parallelism: All providers switched to phase 2 at the same time.

- Market shares stability.

Discussion : Competitive analysis (4)

The ingredients of competition in phase 2:

• Sophisticated and non transparent pricing to relax price competition : non linear tariff.

• switching costs : no phone number portability, long term contracts etc…

• fidelity programs

Discussion : collusion or low competition ?

- In phase 2, each providers has an installed base with fidelity programs and switching costs. If there is competition, this is not on new subscribers but on each competitor's installed base.

- A provider need to propose very low prices to attract competitors' subscribers. It should also propose this low prices to all of its own consumers: capturing new consumers should be very costly.

Competition between fat cats (Fudenberg - Tirole) and competition intensity is low

Discussion :

Two questions :

1) Assessing collusion : Empirically, is competition between fat cat so different than collusion ?

2) Firms take risk to collude (they can be detected, here fines = 534 M€). The incentive to collude is higher when competition is fierce

discussion : final remark

- Finally, competition should be harsher with less switching costs. In particular without subsidized access, and then without long term contracts : This is more a problem of *ex ante* regulation than *ex post* control.

- Today, even if there is no more agreement, the existing market structure is not very competitive because of the very high switching costs.

French mobile cartel case

The end….

Anne Perrot, French Competition Council

Nadine Mouy, French Competition Council

Laurent Flochel, University Lyon 2