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Press and Information

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Judgment of the Court of First Instance in Case T-349/03

Corsica Ferries France SAS v Commission

THE COMMISSION'S DECISION DECLARING THE RESTRUCTURING AID FOR SNCM PLANNED BY FRANCE COMPATIBLE WITH THE COMMON MARKET IS ANNULLED

The Commission made an incorrect assessment of the minimal nature of the aid which vitiates the lawfulness of the decision

Under the EC Treaty, ¹ aid granted by Member States which distorts, or threatens to distort, competition is incompatible with the common market, in so far as it affects trade between Member States. Some aid may, however, be regarded as compatible with the common market. The Commission has indicated, in guidelines, ² the conditions under which State aid for rescuing and restructuring firms in difficulty may be declared compatible with the common market. Those conditions relate to the beneficiary qualifying as a firm in difficulty, the restoration of viability, the avoidance of undue distortions of competition, the limitation of the aid to the minimum, the imposition of the conditions and obligations necessary for competition not to be distorted to an extent contrary to the general interest, and the full implementation of a restructuring plan.

Corsica Ferries France SAS is a shipping company which offers scheduled maritime services to Corsica from mainland France and Italy. Société nationale maritime Corse-Méditerranée (SNCM) is a shipping company which, since 1976, has carried out the public service obligations of scheduled maritime services between mainland France and Corsica, in return for financial compensation from France.

In 2002 France notified the Commission of planned restructuring aid of EUR 76 million for SNCM.

¹ Article 87 EC.

² Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 1999 C 288, p. 2), applicable from 9 October 1999.

By decision of 9 July 2003³ the Commission declared that aid to be compatible with the common market and authorised the recapitalisation of SNCM by a first payment of EUR 66 million. It envisaged the possibility, before the end of the restructuring period (31 December 2006), of subsequently authorising a second payment corresponding to the difference between the remaining EUR 10 million and the proceeds of the sales required by the decision.

Corsica Ferries brought proceedings for the annulment of that decision, arguing that it did not have an adequate statement of reasons and that it was in breach of the Commission's guidelines. It was said to contain errors of fact and manifest errors of assessment, especially as regards the condition that aid should be limited to the minimum.

In its judgment of today, the Court of First Instance rejects all the arguments of Corsica Ferries except for that relating to **limitation of aid to the minimum**.

By that complaint, Corsica Ferries criticised the Commission for not taking into account the net proceeds of the sales of real property assets provided for in the restructuring plan and carried out in 2003 in determining the minimal nature of the aid granted to SNCM.

The Court notes that in its decision the Commission first found that, in accordance with its restructuring plan, SNCM had planned to realise EUR 21 million from the sale of ships and that it had actually sold its real property assets for net sales proceeds of EUR 12 million. To determine the minimum amount of aid, the Commission simply observed in the decision that SNCM was to obtain EUR 21 million as net proceeds of sale, without referring to the EUR 12 million indicated as the net proceeds of sale of the real property assets.

Under the guidelines, the amount of aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company. To determine the minimal nature of the aid granted to SNCM, the Commission should thus have taken into account all the net proceeds of the sales carried out under the restructuring plan, and should therefore have included the receipts from sales of real property assets.

The fact that those receipts had a marginal effect on the financial position of SNCM cannot justify not taking them into account.

Moreover, the Commission could not confine itself to making an approximate estimate of the net proceeds of the sale of the ships and the real property, since, at the time of adoption of the decision, it must have known the actual amount of those net proceeds.

Finally, the decision is vitiated by a manifest error of assessment, since the Commission had information available to it which enabled it to find, at the time of adoption of the decision, that the net proceeds of sale exceeded EUR 21 million.

In those circumstances, the Court of First Instance finds that the conditions for the aid to be declared compatible with the common market by the Commission were not satisfied. The determination of the minimal nature of the aid is of essential importance in the overall structure of the decision, and it is not for the Court, in the framework of an action for

³ Commission Decision 2004/166/EC on aid which France intends to grant for the restructuring of the Société Nationale Maritime Corse-Méditerranée (SNCM) (OJ 2004, L 61, p. 13).

annulment, to substitute its own assessment for that of the Commission. The Court therefore annuls the Commission's decision.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE EN ES FR GR IT

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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