



Press and Information

Court of Justice of the European Union

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Judgment in Case C-81/10 P
France Télécom v Commission

The Court confirms the judgment of the General Court finding that France Télécom benefited from State aid incompatible with the common market each year from 1994 to 2002

The Commission's decision finding that that aid existed and ordering its recovery is valid

This case is linked to changes in the legal form of France Télécom in the context of the liberalisation of the telecommunications sector. Currently a public limited company incorporated under French law, France Télécom was established, in the form of a *sui generis* public law corporation, on 1 January 1991. In 1998, France Télécom was converted into a national undertaking in which, at the material time, the State held, directly or indirectly, more than half of the share capital.

Business tax is a local tax payable each year in France by natural or legal persons regularly pursuing a self-employed occupation. By way of derogation from the business tax regime, two successive taxation schemes were set up for France Télécom, namely a transitional scheme, applicable from 1 January 1991 until 31 December 1993, followed by a definitive scheme, which applied from 1 January 1994 onwards. The latter scheme was abolished with effect from 31 December 2002.

Under the transitional scheme (1991 – 1993), France Télécom was subject only to such duties and taxes as were actually borne by the State. Consequently, it was not liable *inter alia* for corporation tax or local taxes, such as business tax. In exchange for that exemption, France Télécom had to pay a fixed levy established annually by legislation.

The definitive scheme (1994-2002) ('the special tax regime') provided that France Télécom was subject to the general tax system with effect from 1 January 1994, with the exception of direct local taxes, including business tax. France Télécom was required to pay business tax at a national rate.

Those two schemes were examined by the Commission, which adopted a decision¹ on 2 August 2004 according to which the transitional scheme did not constitute State aid. However, the Commission considered that the special tax regime applicable from 1994 to 2002 introduced State aid consisting in the tax differential between the tax which France Télécom should have paid under the general law and the amount of business tax actually paid. That new aid, implemented unlawfully, was also incompatible with the common market. It therefore had to be recovered by the French authorities. The decision did not specify the exact amount to be recovered but stated that it lay within a range of between €798 million and €1 140 million, together with interest from the date on which the aid at issue was at the disposal of the beneficiary until the date of its recovery.

The French authorities and France Télécom brought an action before the General Court for annulment of the Commission's decision. By judgment of 30 November 2009², the General Court dismissed the action, finding that the Commission had correctly concluded that there was State aid.

¹ Commission Decision 2005/709/EC of 2 August 2004 on the State aid implemented by France for France Télécom (OJ 2005 L 269, p. 30).

² Joined Cases [T-427/04](#) and [T-17/05](#) *France v Commission*. See also Press Release [105/09](#).

France Télécom lodged an appeal before the Court of Justice, seeking to have that judgment set aside.

In today's judgment, the Court of Justice rejects the arguments relied on by France Télécom in support of its appeal.

According to the Court, **the General Court was entitled to find that the special tax regime to which France Télécom was subject (from 1994 to 2002) constituted State aid.**

The company's liability to business tax was in fact lower and it therefore benefited from **an advantage directly attributable to the specific features of the special tax regime** applied to it. In particular, France Télécom benefited from specific tax treatment at national level, characterised by the fact that business tax was calculated on the basis of a weighted average rate, as opposed to the various rates applicable in the different local authorities, whereas the rates to which other undertakings were subject were voted annually by those authorities. Moreover, France Télécom was subject to a single rate of business tax only in its principal place of business, whereas other undertakings were taxed at the different rates voted by the local authorities in the territory within which those undertakings had establishments. A rate of 1.9% was also applied to France Télécom, as opposed to the rate of 8% applicable to other undertakings, in respect of management costs.

The Court confirms the General Court's analysis that, in so far as it conferred an advantage on France Télécom, the special tax regime constituted State aid, even though the exact amount of aid granted under that regime had to be determined by reference to certain factors unrelated to the regime.

The present case involved a **dual categorisation**, in which the existence of an advantage was attributable, first, to a fixed element forming part of the special tax regime applied to France Télécom, as opposed to the general law regime, and, second, to a variable element, which depended on external factors, such as the location of France Télécom's premises or land in the various local authorities and the tax rate applicable in the authorities concerned.

Next, the Court rejects France Télécom's argument that the General Court failed to take account of the overall tax regime applicable to it during the two successive tax regimes. According to the Court, the fact that the two regimes were established by the same law does not mean that the tax regime applicable to France Télécom consisted of two inextricably linked periods, the first entailing over-taxation and the second under-taxation. The Court therefore considers that the General Court did not err in law in finding that the Commission was entitled to refuse to apply a set-off between, on the one hand, the amount paid by France Télécom between 1991 and 1993 by way of fixed levy and, on the other, the tax differentials arising as a result of the special regime established for that company for the years 1994 to 2002.

Lastly, the Court also rejects France Télécom's arguments alleging breach of the principle of the protection of legitimate expectations and failure to state adequate reasons in the judgment of the General Court.

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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