



Press and Information

General Court of the European Union  
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Judgment in Cases T-135/12 and T-385/12  
France v Commission and Orange v Commission

## **The reform of the financing of the pensions of civil servants working for France Télécom after its conversion into a public limited company only constitutes compatible State aid subject to the conditions imposed by the Commission**

*The effect of that reform was to reduce the contribution to be paid to the French State by France Télécom up until that conversion and it failed to bring about an equalisation of the social charges payable by competitors*

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 was 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).<sup>1</sup> 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.<sup>2</sup> First, it found that the measure in question constituted State aid, since it reduced the contribution paid to the French State by France Télécom until that conversion for the purposes of financing the pensions of civil servants. 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.

The French Republic (Case T-135/12) and France Télécom (now Orange, Case T-385/12) have 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 and that, even if that were the case, the Commission had no right to demand that the risks not common to ordinary employees and civil servants be taken into account.

In its judgments delivered today, the General Court confirms that **France granted State aid compatible with the internal market to France Télécom**, in accordance with the conditions laid down by the Commission, and dismisses the actions.

<sup>1</sup> This is because civil servants cannot, by reason of their status, be dismissed and therefore cannot face unemployment. In addition, civil servants have no need to receive the protection provided in respect of the wage claims of other employees, in so far as it is well known that public institutions cannot be wound up by judicial decision.

<sup>2</sup> 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).

First, the General Court notes that, by reducing the social charges, **the 1996 Law improved the legal situation of France Télécom as compared with the previous regime and therefore created an advantage for that undertaking.** The aim of the 1996 Law was not to prevent France Télécom from being subject to a charge which, in normal circumstances, should not have been included in its budget, since the contributions concerning the pensions of civil servants were not previously subject to the common scheme of pension contributions. Furthermore, **the advantage conferred on France Télécom is highly selective,** as the 1996 Law concerns only that undertaking. Finally, the Commission duly concluded that **the 1996 reform distorted, or threatened to distort, competition on the telecommunications services market,** in so far as the financial resources released by the 1996 Law could have encouraged France Télécom to develop its activities on markets newly opened to competition, whether in France or in other Member States.

Moreover, the Commission was entitled to conclude that **the new system of financing the pensions concerned does not achieve a competitively fair rate,** given that the rate applied to France Télécom includes only the contributions corresponding to the risks common to ordinary employees and civil servants and, as a result, excludes the contributions corresponding to non-common risks. In that respect, the General Court finds that that rate is designed to ensure that **France Télécom bears the same level of costs for social security charges as its competitors, including the charges which are not part of its budget due to its special status,** such as those concerning the risk of unemployment and wage guarantee insurance.

In addition, the General Court finds that **the Commission correctly took into account the effects of the exceptional flat-rate contribution, holding that that contribution has neutralised the effects of the aid for a period of approximately 15 years,** so that France Télécom does not have to pay, in respect of the period from 1997 to 2010, an additional contribution assuring a competitively fair rate. Finally, the General Court declares that, even if the exceptional flat-rate contribution had led to a reduction in the detrimental effects of the aid, it cannot be automatically inferred from this that the contributions paid by France Télécom necessarily ensured fair competition.

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**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 texts of the judgments ([T-135/12](#) and [T-385/12](#)) are published on the CURIA website on the day of delivery*

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