



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 130/16**  
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Judgment in Case C-486/15 P  
Commission v France and Orange

## **The Court dismisses the Commission's appeal in the case involving shareholder loans offered to France Télécom by the French authorities at a time when the telephone operator was undergoing a major crisis**

*Accordingly, the Commission's decision holding that that shareholder loan constitutes State aid incompatible with the internal market is definitively annulled*

France Télécom SA, now Orange, was established in 1991 as 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 seeking annulment of the Commission's decision.

In its judgment of **21 May 2010**,<sup>1</sup> 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 conferred on France Télécom. This judgment was appealed to the Court of Justice.

By judgment of **19 March 2013**,<sup>2</sup> the Court set aside the judgment of the General Court, since it considered that, despite 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. The Court of Justice referred the case back to the General Court for the latter to give a ruling on the arguments of the French State and of France Télécom that it had not dealt with in its first judgment.

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

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

On **2 July 2015**,<sup>3</sup> the General Court once again annulled the Commission's decision, this time on the ground that the Commission had not correctly applied the test of the prudent private investor.<sup>4</sup> The Commission disagreed with the General Court's judgment and asked the Court of Justice to set it aside.

By today's judgment, the Court of Justice dismisses the Commission's appeal and **upholds the General Court's judgment of 2 July 2015**. Accordingly, **the Commission's decision of 2 August 2004 is definitively annulled**.

In particular, contrary to the Commission's submissions, the Court of Justice considers that **the General Court did not exceed the limits of the judicial review that it was bound to carry out or distort the Commission's decision**. The General Court examined the Commission's assessment of the evidence on which the Commission based itself to find that it was appropriate to apply the prudent private investor criterion to the context of July 2002 and not December 2002. It took the view that that assessment was based on a selective consideration of the available evidence and that that evidence did not substantiate the conclusions drawn from it by the Commission. The General Court was therefore correct in holding that the Commission's assessment was vitiated by a manifest error.

As regards the Commission's argument that the prudent private investor criterion ought to have been applied to the context of July 2002 and not December 2002, the Court of Justice observes that, according to the General Court's findings, the shareholder loan offer came only in December 2002, the French Government had made no firm commitment in July 2002 and the decision to provide FT with financial support through the shareholder loan offer had been taken not in July 2002 but in early December 2002. In those circumstances, deciding in advance in July 2002 the time when the prudent private investor criterion fell to be assessed would have necessarily excluded from that assessment relevant factors that occurred between July 2002 and December 2002.

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**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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<sup>3</sup> Joined Cases [T-425/04 RENV](#) and [T-444/04 RENV](#) France and Orange v Commission, see Press Release No. [76/15](#).

<sup>4</sup> 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.