



Press and Information

General Court of the European Union
PRESS RELEASE No 129/13
Luxembourg, 16 October 2013

Judgment in Case T-432/10
Vivendi v Commission

The General Court upholds the Commission's decision rejecting a complaint about France Télécom's pricing practices for certain wholesale telecommunication services

As those services had only limited effects on the functioning of the retail markets, the Commission was not bound to pursue a detailed investigation

Vivendi, a French company, owns the majority of the registered capital in SFR, one of the largest mobile and fixed telecommunications operators in France.

France Télécom, which later became Orange, is the incumbent French telecommunications operator which owns the local loop. It offers wholesale services to the other telecommunications operators, which they may make use of in order to offer their own customers retail services using the local loop.

In 2009, Vivendi and Iliad, which has a 100% shareholding in Free SAS, an internet service provider in France, filed a complaint with the Commission alleging several infringements of EU competition law by France Télécom on the market for high-speed internet access and the telephone subscription market. According to the complainant companies, France Télécom is demanding an excessively high price for the provision of its wholesale services relating to access to the local loop. They claim that through its actions, France Télécom aims to increase the costs imposed on competitors in the retail markets and to drive them out of those markets.

In July 2012, the Commission adopted a decision¹ rejecting the complaint on the grounds that there was not sufficient EU interest in pursuing an investigation of the alleged infringements. The Commission considered that pursuing an enquiry would have been disproportionate in terms of the duration and resources required having regard, first, to the limited impact which the practices in question were likely to have on the functioning of the internal market, and, secondly, the limited possibility of proving an infringement of the competition rules.

Vivendi brought an action for the annulment of the Commission's decision.

In its judgment, the General Court finds, first, that the integration of Wanadoo Interactive, a former retail subsidiary of France Télécom, into the parent company had been closely monitored by the Commission and by the French authorities. They did not find any evidence suggesting that France Télécom was engaged in anti-competitive practices to the detriment of its competitors.

In that regard, the Court states that, when reviewing compliance with the competition rules, the Commission can take account of the results of inspections and monitoring carried out by the national authorities and their regulatory activities. Thus, the Commission was able to endorse the conclusion of ARCEP² that the most appropriate method for calculating the costs connected with the use of the local loop was that of 'current economic costs'. That method was based mainly on

¹ Decision C (2010) 4730 (Case COMP/C 1/39.653 – Vivendi & Iliad v France Télécom), taken pursuant to Article 7(2) of Regulation (EC) No 773/2004, of 7 April 2004, relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC].

² The telecommunications regulator (ART) which later became the regulator for electronic communications and posts (ARCEP).

the consideration of the actual historic investments which France Télécom had made in the telecommunication infrastructure for the benefit of the alternative operators, such as Vivendi. Similarly, the Commission did not fail to have regard to the limits of its discretionary power by concluding that there was no evidence that the incorrect information communicated by France Télécom relating to those investments had misled ARCEP when it chose the method for calculating the costs of the local loop.

The Court also rejects Vivendi's claim that the Commission did not examine sufficiently the effects of France Télécom's contested practices on the retail market. In addition, the Commission rightly established that the abusive nature of the pricing practices of a dominant undertaking, such as France Télécom on the wholesale telecommunication market, must be determined on the basis of its own situation, and therefore on the basis of its own charges and costs, rather than on the basis of the situation of its competitors.

In those circumstances, the Court concludes that the Commission could rightly find that, in the review of the complaint in question, **the possibility of establishing proof of any infringement on the part of France Télécom was very limited. Such a finding is sufficient in itself to conclude that the EU has no interest in pursuing the investigation, and it justifies the rejection of the complaint. Accordingly, the Court dismisses the action brought by Vivendi.**

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.

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

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