



Law Department

**THE ABUSE OF PREMIUM RATE SERVICES TO THE
CONSUMERS' DETRIMENT IN FRANCE**

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EXECUTIVE SUMMARY

In France, the telecommunication business is based on freedom of activity, the only obligation being the necessity to declare its activity to ARCEP, an independent administrative authority, dedicated to telecommunication regulation and in particular competition between all market players.

Setting up a telematic service is a relatively simple operation. Access to the telecommunication network is determined by ARCEP's number allocation plan, subject to a certain number of conditions. Any natural person, private or public legal person or non lucrative organisation may as a service provider enter a contract with a telephone operator, with the goal of offering premium rate services. The telephone operator offers the technical means and is required to invoice and recover debts, the service provider must transmit the information or service it was offering through premium rate services. Finally, the consumer is required to pay the bill.

Initiated by the Minitel, the premium rate services market has grown over the years in France in diversified sectors (lottery, erotic services, and services for young people...). For example, in 2001, premium rates services through Audiotel amounted to 2 billion minutes in volume and turnover for premium SMS climbed to 134.651.000 euros in 2004. Premium rate services may be offered through landlines, mobiles or Internet. The tariffs vary depending on the type of telecommunication network used and the type of number called. However, the tariffs may not exceed the limits specified by ARCEP, which are relatively low (for example, access to a premium rate services, billed by the combination of a fixed price / length of the call may not exceed 11,46 euros).

Other public bodies intervene in the regulation of the telecommunications sector : CST (*Conseil Supérieur de la Télématique*) and CTA (*Comité de la Télématique Anonyme*) are complementary bodies that mainly hold a consulting role and resolve telecommunication conflicts, though they are not true regulating bodies.

Regulation is issued through two different channels: codes of conduct (often termed soft law) develop obligations, specific to premium rate services. Their binding nature is only the result of including these measures in the contract signed between the telephone operator and service provider.

No law is truly specific to the premium rate services; however certain provisions contained in traditional general private law are applicable to this type of activity. In short, premium rate activities must comply with data protection laws, prohibition of pornographic content (measure which observes a certain level of tolerance...), and all provisions contained in

French contract law (capacity, consent, obligation to inform, good faith...). Consumer law is also applicable to premium rates services, ensuring a certain protection of the consumer (obligation to inform, on the service, price... in theory only, all information is not always clear to the consumer). Premium rate services must refrain from false or misleading advertisement. The general provision on the prohibition of lotteries (which massively use premium rate services) is also applicable to premium rate services. Despite a restrictive legal framework, it sometimes lacks efficiency. Distance selling law also applies, specifically the obligation to provide information and all tariffs are open to competition but must submit in part to governmental price regulation.

Very few judicial cases exist, allowing us to evaluate consumers' complaints, due most certainly to the amount of money involved or the unwillingness of the consumer to reveal certain habits, in the case where the bills are much larger (in any case, phone communication statements are most often deemed sufficient proof in judicial proceedings). No class action is possible and premium rate services are not a target of consumer groups. A few out-of-court solutions (such as mediation) are available but are scarcely used, generally not well known and of limited efficiency.