Press and Information

Court of Justice of the European Union
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Judgment in Joined Cases C-533/12 P and C-536/12 P
Société Nationale Corse-Méditerranée SA v Corsica Ferries France SAS
and France v Corsica Ferries France SAS

The Court of Justice upholds the partial annulment of a decision by which the Commission approved various measures taken by France in favour of SNCM

The Société Nationale Corse-Méditerranée ('SNCM') is a French maritime company which provides regular crossings to Corsica from continental France. 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 (Butler Capital Partners and Veolia Transport[1]), whereas 25% of its capital was retained by the CGMF and 9% was reserved for the employees.

By decision of 8 July 2008,[2] the Commission considered that a 2002 capital investment[3] 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 by the CGMF at a negative price 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 purchasers.

Corsica Ferries France SAS, SNCM's main competitor, brought an action before the General Court seeking annulment of the Commission's decision. By judgment of 11 September 2012,[4] the General Court partially annulled the decision, holding that the Commission had committed several errors of assessment both with regard to the capital contribution and the privatisation plan. SNCM and France ask the Court of Justice to set aside that judgment.

In today's judgment, the Court rejects the appeals of SNCM and France and thus upholds the partial annulment of the Commission's decision.

So far as concerns the disposal of SNCM at a negative price of €158 million, SNCM and France criticise the General Court for not correctly applying the 'market economy private investor test'.[5] The Court of Justice considers that the General Court correctly determined the necessary criteria for identifying the rational private investor with which the public undertaking in question (CGMF) had to be compared. Furthermore, the General Court duly found that the Commission had failed to establish, to the requisite legal standard that the French State was motivated by a

[1] In the meantime, Butler Capital Partners has transferred its shares to Veolia Transport.
[2] 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).
[3] That capital investment was the subject 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 Press Release No 58/05).
[4] Case T-565/08 *Corsica Ferries France* v *Commission* see also Press Release No 115/12).
[5] That test seeks to determine whether a private investor could have been prevailed upon to make a capital contribution of €158 million in connection with the sale of SNCM or whether it would instead have chosen to wind it up. That test is necessary in order to determine the existence of State aid: capital made available to an undertaking by the State in circumstances corresponding to normal market conditions cannot be classified as State aid.

reasonable probability of obtaining a material benefit, even in the long term, from the transaction in question.

So far as concerns the capital contribution of €8.75 million made jointly and concurrently by CGMF with the private investors, the Court of Justice confirms that the General Court did not err in law in its assessment of the effects of the sale cancellation clause which was concluded at the time the capital contribution was made as part of the partial privatisation of SNCM. The Court of Justice states that, in the event that that clause is exercised, the purchasers have the opportunity to recover their contribution and to end their involvement with SNCM. It is therefore clear, as the General Court found, that the cancellation clause may produce effects on the conditions of the recapitalisation and affect the comparability of the capital contributions of the public and private shareholders. Since the General Court found evidence of those effects, it was right to find that the Commission should have conducted a thorough analysis of the economic impact of the sale cancellation clause.

So far as concerns the aid to individuals in the amount of €38.5 million, SNCM and France claim that the General Court should have ascertained whether that sum was justified in the light of the private investor test. In that regard, the Court of Justice states that nothing in the arguments of SNCM and France demonstrates that the nature of that sum of €38.5 million is different from that of the sum of €158 million, so that the same conclusions apply in the light of the private investor test.

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