



Press and Information

General Court of the European Union
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Judgment in Case T-402/13
Orange v Commission

The General Court confirms the decisions ordering an inspection taken by the Commission against Orange in connection with a possible abuse of a dominant position

Although the Court is entitled to examine whether the Commission has sufficiently reliable information before adopting a decision ordering an inspection, such an examination is not the only way to ascertain that the decision was not arbitrary

Orange (known as France Télécom until 1 July 2013) is a French public limited company which provides Internet access to companies and individuals. In 2011, a competitor known as Cogent lodged a complaint with the French Competition Authority, believing that Orange had abused its dominant position by a number of practices in the sector for reciprocal interconnection services in the area of Internet connectivity. In 2012, the Competition Authority found that the practices alleged against Orange were not substantiated or did not constitute an abuse of a dominant position.

In parallel, the Commission had opened a procedure against Orange into highly similar practices. After the Competition Authority's decision, the Commission, by decisions of 25 and 27 June 2013,¹ ordered Orange to undergo an inspection ('the inspection decisions'). The inspection took place between 9 and 13 July 2013 on four of Orange's premises. Taking the view that the Commission did not have the right to order that inspection on its premises in the circumstances of the case, Orange brought an action before the Court seeking the annulment of those decisions.

By today's judgment, **the Court dismisses Orange's action and confirms the Commission's inspection decisions.**

Orange disputed the proportionality and necessity of the inspection decisions, in so far as the Competition Authority had already investigated into identical allegations of infringement and found that its conduct was in compliance with EU competition law rules. The Court nevertheless points out that **the Commission is not, in principle, bound by decisions taken by a national court or authority pursuant to Articles 101 and 102 TFEU** and that the Commission may at any time take decisions relating to competition, even if they conflict with a national decision.

Orange also argued that communicating the national case-file to the Commission might have been a less onerous but equally effective alternative to an inspection but equally effective, in so far as the Commission could have obtained additional information on the alleged infringements in that way. While emphasising that it may appear unfortunate that the Commission opted for an inspection without first examining the information obtained by the Competition Authority, the Court finds, however, that the inspection decisions are not vitiated by illegality, given that the authority had not conducted any inspection on Orange's premises and that its decision had therefore been taken solely on the basis of information voluntarily submitted by Orange. In that context, the Court observes that any anti-competitive conduct that might have taken place on Orange's part would be secret by its nature and that it is thus unlikely it would be apparent from material made publicly available by Orange and the information provided to the Commission.

¹ Commission Decisions C(2013) 4103 final and C(2013) 4194 final of 25 and 27 June 2013 relating to a proceeding under Article 20(4) of Council Regulation (EC) No 1/2003, addressed to France Télécom SA and Orange, respectively, as well as to all of the companies directly or indirectly controlled by them.

Orange contended, finally, that the Court must ensure that inspection decisions are not arbitrary by ascertaining whether the information the Commission has in its possession was sufficiently reliable and detailed so as to justify the adoption of the decision. In that regard, the Court states that while the Commission is not required to specify, at the preliminary investigation stage, the information which led it to contemplating that EU competition rules may have been infringed, that does not however mean that it does not have to be in possession of such information. **The Court thus confirms that it is entitled to examine whether the Commission possesses sufficiently reliable information before adopting an inspection decision, but points out that such an examination is not the only way it can ascertain that the decision was not arbitrary.** There is thus no need for that examination if the non-arbitrary nature of the decision can be deduced from the sufficiently precise nature of the explanation of the alleged facts that the Commission intends to investigate.

In the present case, the Court finds that the nature of the suspected restrictions of competition was defined in sufficiently precise and detailed terms in the inspection decisions² and that those decisions clarify in what way Orange's conduct could fall within the suspected practices. In those circumstances, the Court is able to conclude that the inspection decisions were not arbitrary on the sole basis of the reasons underlying those decisions and thus does not need to examine the information in the Commission's possession at the date of the adoption of those decisions.

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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² The Commission thus accused Orange of possible abuses of a dominant position owing to practices consisting of, first, limiting access to Orange's networks ('tromboning', port congestion and restricting route propagation) and, secondly, charging for access to those networks (billing the allocation of additional capacity, restrictive traffic reports and margin squeeze).