

Operative part of the order

A national measure which, in the context of taxation on share dividends as income from assets up to the limits of a flat-rate yield calculated by applying a specific percentage to a base including, besides the capital invested by the shareholder, a fraction of the salaries paid to employees of the company issuing the dividends, does not permit salaries of workers employed in a branch of this company, or by one of its subsidiaries to be taken into account, in a third country, seriously restricts freedom of establishment within the meaning of Article 43 EC et seq. Those articles cannot be pleaded in circumstances involving the establishment of a company of a Member State in a third country.

(¹) OJ C 106, 30.4.2005.

Appeal brought on 13 February 2007 by Smanor SA, Hubert Ségaud and Monique Ségaud against the Order of the Court of First Instance (Fourth Chamber) of 14 December 2006 in Case T-150/06, Smanor and Others v Commission

(Case C-99/07 P)

(2007/C 170/15)

Language of the case: French

Parties

Appellants: Smanor SA, Hubert Ségaud, Monique Ségaud (represented by: J.P Ekeu and L. Roques, avocats)

Other party to the proceedings: Commission of the European Communities

By Order of 23 May 2007 the Court (Sixth Chamber) dismissed the appeal and ordered Smanor SA and Mr & Mrs Ségaud to bear their own costs.

Appeal brought on 16 April 2007 by France Télécom SA against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 30 January 2007 in Case T-340/03 France Télécom SA v Commission of the European Communities

(Case C-202/07 P)

(2007/C 170/16)

Language of the case: French

Parties

Appellant: France Télécom SA, formerly Wanadoo Interactive SA (represented by: O.W. Brouwer, H. Calvet, J. Philippe and T. Janssens, avocats)

Other party to the proceedings: Commission of the European Communities

Forms of order sought

- set aside the judgment of the Court of First Instance of the European Communities in Case T-340/03 *France Télécom SA v Commission of the European Communities*, which dismissed the appeal against the Commission of the European Communities decision of 16 July 2003 relating to a proceeding under Article 82 [EC] (Case COMP/38.233 — Wanadoo Interactive);
- accordingly:
 - either refer the case back to the Court of First Instance for a fresh decision;
 - or give final judgment and annul the decision of the Commission of the European Communities of 16 July 2003 relating to a proceeding under Article 82 [EC] (Case COMP/38.233 — Wanadoo Interactive), by granting the forms of order sought in the application filed by the appellant at first instance;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The appellant puts forward seven grounds in support of its appeal.

By its first ground of appeal the appellant claims that the Court of First Instance failed to comply with its duty to provide reasons both as regards the possibility for recoupment of losses, which must be proven, and as regards the right to align prices with those of competitors, which the Court ruled out without explanation.

By its second ground of appeal the appellant claims that the Court infringed Article 82 EC by refusing Wanadoo the right to align its prices, in good faith, with those of its competitors. That right is enshrined in the decision-making practice of the Commission and the case-law of the Court, as well as in the French Competition doctrine and authorities, and furthermore is the only means for the appellant to remain competitive in the market.

By its third ground of appeal the appellant claims that the Court also infringed Article 82 in failing to find fault with the Commission's method for calculating cost recovery, which involved a distortion of the test of predation required by the Court. The method which the Commission used made it impossible to know whether the Wanadoo subscribers generated a profit or loss for that business during their subscription period.