



Press and Information

General Court of the European Union
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Judgment in Case T-565/08
Corsica Ferries France v Commission

The General Court annuls the Commission's decision by which it approved all of the measures adopted by France in favour of SNCM

The Commission committed manifest errors of assessment in finding, first, that certain measures of the 2002 restructuring plan constituted State aid compatible with the common market and, second, that the measures of the 2006 privatisation plan did not constitute State aid

The Société Nationale Corse-Méditerranée ('SNCM') is a French maritime company which provides regular crossings to Corsica from continental France. Since 1976 SNCM has been in charge of ensuring certain public service transport obligations in exchange for financial compensation from the French State. In 2002, 20% of that company was held by the Société nationale des chemins de fer ('SNCF') and 80% by the Compagnie générale maritime et financière ('CGMF'), which themselves were wholly-owned by the French State. When its capital was offered in 2006, 66% of SNCM was taken up by private companies (Capital Partners and Veolia), whereas 25% of its capital was retained by the CGMF.

By decision of 8 July 2008¹, the Commission considered that the 2002 capital investment² of CGMF in SNCM of €76 million (€53.48 million in the form of public service bonds and the remaining €22.52 million as aid for restructuring), was compatible with the common market. Similarly, the Commission considered that the measures of the **2006 privatisation plan** did not constitute State aid. Those measures included a recapitalisation of SNCM for the sum of €158 million, an additional capital investment by the CGMF in the amount of €8.75 million and, finally, an advance on a current account in the amount of €38.5 million aimed at financing a possible social plan put in place by the companies which took over SNCM.

Corsica Ferries France SAS, SNCM's main competitor, brought an action before the General Court seeking annulment of that decision.

First, the General Court finds that the Commission committed a manifest error of assessment in approving the **recapitalisation of SNCM as a measure which did not constitute State aid**.

In the view of the General Court, in order to determine whether the privatisation of SNCM for a negative sale price of €158 million involved elements of State aid, it was for the Commission to assess whether, in similar circumstances, a private investor could have been led to make such large capital investments in the context of the sale of that undertaking or would have opted to liquidate it.

According to the Commission, the hypothetical cost of the liquidation of SNCM, with which the cost of recapitalisation had to be compared, was limited to the cost of additional redundancy payments, going beyond the strict legal and contractual obligations, which would have had to have been paid to employees. Corsica Ferries disputes that a prudent private investor would have paid such compensation.

¹ Decision 2009/611/EC of 8 July 2008 concerning the measures C 58/02 (ex N 118/2002) which France has implemented in favour of the Société Nationale Maritime Corse-Méditerranée (SNCM) (OJ 2009 L 225, p. 180).

² That capital investment was the object of a Commission decision in 2003 (Decision 2004/166/EC of 9 July 2003) (OJ 2004 L 61, p. 13), which was annulled by a judgment of the General Court of 15 June 2005 in Case [T-349/03 Corsica Ferries France v Commission](#), see also Press Release No [58/05](#).

In the view of the General Court, in a social market economy, a prudent private investor would not have ignored, first, its responsibility towards all of the undertaking's stakeholders and, second, the evolution of the social, economic and environmental context in which he was carrying out his development. The payment of additional redundancy benefits may therefore, in principle, constitute a legitimate and appropriate practice, depending on the circumstances of the case, with a view to promoting peaceful social dialogue and maintaining the company's brand image. However, in the absence of all economic rationality, even in the long term, the taking into account of costs going beyond the strict legal and contractual obligations must be regarded as State aid.

The General Court notes that the Commission failed to define the economic activities of the French State in relation to which the economic rationale of the measures at issue must be assessed. Moreover, the Commission did not furnish sufficient objective and verifiable evidence to show that the payment of additional redundancy benefits is a sufficiently established practice among private business persons or that that conduct of the French State, in the present case, was motivated by a reasonable likelihood of drawing indirect material profit, even in the long term (by preventing, for example, a worsening of the social climate within public undertakings).

Second, as regards **the capital investment of CGMF in the amount of €3.75 million**, together with the capital invested by the private companies which took over SNCM, the General Court considers that the Commission did not take account of all the relevant information in its assessment of the comparable nature of investment conditions.

Third, the General Court finds that the Commission committed a manifest error of assessment in approving **the aid to individuals in the amount of €38.5 million as a measure which did not constitute State aid**. The mere fact that a measure pursues a social aim is not sufficient for it to avoid being classified as State aid. In so far as that aid was likely to create an economic advantage for SNCM, it constituted State aid.

Finally, the General Court finds that the Commission's analysis of the cost of restructuring of €22.52 million was not validly substantiated in so far as it was based on the fact that the measures provided for in the 2006 plan did not involve State aid.

Consequently, the General Court annuls the Commission's decision.

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 text](#) of the judgment is published on the CURIA website on the day of delivery

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