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Press and Information

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Judgment of the Court of Justice in Case C-202/07 P

France Télécom SA v Commission

THE COURT DISMISSES FRANCE TÉLÉCOM'S APPEAL REGARDING ABUSE OF ITS DOMINANT POSITION ON THE FRENCH INTERNET ACCESS MARKET

The judgment of the Court of First Instance, which dismissed the action against the Commission decision imposing a fine of EUR 10.35 million on France Télécom, is upheld

At the material time (March 2001-October 2002), Wanadoo Interactive SA ('WIN') was part of the France Télécom group active in France in the Internet access services sector including ADSL services.

In July 1999, the Commission decided to launch a sectoral inquiry within the European Union, which focused in particular on the provision of local loop access services and use of the residential local loop. Against that background, the Commission examined the prices which WIN charged its residential customers in France for high-speed internet access.

As a result of that procedure, the Commission found that the prices which WIN charged its residential customers for its eXtense and Wanadoo ADSL services were predatory prices because they did not enable it to cover its variable costs until August 2001 or to cover its full costs from August 2001 until October 2002 and because they were fixed as part of a plan to pre-empt the market in high-speed internet access during a key phase in its development. Therefore WIN's behaviour constituted an abuse of its dominant position on the French market in high-speed internet access for residential customers. By decision of 16 July 2003, the Commission imposed on WIN a fine of EUR 10.35 million.

WIN brought an action seeking annulment of that decision before the Court of First Instance.

WIN merged with France Télécom on 1 September 2004, as a result of which France Télécom succeeded to WIN's rights.

On 30 January 2007, the Court of First Instance dismissed France Télécom's action for annulment, holding that the Commission correctly concluded that WIN had abused its dominant

position in the French market in high-speed internet access. The Court of First Instance also upheld the amount of the fine imposed on WIN¹.

France Télécom appealed against that judgment of the Court of First Instance to the Court of Justice.

By its judgment today, the Court of Justice dismisses the appeal as partially inadmissible and partially unfounded.

The Court of Justice finds that the Court of First Instance did not in any way err in law in dismissing France Télécom's action. In addition, the Court of Justice finds that the Court of First Instance was justified in finding that demonstrating that it is possible to recoup losses is not a necessary precondition for a finding of predatory pricing.

Accordingly, the judgment of the Court of First Instance is upheld.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES DE EL EN FR IT

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-202/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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¹ Case T-340/03 *France Télécom SA*; see Press Release No 09/07.