



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 115/16

Luxembourg, 26 October 2016

Judgment in Case C-211/15 P
Orange v Commission

The Court rejects France Télécom's appeal in the case involving the reform of the arrangements for financing the pensions of civil servants working for that company

It follows that the Commission's decision that that reform constitutes State aid compatible with the internal market on certain conditions set by the Commission is valid

A 1996 French law converted France Télécom into a public limited company in preparation for its listing on the stock exchange, the opening-up of part of its capital and the total opening-up of the undertaking to competition. On that occasion, the system governing the financing of the pensions of civil servants working for France Télécom changed. Consequently, the employer's contribution paid by France Télécom to the French State in order to finance the pensions of civil servants was set at the same level as the social security contributions and taxes payable by its competitors operating in the telecommunications sector. However, that equalisation, in the form of a 'competitively fair rate', took only the risks common to ordinary employees and civil servants into account, thus excluding non-common risks (such as, inter alia, unemployment and employee claims in cases of winding-up by court order).¹ In addition, France Télécom made an exceptional flat-rate contribution of FRF 37.5 billion (€5.7 billion) in order to meet future retirement costs.

In 2011, the Commission declared that financing measure to be compatible with the internal market, but subject to certain conditions.² First, it found that the measure in question constituted State aid, since it reduced the contribution paid to the French State by France Télécom for the purposes of financing the pensions of civil servants until France Télécom's conversion. Furthermore, according to the Commission, that State aid did not comply with the principle of proportionality, in so far as the financial contribution paid by France Télécom to the French State was not equal to the social security charges payable by the competitors of France Télécom. The Commission therefore asked France to amend the 1996 Law in order to take the risks not common to ordinary employees and civil servants into account.

In 2012, the French Republic and France Télécom (now Orange) asked the General Court to annul the Commission's decision, on the ground that the reform of the method of financing in question does not constitute State aid. In 2015, the General Court rejected that application, thus confirming the Commission's decision that the reform of the method of financing the pensions of civil servants working for France Télécom constituted State aid compatible with the internal market on certain conditions set by the Commission.³ As it was not satisfied with General Court's decision, France Télécom lodged an appeal before the Court of Justice, seeking to have that decision set aside.

In today's judgment, **the Court dismisses France Télécom's appeal against the General Court's decision.**

The Court notes that the arrangements for the retirement pensions of France Télécom civil servants is legally distinct and clearly separate from the arrangement applicable to the ordinary

¹ The French Government explained that this is because civil servants cannot, by reason of their status, be dismissed and therefore cannot be unemployed and public institutions cannot be wound up by judicial decision.

² Decision 2012/540/EU on State aid C-25/08 (ex NN 23/08) – Reform of the arrangements for financing the retirement pensions of civil servants working for France Télécom implemented by the French Republic in favour of France Télécom (OJ 2012 L 279, p. 1).

³ Cases: [T-135/12](#) and [T-385/12](#) France v Commission and Orange v Commission see Press Release No. [25/15](#).

employees of France Télécom's competitors (ordinary system of retirement pension contributions). It follows, according to the Court, that the General Court was entitled to conclude that the latter arrangements are not the arrangement normally applicable to France Télécom civil servants, so that the 1996 Law did not, contrary to what France Télécom claims, remove an abnormal burden borne by the budget of that undertaking or introduce derogating arrangements (contributions to the pensions of civil servants not having previously been subject to the ordinary system of retirement pension contributions). Accordingly, the Court rejects France Télécom's argument that the General Court was mistaken in its conclusion that, as it had the effect of reducing social security costs, **the 1996 Law conferred an economic advantage on France Télécom.**

The Court also considers that the General Court was correct in holding that **the economic advantage conferred on France Télécom was selective**, in so far as the 1996 Law concerned only one undertaking and was intended to modify certain competitive constraints which were specific to it.

Moreover, the Court finds that the General Court was entitled to endorse the Commission's assessment that the economic advantage which it found to exist **was liable to distort competition**. The Court observes that it is sufficient in that regard that the 1996 Law made available to France Télécom greater financial resources to operate on telecommunications markets, that the markets for those services were gradually opened up to competition and that those two factors enabled it to develop more easily on the markets of other Member States newly opened up to competition.

Lastly, the Court finds that the General Court distorted neither the Commission's decision nor the 1996 Law in concluding that the exceptional flat-rate contribution was not designed to equalise France Télécom's contributions and the social security costs paid by its competitors.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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