

NEW TECHNOLOGIES

February 2008

Measures contained in the Chatel Act regarding the electronic communications sector

French Act no. 2008-3 dated 3 January 2008¹ on the development of competition to benefit consumers (the Chatel Act), provides for new measures to benefit consumers.

The new provisions are notably with regard to electronic communications contracts entered into with a consumer (a physical person), whether or not that person is acting for professional ends. They will enter into effect on 1 June 2008 and will be applicable to contracts already in force.

➤ **No charges for waiting time on calls to the after-sales, complaints and assistance departments of operators and access to such services via non-surcharged numbers**

Waiting time – which is defined as the time which passes before consumers are connected to a person who actually handles a query – will be free as regards all calls made (from France but not from abroad) by consumers to after-sales departments, complaints departments, technical assistance departments of one's own operator and which originate in the local loop of the operator in question.

An amendment introduced by the French National Assembly aiming to extend the provision to all surcharged numbers (used by public services, e-tailing businesses, banks) was not passed by the French Senate.

Access to such services must also be made possible via non-surcharged numbers.

A list of numbers that can be surcharged shall have to be identified by ARCEP (the French postal and electronic communications regulatory authority) (see Article L. 121-84-5 of the French Consumer Code).

➤ **Extension of freephone numbers to mobile phones**

Numbers advertised as free (*numéros verts, numéros azur*), which up until now could be accessed toll-free only if one called them from landline networks, will be accessible toll-free to calls made from mobile networks (ref. new Article L. 121-84-8 of the French Consumer Code).

To this end, a specific interconnection deal enabling calls to be routed to the operator which manages a given toll-free number shall have to be offered by mobile operators at a reasonable rate (ref. Article L.34-8-2 of the French Postal and Electronic Communications Code).

➤ **Directory enquiries – call surcharges prohibited and obligation of announcing the cost of being connected to a number**

Mobile operators may no longer apply to directory enquiries any rate other than the rate for a national call – this provision (see new Article L.181-84-9 of the French Consumer Code) should end the practice by certain mobile operators of surcharging the cost of connection to such services and should lead to the calls in question being covered by the flat rate monthly call packages.

Directory enquiries service providers which offer users the option of being connected to the number requested shall have to notify the consumer of the rate charged for connection, and get the consumer's consent to be connected prior to establishing the connection (ref. new Article L.181-84-10 of the French Consumer Code).

➤ **Contract cancellation terms and conditions**

- **Return of security deposits and prepayments:** companies will have to refund security deposits as soon as the item to which the deposit relates is returned – and within 10 days following payment of the last bill. Sums paid in advance for services must be refunded within 10 days of payment of the last bill; civil law sanctions will apply to the operator for non-compliance therewith (ref. new Article L. 121-84-1 of the French Consumer Code);

- **Cancellation notice:** the notice period shall now be no longer than 10 days from receipt by the service provider of the consumer's cancellation request (unless the consumer requests that cancellation be effective from a later date) (ref. Article L. 121-84-2 of the French Consumer Code).

➤ **Mandatory listing of contract end date on bills**

Listing the contract duration remaining and the contract end date on bills has been made mandatory (ref. new Article L. 121-84-3 of the French Consumer Code).

¹ Act no. 2008-3 published in the Official Journal dated 4 January 2008.

➤ **Express consent of consumers for paid continuation of services which were initially free**

This entails making it mandatory for operators to request confirmation by consumers of their agreement to the continued provision of services or optional extras they initially tested free of charge (ref. new Article L.121-84-4 of the French Consumer Code).

➤ **Contract periods and cancellation terms and conditions of contracts**

Operators may no longer lock consumers into a minimum contract term of more than twenty-four months during which the contract may not be amended or terminated without penalties.

All operators which make a proposal to provide communication services for periods of more than twelve months must additionally:

- Offer, simultaneously, the same deal, under non-disqualifying terms and conditions, for a contract term not in excess of twelve months;
- Provide the option of cancelling the contract before the natural term thereof from the thirteenth month onwards; in which case the ceiling for penalties due will be one quarter of the amount due on the remaining minimum contract term.

Operators may only bill costs corresponding to expenses which they actually incur for cancellations and these latter shall only be payable if they have been expressly provided for in the terms of the contract and are duly justified (new Articles L. 121-84-6 and L. 121-84-7 of the French Consumer Code).

➤ **Option of designating distinct universal service operators for the provision of telephone directory and directory enquiry services**

These two components of the universal service up until now had to be handled by the same operator. Now, calls for tender by means of which the companies responsible for each of these services are designated shall be distinct (ref. Article L.35-2 of the CPCE (the French Postal and Electronic Communications Code)).

➤ **Enforcement**

Violations of the new regulations – ie those regarding refund of advances, cancellation notice periods, no charges for waiting time when making a call from the operator's local loop, and after-sales departments that can be called using non-surcharged numbers – shall

be monitored and noted by the DGCCRF (the French Competition, Consumer Affairs and Anti-Fraud body).

➤ **Scope of the French Consumer Code**

At the initiative of the Senate, the section of the French Consumer Code covering electronic communications now protects consumers, whether or not the consumers in question use such services for work purposes.

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