



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-425/04 RENV France v Commission
and T-444/04 Orange v Commission

The shareholder loan offered to France Télécom by the French authorities at a time when the telephone operator was undergoing a major crisis cannot be classified as State aid

The General Court annuls the Commission's decision in that regard on the ground that it had not correctly applied the test of the prudent private investor

France Télécom SA, now known as Orange, was established in 1991 in the form of a public law corporation, and has been a public limited company since 1996. In 2002, the French State was the majority shareholder. On 30 June 2002, France Télécom'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 France Télécom's financial situation, the French Minister for the Economy stated, in an interview published on 12 July 2002 in the French newspaper, *Les Échos*, that '... the shareholder State will act as a prudent investor and were France Télécom to encounter difficulties, we would take the appropriate measures ... I repeat that were France Télécom 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 France Télécom that it had the support of the French authorities.

On 4 December 2002, the French State published a notice concerning a proposal for a shareholder loan which it was considering making to the undertaking. That proposal consisted in opening a credit line of €9 billion in the form of a loan contract, the contractual offer for which was sent to France Télécom on 20 December 2002. The offer was, however, neither accepted nor acted upon.

By decision of 2 August 2004, the Commission concluded that that credit line, placed in the context of the statements made since July 2002, constituted State aid incompatible with EU law. The French Government, France Télécom and other interested parties therefore brought an action before the General Court of the European Union seeking annulment of the Commission's decision.

In its judgment of **21 May 2010**,¹ the General Court annulled the Commission's decision on the ground that the French authorities' statements could not be classified as State aid in so far as they had not, in fact, committed State resources despite the financial advantage thereby conferred on France Télécom. Appeals were brought before the Court of Justice against that judgment.

By judgment of **19 March 2013**,² the Court set aside the judgment of the General Court, since it considered that, despite its not having been advanced, the loan promised to France Télécom had conferred on it an advantage from State resources insofar as the State budget was potentially burdened. At the same time as giving final judgment on the arguments dealt with by the General Court, the Court of Justice referred the case back to the General Court for the latter to give a ruling

¹ Joined Cases [T-425/04, T-444/04, T-450/04 and T-456/04](#), France and Others v Commission, see also Press Release No [48/10](#).

² Joined Cases [C-399/10 P and C-401/10 P](#) Bouygues and Bouygues Télécom v Commission, see also Press Release No [32/13](#).

on the arguments of the French State and of France Télécom that the General Court had not dealt with in its first judgment.

By today's judgment, the General Court considers, with regard to those arguments with which it did not deal in its first judgment, that **the Commission was wrong to classify the offer of a loan made to France Télécom as State aid and therefore annuls the Commission's decision.**

The French government and France Télécom submit that, in relation to its assessment of whether there had been State aid, the Commission did not correctly apply the **test of the 'prudent private investor'**, nor did it carry out a proper assessment in that regard. In essence, that test is aimed at establishing whether a prudent private investor in the same position as the French state would have made statements of support in favour of France Télécom and would have granted France Télécom a shareholder loan in which it alone burdened itself with a very significant financial risk. That test is necessary in order to determine whether there is State aid: capital made available to a business by the State in circumstances which correspond to normal market conditions cannot be classified as State aid.

In that regard, the General Court points out that **it is the notice of 4 December 2002 and the shareholder loan offer, taken together, which were characterised as State aid by the Commission, which implies that the prudent private investor test must be applied to both of those measures and only those measures.** However, the General Court finds that, in taking the view that the shareholder loan offer was State aid, the Commission essentially applied the test of the private investor to the statements made from July 2002. Such an application of that test is all the more wrong because the Commission did not have sufficient information at its disposal for determining whether the statements made from July 2002 were, in themselves, capable of committing State resources and, thereby, of constituting State aid.

In addition, the General Court points out that **the Commission was required to apply the test of the prudent private investor in relation to the time when the measures at issue** (the notice of 4 December 2002 and the shareholder loan offer) **were taken by the French State**, namely in December 2002. According to the General Court, the Commission in fact applied the test in relation to the situation as it existed before July 2002. Whilst the General Court accepts that it is possible to have regard to prior events and objective facts, it does not that consider that those earlier events and facts alone can conclusively form the relevant reference framework for the purposes of the application of the prudent private investor test. As far as the statement of 12 July 2002 in particular is concerned (which was made well before the notice of 4 December 2002), the General Court notes that the Commission did not succeed in proving that the intention of the French authorities was sufficiently genuine, reliable, specific and unconditional for them to be legally bound by such statements.

In response to the Commission's argument that the shareholder loan offer is only the manifestation of previous statements of the French State with the result that its actions did not meet the test of the prudent private investor, the General Court states that **the statements made from July 2002 did not in themselves anticipate the specific financial support which was ultimately put in place in December 2002.** Those statements were, as regards the form, scope and conditions of potential future intervention by the French State, of an open, general and conditional character.

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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