



Autorité de la Concurrence
de la Nouvelle-Calédonie

In this decision taken following an emergency procedure, the New Caledonia Competition Authority (ACNC) declared itself competent to examine the practices undertaken by the OPT (the New Caledonia post and telecom office) which were considered, according to the SCCI, to be anticompetitive and destined to evict the latter from the international connectivity capacity services market by blocking the installation of its own submarine cable between New Caledonia and Sydney.

Following the Administrative Tribunal's jurisprudence, the Authority considers that the exclusive rights conferred upon the OPT must be interpreted narrowly given that the regulation in effect infringes onto free enterprise and competition.

In the issue at hand, the Authority finds that the provisions of the post and telecommunications code relative to the OPT's regulated monopoly do not expressly include access to high-speed telecommunication network via a submarine cable. Moreover, it is not demonstrated that the arrival of a private competing operator, such as the SCCI, would be such as to call into question the OPT's financial stability or its capacity to assume its different public service missions. Indeed, the revenue received from the use of the OPT's submarine cable represent less than 4% of its total turnover. **The Authority thus finds that the concerned market should be considered as a market open to competition in which the OPT has a *de facto* monopoly.**

The Authority also finds that the government was alerted, since September 2018, to the "*legal fragility*" of the regulated monopoly by expert firms which had been mandated to prepare "*New Caledonia Telecom's Strategy*".

On the merits, at this stage of the proceedings, it appears that, first of all, **the OPT's refusal to respond to SCCI's local network interconnection request can potentially constitute an abuse of dominant position.**

Similarly, the Authority considers that the **OPT's new rate package in place since March 1, 2020** can potentially be considered as a **tying practice and an anti-competitive foreclosure strategy**. Indeed, this offer imposes upon the OPT's clients to purchase the international network access (via the OPT's cable) as the same time as the local network access (on which the OPT has a monopoly) all the while lowering globally by 40% the rate for the internet providers. Where this rate decrease is exclusively due to a rate decrease on the international network access (-77%) and compensated by a rate increase on the local network access (+18%), **it cannot be excluded that it could also constitute an anticompetitive cross-subsidy practice.**

However, the Authority rejects the argument in which the OPT's new rate package could constitute a predatory price practice due to insufficient evidence provided by the SCCI against the criteria set by the jurisprudence.

Regarding the protective measures request, which is the matter at hand, the Authority acknowledges the existence of a **serious and immediate threat to SCCI's interests**. Indeed, the latter could be excluded from the market and disappear prior to the end of the proceedings due to the OPT's refusal to offer a commercial local telecommunications network interconnection option.

The Authority finally finds that the alleged practices constitute a serious breach to the sector enterprises' interest and, *in fine*, to the consumers where the internet providers will not be in a position to promote competition between several players on the market to offer price decreases to the consumers and/or a significant improvement to the proposed service quality if the SCCI cannot enter the market or if they are forced into a tied sale by the OPT after the activation of SCCI's submarine cable.

For all these reasons, the Authority “orders OPT-NC to offer SCCI, within a maximum of eight weeks from the notification of this decision, a technical and commercial offer for the access to the local federating network for the supply of international high-speed connectivity capacity services via submarine cable, with objective and non-discriminatory conditions that are cost-oriented, in order to allow for effective competition on the market.”