



Press and Information

General Court of the European Union
PRESS RELEASE No 20/17
Luxembourg, 1 March 2017

Judgments in Case T-366/13
France v Commission and T-454/13 SNCM v Commission

The General Court confirms France must recover €220 million in aid granted to SNCM in respect of certain maritime transport services it provided between Marseille and Corsica

The Société Nationale Corse-Méditerranée ('SNCM') is a French shipping company that provides regular services from mainland France. By decision of 2 May 2013,¹ the Commission classified as State aid the financial compensation paid to SNCM and CMN ('Compagnie Méridionale de Navigation') in respect of maritime transport services provided between Marseille and Corsica for the years 2007-2013 in the context of a public service agreement. Although the compensation paid to SNCM and CMN for transport services provided throughout the whole year ('the basic service') was declared to be compatible with the internal market, the Commission found that the compensation paid to SNCM in respect of services it provided during peak periods ('the additional service') was incompatible with the internal market.

Consequently, the Commission ordered the recovery of the State aid declared to be incompatible with the internal market, a total of €220 million,² by 3 September 2013. In the summer of 2013, both France and SNCM brought actions before the General Court for the annulment of that decision.

In a parallel infringement action brought by the Commission against France in relation to these same events, the Court of Justice held, by judgment of 9 July 2015,³ that France had failed to fulfil its obligation to recover, within the prescribed period, the €220 million aid granted to SNCM. In that judgment, however, the Court did not assess the merits of the dispute which is the subject matter of today's judgments of the General Court.

In today's judgments, the General Court confirms the decision of the Commission and, accordingly, confirms that France must recover the €220 million aid.

First, the Court points out that, **in order for compensation for public service costs not to be classified as State aid, a number of cumulative conditions⁴ must be satisfied**, including, in particular: (1) the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined, and (2) the recipient undertaking must be selected

¹ Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) awarded by France to Société Nationale Corse-Méditerranée and the Compagnie Méridionale de Navigation.

² Other aid measures granted by France to SNCM were the subject of the judgment of the General Court of 11 September 2012 (Case [T-565/08](#), see Press Release No [115/12](#)) and of the judgment of the Court of Justice of 4 September 2014 (Cases [C-533/12](#) and [C-536/12](#), see Press Release No [115/14](#)). Those judgments partially annulled the decision the Commission which declared, for a number of reasons, that the aid granted should not be recovered from SNCM. However, before the judgment of the Court of Justice was delivered, the Commission, in a new decision of 20 November 2013, ordered recovery of the aid which was the subject of the judgments of the General Court and the Court of Justice (that new decision also relates to an amount of approximately €220 million). SNCM has brought an action before the General Court against the new decision of 20 November 2013 (Case [T-1/15](#), which is still pending before the General Court).

³ Case: [C-63/14](#) Commission v France, see also Press Release No [82/15](#).

⁴ These conditions are deduced from the judgment of the Court of Justice of 24 July 2003, Altmark Trans and Regierungspräsidium Magdeburg ([C-280/00](#), see also Press Release No [64/03](#)).

under a procedure which allows the candidate to be selected who is capable of providing the services in question at the least cost to the community.

In its decision, the Commission found, contrary to what was submitted by SNCM and France, **that the first of those conditions was not satisfied in relation to the additional service and that the second condition was not satisfied in relation to either of the services at issue. The General Court has confirmed the Commission's analysis.**

As regards the **first condition**, the Court holds, bearing in mind that maritime cabotage is an activity which comes under the scope of an EU regulation,⁵ that, for a maritime cabotage company to be entrusted with the operation of services of general economic interest (SGEI), and hence public service obligations, (i) the service in question must meet a real public service need, attested to by the shortage of regular transport services in a situation of free competition, and (ii) the scope of that service must be necessary and proportionate to that need. In the present case however, the French authorities failed to establish these criteria in their favour, unlike the Commission.

In relation to the first condition, the Court also finds that the Commission was correct in classifying the additional capacity provided during peak periods as an additional service and thus assessing that service separately from the basic service. The fact that there is such a distinction between the transport services provided throughout the whole year as part of the basic service and the additional capacity provided during peak periods as part of the additional service is clear from both the wording and practical implementation of the public service agreement.

The Court finds that the Commission also assessed the situation correctly in relation to the **second condition**. It is apparent from a body of consistent evidence that the tendering procedure carried out in relation to SNCM clearly failed to ensure adequate open and effective competition allowing the candidate to be selected who was capable of providing the maritime transport services in question at the least cost to the community.

Finally, the Court finds that the Commission correctly calculated the amount of aid to be recovered.

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 EU 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 [T-366/13](#) and [T-454/13](#) of the judgments are published on the CURIA website on the day of delivery

Press contact: Holly Gallagher ☎ (+352) 4303 3355

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⁵ Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).