

Appendix 1 – French case law on refusals to deal

No.	Type	Parties	Décision	Observation	Refusal to access an essential facility	Refusal of inter-operability	Constructive refusal to deal	Margin squeeze
09-D-29	Decision	Euris / Cegedim	No Interim Measures On-going in depth investigation	The defendant, Cegedim, stopped granting access to its database <i>OneKey</i> , that the plaintiff considers as the main source of the information necessary to elaborate and sell services to its clients. The Authority did not accept to grant interim measures, and could not conclude on whether the database in question constituted an essential facility. It decided to pursue the case for an assessment on the merits.	X			
09-D-24	Decision	Outremer Telecom, Mobius / France Telecom	Infringement (fine)	France Telecom has abused its dominant positions on the relevant wholesale markets (local loop, Internet data collection,...) by squeezing its competitors, and providing them with degraded services		X	X	X
09-D-15	Decision	SFR / France Telecom (Unik)	No Interim Measures On-going in depth investigation	SFR filed a complaint alleging a margin squeeze by France Telecom				X
09-D-06	Decision	SNCF, Expedia, Voyages sncf.com, GLE e-commerce	Infringement (fine) + Commitments	SNCF, legal monopoly for passenger rail transportation, has set excessive prices for the access by travel agencies to the platform that centralizes sales of train tickets. The Authority considered this platform constituted an essential facility. SNCF also refused to allow other travel agencies to benefit from certain technical functionalities of its platform, thereby favoring its own subsidiary on the market of travel agency services.	X	X	X	
08-D-08	Decision	Editions Gisserot / Centre des monuments nationaux (CMN)	No interim measures No infringement	CMN publishes tourist guides and sells them through points of sales located on several highly touristic sites. Gisserot is a competing publisher, who alleged that CMN had a dominant position as a retailer on these sites. Gisserot alleged that the points of sales in question constituted essential facilities, and that CMN's decision to stop selling Gisserot's guide amounted to an unlawful refusal to deal. The Authority rejected the allegation, since it did not find that the shops in question could be considered essential facilities. See Appendix 2	X			
08-D-04 04-D-34 03-MC-04	Decision	MLP / NMPP	Commitments Interim measures	See Appendix 2	X	X	X	

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08-D-02	Decision	Free SAS / France Télécom	No Interim Measures On-going in depth investigation	Free, an Internet Service Provider (ISP), filed a complaint claiming that all civil engineering equipments (here, tubes through which cables are drawn) belonging to France Telecom (former monopoly for telecommunication services) on state-owned locations constituted an essential facility, and denouncing France Telecom's refusal to grant access to these tubes. The Authority did not find that there was an immediate threat to competition (the market for Internet access through optical fiber to the home was just burgeoning), and considered that the regulator's monitoring of multilateral negotiations and FT's experimentations were sufficient to prevent any risks to competition.	X			
07-MC-04 07-D-43	Decision	Direct Energie, EDF	Interim Measures Engagements	The Authority accepted to grant interim measures, requiring EDF (former state-owned monopoly on the markets for electricity production, transportation and distribution) to design supply contracts enabling new entrants on the liberalized market of energy distribution to operate without being squeezed. EDF then offered commitments addressing the Authority's competition concerns regarding access to electricity by the downstream operators recently active on the market. See Appendix 2				X
07-D-33	Decision	T-Online, Liberty Surf / France Telecom	Infringement (fine) + Commitments	The plaintiffs complained about France Telecom's refusal to give access to the information necessary to evaluate whether a given consumer is eligible for high speed Internet services (ADSL)		X		
07-D-20	Decision	Société Integral Process, Masimo Europe Limited	No Interim Measures No infringement		X	X		
06-D-36	Decision	SELARL Alpes Imagerie Médicale, Centre Hospitalier de Chambéry, GIE IRM Savoie, SCM Imagerie Médicale du Nivolet	Infringement	A group of physicians, owning and operating medical imaging equipments (CAT scan and MRI), restricted, on discriminatory grounds and without objective justifications, the access to these equipments by other physicians.			X	

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06-D-27	Decision	Autodistribution, AD net / Automobiles Citroën	No Interim Measures On-going in depth investigation	Citroën (French car maker) refused to give complete access to the software it had developed in order to diagnose car failures due to electronic equipments. Independent garage mechanics were thus at a disadvantage to repair these failures. The Authority did not grant interim measures, since only 1% of electronic failures were concerned by the refusal and could be fixed exclusively in the Citroën's network.		X		
05-D-75	Décision	Monnaie de Paris, Société LB & Associés	Infringement (fine)	Monnaie de Paris had a dominant position on the market for medals sold as souvenirs on French touristic sites. It refused to supply a number of points of sales, without objective justifications. The Authority concluded this refusal was an abuse of a dominant position.			X	
00-MC-01		Neuf Telecom / France Telecom	Interim measures	In a first decision on interim measures, the Authority ordered France Telecom to offer the possibility for competing network operators to enter the market of wholesale high speed Internet connections.				
04-D-18			Fine for not respecting injunctions	In 2004, the Authority had to fine France Telecom again, for not having respected the injunction. Namely, the Authority demonstrated that the offers designed by France Telecom on the wholesale market, given its own offers on the downstream market, entailed a margin squeeze that prevented competitors to effectively compete.	X			X
05-D-59			Infringement (fine)	On the decision on the merits, the Authority concluded that France Telecom's initial refusal to grant access to the local loop of its network (on which it holds a monopoly position), followed by wholesale offers entailing a margin squeeze, had abused its dominant position. This last decision relies on the essential facility doctrine.				
05-D-25	Decision	Dallay / Yver & Tellier	Commitments	Yver & tellier has developed a classification for collector's stamps that has become a <i>de facto</i> norm for the valuation and trade of these stamps. Dallay, another company publishing collector's stamps catalogues, claimed that this classification constituted an essential facility, because of Yver & Tellier's renown and reputation. The Authority considered it would have been close to impossible for Dallay to develop a classification that would allow for consistent mapping from its numbering to Yver & Tellier's one. Yver & Tellier offered commitments, and agreed to provide competing publishers with a license to use its classification, as long as its property rights remained preserved.	X	X	X	

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05-D-12	Decision	20 Minutes, Métro / EUROPQN	Commitments	See appendix 2	X	X		
04-D-40			No interim measures					
04-D-54	Decision	VirginMega / Apple Computer France	No interim measures No infringement	See appendix 2		X	X	
04-D-48	Decision	France Telecom, SFR Cegetel et Bouygues Telecom	Infringement	On the market for fix to mobile calls, each operator held a monopoly position on the upstream market of mobile call termination, and was also active on the downstream market for fix to mobile calls. The Authority considered that France Telecom and SFR charged upstream and downstream prices that entailed a margin squeeze.				X
04-D-26	Decision	Reims Bio / GIP Champagne Ardenne (GIPCA)	Infringement	GIPCA, a group authorized to collect and resale blood for non therapeutic usage, used several dilatory tactics and eventually stopped supplying a downstream firm (Reims bio) that was relying almost exclusively on it. The Authority considered that Reims Bio had no other effective supply sources, and concluded that GIPCA had abused its dominant position.			X	
04-MC-01	Decision	Free, Iliad, Neuf Telecom / TF1, M6, France Télécom	Interim measures	France Télécom abused its dominant position on the local loop of the fix telecommunication network, through discriminatory conduct and dilatory tactics. Télécom.	X			