



French mobile operators case (november 2005)

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ACE Mannheim, december 2006**

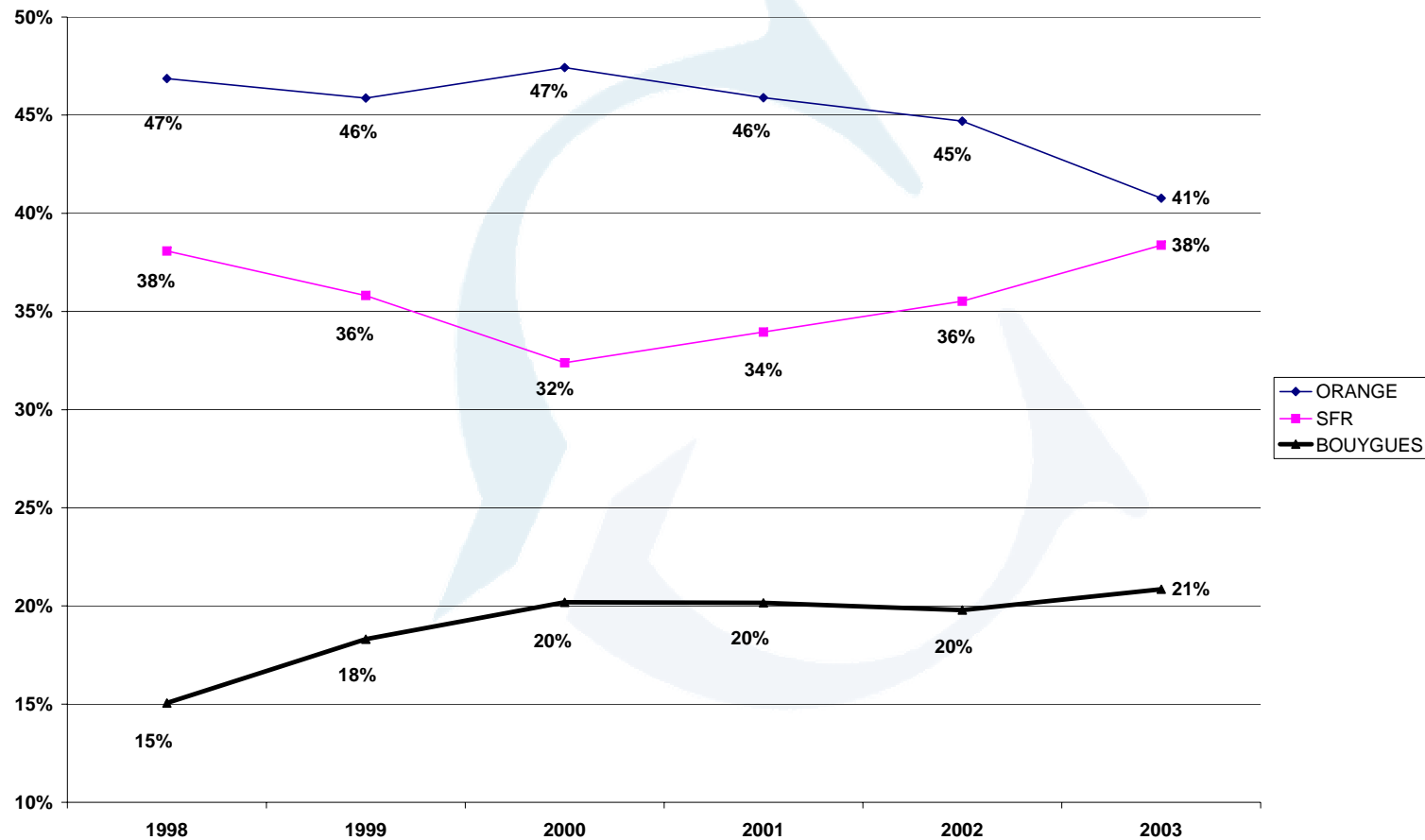
Part 1 : Facts

- Complaint from UFC Que Choisir (consumers ass.)
- Downraid July 2003 (Orange, SFR, Bouygues Telecom)
- 2 main findings :
 - ◊ Information exchanges
 - ◊ Indications of an agreement on market shares



Facts

Background for France Mobile phone sector : 3 operators, Orange (1st), SFR (2nd), Bouygues Telecom (last, 1996)



Facts on information exchanges

- Internal e-mail on Bouygues Télécom PC : last month gross and net sales, and cancellations for Orange and SFR
- « *I remind you that these figures are exchanged between the 3 operators on a confidential basis. There cannot in any way be communicated outside and, especially to our regulators (ART, minister, ...)* »
- « as usual since 1997, stopped after july 2003
- « *A few days before sending the figures to ART...to anticipate financial communication on the given figures* »



Facts on information exchanges

Background

- ART's mobile sector survey 1997-2000 : monthly net sales and total number of subscribers
- After 2000 : published on a quarterly basis but figures given to ART every month ;
breakdown prepaid/postpaid added
- Availability through other sources ?

Utilisation

Hand-written memos, boards of directors reports :
numerous comments on information exchanged

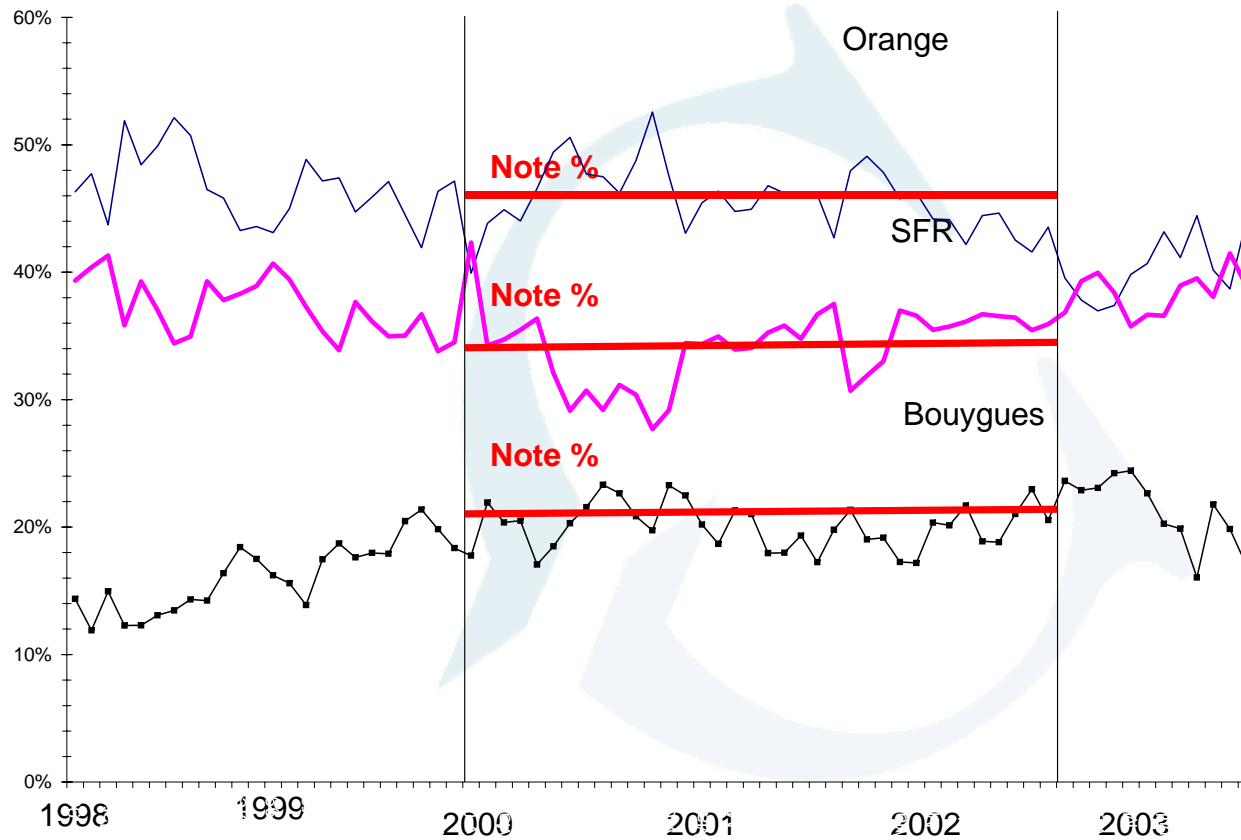


Facts on market shares agreement

- **Handwritten note on SFR premises :** « *MB (Orange's president) is OK to renew in 2001 the 2000 agreement on V.B. market shares, even though they have not kept to it on 2000 last half year. PM (Bouygues' president) after having asked for 23% accepts 22% »*
- « *Agreement is with shareholders : «they « allow » the firm executives to aim for X% market shares? »*
- **Handwritten notes on Orange premises :** « *2000 EBITDA of 10GF presupposes the success of the policy for market pacification »*
- « *market shares results : no phone at 75€ - SFT/BYT/ITI agreement → get 90€ on 2/04 » « won't be attacked without firing back ? »*
- « *market shares Yalta »*



Facts on market shares agreement



Gross sales marketshares



Facts on market shares agreement

Trend in prices very difficult to grab (numerous pricing plans combining basic time price, call period, called numbers, indivisible calling time, roll-on minutes, price for off package time + continuous changes)

- Investigation price survey : decrease in subscriber-acquisition costs (subsidies for handsets) ; +5% on packages prices ; - 10% on prepaid cards
- INSEE F.Magnien paper on price change in mobile telephone « constant usage index » = end of price fall
- ARCEP : time limit on card use shortens for prepaid; packages lowest prices go up ; not « price animated » especially for small users
- Average revenue per minute picks up



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Part 2 : Council's analysis

Council's analysis on information exchange

- EU case « UK tractors » ; CFI « Fiatagri » and « John Deere »
 - « On a truly competitive market ie the atomized nature of the supply » highly concentrated oligopolistic market on which competition is already greatly reduced and exchange of information facilitated »
 - market structure
 - « Exchanges of precise information at short intervals, on a regular and frequent basis »
 - nature of the information



On the nature of information

« available through other sources »

→ Business secret, (« confidential », not published by ARCEP, cannot be made up with distributors sales, newspapers...)

« Not precise, no break down between prepaid and postpaid (≠ ARCEP quarterly publication), no values »

→ Precise (gross sales and cancellations per operator) enough to be used as a basis to survey the market

→ on a frequent basis (every month)

→ best way to make up for lack of price transparency :
« synthetic indicator on competitive efforts of competitors »

→ Freshness : first days of the months

On market structure (1)

Oligopolistic (three operators), very high barriers to entry (licences, networks fixed costs), no MVNO at the time

« ***Differentiated products*** » : homogeneous enough (minutes of communications) to be on the same market even if differentiated because of numerous pricing combinations)

« ***Volatility of market shares*** » : stabilizes after 2000

« ***Fast growing demand*** » : slowing down after 2000 « as well known in networks goods, acquisition of the largest users base possible is central, then high switching costs allows charging higher prices

On market structure (2)

« *competition is fierce* »

- subsidies after 2000 ; parallel prices moves unfavorable to consumers

« *punishment of deviations is impossible bc of high switching costs* »

- information exchanges ensure transparency (facilitating practise) ;
- switching costs have grown higher and higher since 2000 and price elasticity is not so low that it forbids punishment



On the anticompetitive effect

« information exchanges are anticompetitive only if they are the only feature lacking to a tacit collusion situation (ie Airtours/Firstchoice), if they allow firms to act as one, totally suppressing competition between them : if deviations are punished (Orange deviated and was not punished) »

- Lessening of competition, compared to a « no information exchanges situations » must also be prohibited
- reveals positions and strategies, so reduces uncertainty
- informations have been actually used to survey the market and take commercial decisions
- did not put forward any other efficient purpose
- Even if does not underpin any other anti-competitive arrangement

Council's analysis on market shares agreement

« *handwritten stuff is misunderstood* »

- no credible explanations, importance played down
- means what is written ie the 3 operators agreed in 2000 to stabilize their respective market shares, in order to « pacify the market » (or Yalta) and thus monitor the « landing of the market (lower acquisition costs, higher prices)

! **Material evidence, not only economic proof**



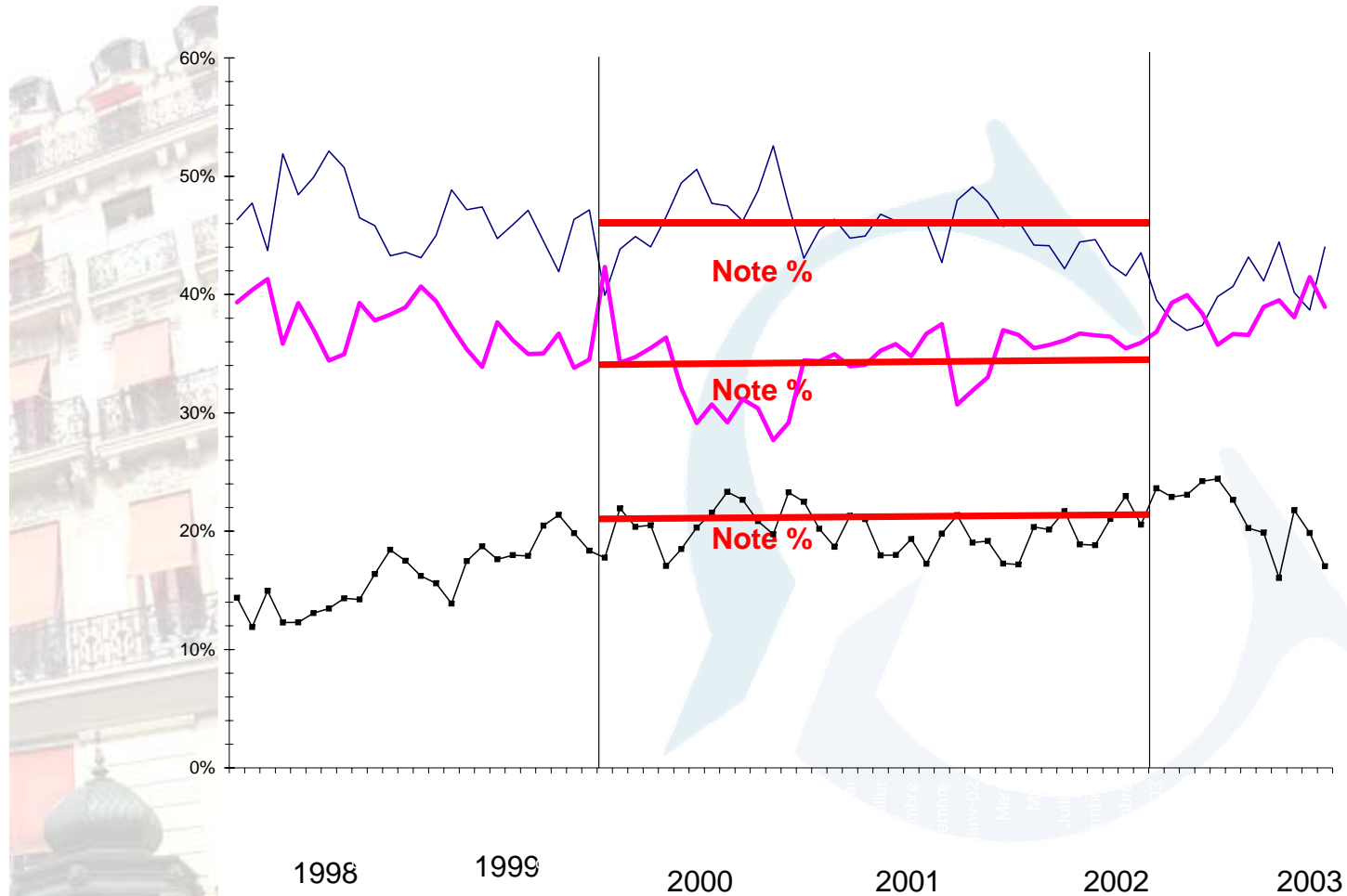
Council's analysis on market shares agreement

« *Market shares are instable, impossible to monitor* »

- instable in the short run but in the longer run, stabilizes from 2000 till 2002 last quarter
- Possible to monitor ; executives' memos show that they had estimations on price elasticity and were anticipating market shares reactions to price moves



Facts on market shares agreement



— Orange Bouygues T
— SFR

Gross sales marketshares

Council's analysis on market shares agreement

« *intensive competition, no parallelism* »

- certain parallelism in acquisition costs, in pricing conditions for small users (reduction in time period of use for small amount prepaid cards), in average revenues per minutes (stabilizes);
- independant prices moves are not inconsistent with an agreement to stabilize market shares (if decrease, have to be brought up) nor is advertising and marketing for mobile telphony products (total market growth has to be sustained)




Council's analysis on market shares agreement

« *landing of the market is timely, in keeping with each of the operators interest and has been observed in other countries* »

- ➔ operators have entered the market at different time (sp. Bouygues) and should not land at the same time (financial analyst wonders at Bouygues' strategy (*sacrifices its consumers base growth too early*))
- ➔ even if in keeping with their interest, facilitates rise in prices at the expenses of consumers, ensure that none of them will take advantage of the others' landing to increase its market share



Council's analysis on market shares agreement

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- « *SFR econometric study shows that an « agreement » variable is not relevant to explain 192 products minutes prices between 2000 and 2002* »
 - Explained variable (prices) is not independant from the « agreement » variable even if agreement is not on prices but on market shares
 - In 2003, 69% of people used mobile phones in France vs 80% in average in Europe : is not caught by SFR model
 - « *no agreement before and after* » is an uncheckable assumption
 - Dynamic effects of an agreement don't stop on dec 31th

Council's analysis on sanctions

« *no effect on prices* »

● **Affected market , € billion**

| 2000 | 2001 | 2002 | 2003 |
|------|------|------|------|
| 7,7 | 10 | 11,7 | 13,2 |

- **special responsibility of the 3 owners of mobile licences**
- **growing share of consumers expenses (2,7% in 2003)**

| € million | Orange | SFR | BouyguesT |
|-------------------------|--------|-----|-----------|
| Inf.exch. | 41 | 35 | 16 |
| Market shares agreement | 215 | 185 | 42 |



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