



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04
France and Others v Commission

The statements of the French authorities aimed at assuring France Télécom of their support at a time when the operator was experiencing a major crisis cannot be classified as State aid

Although those statements conferred a financial advantage on France Télécom, they did not commit any State resources

France Télécom SA (FT) was established in 1991 in the form of a public law corporation, and has been a public limited company since 1996. Since October 1997 FT has been quoted on the stock exchange. When the Commission decision which is the subject of the present action was adopted, FT was a group active in the provision of telecommunications networks and services. In France, that group was active in particular in the fixed telephony sector, and also, through its subsidiary companies Orange, Wanadoo and Equant, in the sectors of mobile telephony, the Internet, data transmission and other information services. In 2002, the French State's holding in FT amounted to 56.45% of its share capital.

On 31 December 2001, FT showed a net debt, in its published accounts for the year 2001, of €63.5 billion, and a loss of €8.3 billion.

On 30 June 2002, FT's net debt reached €69.69 billion, which included €48.9 billion of bonded debt repayable during the years 2003 to 2005.

In the light of FT's financial situation, the French Minister for the Economy stated, in an interview published on 12 July 2002 in a French daily newspaper, that '... the shareholder State will act as a prudent investor and were FT to encounter difficulties, we would take the appropriate measures ... I repeat that were FT to face funding problems, which is not the case today, the State would take the necessary decisions in order to overcome them'. That statement was then followed on 13 September and 2 October 2002 by further public statements aimed essentially at assuring FT that it had the support of the French authorities.

On 4 December 2002, the French State published an announcement of a proposal for a shareholder loan which it was considering making to FT. That proposal consisted in opening a €9 billion credit line in the form of a loan contract, the contractual offer for which was sent to FT on 20 December 2002. The offer was neither accepted nor acted on by FT.

By decision of 2 August 2004, the Commission concluded that, placed in the context of the statements made since July 2002, the shareholder loan granted by France to FT in December 2002 in the form of a €9 billion credit line constituted State aid incompatible with EU law.

The French Government, France Télécom, Bouygues and Bouygues Télécom, and AFORS Télécom brought an action before the General Court seeking annulment of the Commission's decision.

In its judgment today, the General Court notes that, in order for a measure to be classified as State aid, first, *inter alia*, it must entail a **financial advantage** and, second, that advantage must come directly or indirectly from **State resources**.

After analysing the statements of the French authorities made from July 2002 onwards, the Court finds that those statements **did confer a financial advantage** on FT.

When taken together, those statements had a decisive influence on the reaction of the ratings agencies¹ and that reaction was later instrumental in improving FT's image in the eyes of investors and creditors and decisive for the conduct of the financial market players who subsequently participated in FT's refinancing. Thus, the positive and stabilising effect on FT's rating which was a direct consequence of the statements necessarily resulted in a financial advantage being granted to FT.

However, that financial advantage **did not entail any transfer of State resources**. On account of their open, imprecise and conditional nature, in particular as regards the nature, scope and conditions of possible State intervention in favour of FT, the statements made from July 2002 onwards cannot be construed as a State guarantee or be interpreted as containing an irrevocable commitment to provide specific financial assistance to FT.

A specific, unconditional and irrevocable commitment of public resources by the French State would have required those statements to set out clearly the exact sums to be invested, or the specific debts to be guaranteed, or, at the very least, a predefined financial framework, such as a credit line up to a certain amount, in addition to the conditions for granting the assistance envisaged. However, the statements made from July 2002 onwards are silent on those issues.

In addition, the Court points out that it was only by publishing the announcement of the shareholder loan proposal on 4 December 2002 that the French State made clear and specified for the first time to the public the financial assistance which it was considering granting to FT. That financial assistance consisted in opening a €9 billion credit line in the form of a loan contract, the contractual offer for which was never accepted or acted on by FT.

Like the statements made from July 2002 onwards, **that announcement granted an advantage** to FT in that it played a role in enhancing the confidence of the financial markets and in improving the conditions of FT's refinancing. However, the Commission **has failed to prove that the announcement in itself entailed a transfer of State resources**.

Furthermore, the Court **rejects the Commission's argument that the shareholder loan proposal was the realisation of the French State's earlier statements**, since the Commission has failed to prove that the French State had considered granting specific financial assistance of that kind as early as July 2002. It was clearly not until December 2002 that the French State formed the view that the economic conditions for such financial assistance had been fulfilled, which confirms that there was a significant break in the series of events at that stage.

In the light of that break in the series of events, and in the logic of the French authorities' approach, in December 2002, the Commission was not entitled to establish a link between a possible commitment of State resources, at that stage, and advantages granted by earlier measures, that is to say, the statements made from July 2002 onwards.

Therefore, even if it was open to the Commission, in determining whether there was an advantage, to take account of all the events which led up to and influenced the final decision by the French State in December 2002 to support FT through a shareholder loan, it has failed to prove that there was a transfer of State resources related to that advantage.

Consequently, the Court **annuls** the Commission's decision.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

¹ Such as Standard & Poor's, Moody's and Fitch Ratings.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355