



Press and Information

General Court of the European Union
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Judgments in Cases T-74/14 and T-1/15
France v Commission and SNCM v Commission

The Court confirms that the capital injection and the privatisation measures adopted by France in favour of SNCM constitute unlawful State aid incompatible with the internal market

The Société Nationale Corse-Méditerranée ('SNCM') was a French shipping company which provided regular services from mainland France. SNCM had, since 1976, been entrusted with certain public transport service obligations in exchange for financial compensation from the French State. In 2002, that company was 20% owned by SNCF and 80% by the Compagnie Nationale Maritime et Financière ('CGMF'), both of which are 100% owned by the French State. When it opened its capital in 2006, private companies (Butler Capital Partners and Veolia Transport) assumed control of 66% of the capital in SNCM, whereas 25% of its capital remained in the possession of CGMF and 9% was reserved for employees.

By decision of 8 July 2008,¹ the Commission considered that CGMF's capital contribution² to SNCM in 2002 of €76 million (€53.48 million in respect of public service obligations and the balance of €22.52 million by way of restructuring aid) was compatible with the common market. Similarly, the Commission considered that the measures in the 2006 privatisation plan did not constitute State aid. Those measures included the disposal of SNCM at a negative price of €158 million (recapitalisation), an additional capital contribution of €8.75 million, and, lastly, a current account advance of €38.5 million to finance any social plan put in place by the buyers.

Corsica Ferries France SAS, the main competitor of SNCM, brought an action before the General Court seeking annulment of the Commission's decision. By judgment of 11 September 2012,³ the General Court annulled the decision, holding that the Commission had committed a number of errors of assessment both in respect of the capital contribution and the privatisation plan. By judgment of 4 September 2014,⁴ the Court of Justice upheld the judgment of the General Court.

The Commission then adopted a new decision in order to comply with the judgments of the General Court and the Court of Justice. In that new decision of 20 November 2013,⁵ the Commission categorises the capital contribution of €15.81 million and the privatisation plan measures as unlawful and incompatible with the internal market. In total, SNCM is required to repay to the French State €220 million⁶. France and SNCM each brought an action before the General Court seeking the annulment of that decision.

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

² That capital injection had already formed the subject-matter of a Commission decision in 2003 (Decision 2004/166/EC of 9 July 2003, OJ 2004 L 61, p. 13), annulled by the judgment of the General Court of 15 June 2005, *Corsica Ferries France v Commission* (T-349/03, see PR 58/05).

³ Case T-565/08 *Corsica Ferries France v Commission* see also Press Release 115/12).

⁴ Joined Cases C-533/12 P *SNCM v Corsica Ferries France* and *France* and C-536/12 P *Corsica Ferries France* see also Press Release 115/14).

⁵ Decision C(2013) 7066 final, concerning State aid SA.16237 (C 58/2002) (ex N 118/2002) implemented by France in favour of SNCM.

⁶ The second part of the 'SNCM' case concerns other measures taken by France in favour of SNCM (namely financial compensation paid in respect of services provided during peak periods). By decision of 2 May 2013, the Commission

By today's judgments, the General Court dismisses the actions brought by France and SNCM and thus confirms that the €220 million at issue constitutes State aid which is unlawful and incompatible with the internal market.

As regards the disposal of SNCM at a negative price of €158 million, SNCM and France criticise the Commission for failing to apply the 'market economy private investor test'⁷ properly. In that regard, the General Court observes that the Commission correctly considered that the economic activities to be taken into account in that test were those of the market economy as a whole, the conduct of France thus being compared with that of a diversified holding company, seeking to maximise its profits and protect its corporate image as a global investor. Similarly, the Commission was entitled to conclude that SNCM and the French authorities have failed to demonstrate the existence among private investors of a sufficiently established practice of making provision for social plans in cases comparable to that of SNCM, all the more so since the possible social costs were not quantified prior to the implementation of the privatisation measures.

The Court further confirms the Commission's assessment that a prudent private investor would not have gone ahead with the disposal at a negative price of €158 million for the sole purpose of avoiding an action by creditors to make good liabilities. It also confirms the Commission's conclusion that it was not established to the requisite legal standard that the French authorities would have been, with a sufficient degree of probability, ordered by the French courts to pay damages in order to make good liabilities and even less that such an order would have exceeded the negative price at which SNCM was sold. The Court concludes that the Commission correctly applied the private investor test.

As regards the additional capital contribution of €8.75 million, the Court also reaches the conclusion that the Commission correctly applied the private investor test. In particular, the Court states that no analysis to establish that the 10% rate of return on CGMF's contribution of €8.75 million would have been acceptable to a private operator was carried out before the capital contribution injection and that it has not been demonstrated that a prudent private investor would have considered a fixed return of 10% sufficient.

Finally, as regards the current account advance of €38.5 million, the General Court considers that the Commission was entitled to conclude that that aid created an advantage for SNCM by allowing it to not bear the entire cost of the possible future departure of certain employees.

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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categorised the financial compensation as State aid and ordered its recovery (again a total of €220 million). France and SNCM unsuccessfully challenged that decision before the General Court (case [T-366/13](#) France v Commission and case [T-454/13](#) SNCM v Commission see also Press release [20/17](#); those judgments have become final, as no party has brought an appeal before the Court of Justice to have them set aside). At the same time, the Commission successfully brought an action for failure to fulfil obligations against France on the ground that it had not recovered in time the €220 million relating to the second part of the case (case [C-63/14](#) Commission v France see also Press Release [82/15](#)).

⁷The purpose of that test is to determine whether a private investor would have made a capital injection of €158 million in connection with the sale of SNCM or whether it would have opted for the liquidation of the latter. That test is necessary in order to determine whether State aid exists: capital made available to an undertaking by the State in circumstances which correspond to normal market conditions is not to be categorised as State aid.

