



Press and Information

Court of Justice of the European Union
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Judgment in Case C-127/16 P
SNCF Mobilités v Commission

France must recover over €642 million (excluding interest) in State aid granted to the company Sernam

In 2001, the Commission conditionally gave initial authorisation¹ for restructuring aid of € 503 million in favour of Sernam, a private delivery and express package and palette transport company, then wholly owned by SNCF ('the Sernam 1 Decision'). Finding that the conditions attached to that decision had not been complied with and that new, incompatible aid of € 41 million had been granted, in 2004 the Commission adopted a second decision ('the Sernam 2 Decision').² In the Sernam 2 decision, the Commission required the recovery of the € 41 million of aid declared incompatible and confirmed, while laying down new conditions for compatibility, that the aid approved under the Sernam 1 Decision of € 503 million was compatible with the internal market. The Sernam 2 Decision provided, inter alia, for a possible choice between two conditions, which were, in essence, the following:

- within a set period, Sernam was to withdraw from the road transport market;
- alternatively, '[i]n the event that Sernam [sold] its assets en bloc by 30 June 2005 at market price, through a transparent and open procedure, to a company that [had] no legal link with SNCF, the conditions [of withdrawal from the road transport market] [would] not be applicable'.

France stated to the Commission that it had opted to sell Sernam's assets en bloc, the purchaser being Financière Sernam, a company created by the former management team of Sernam.

Having received a number of complaints, the Commission then found that the condition that Sernam's assets en bloc should be sold had not been complied with and that the incompatible aid of € 41 million had not been recovered. It concluded therefrom that the restructuring aid of € 503 million, conditionally authorised in 2004, had been wrongfully implemented and was incompatible with the internal market. The Commission also declared that the measures granted by SNCF to enable the 'sale of the assets en bloc' to be made, namely the recapitalisation of Sernam by SNCF in the net sum of €57 million, the waiving of €38.5 million of Sernam's debts by SNCF, and certain guarantees granted by SNCF when Sernam's activities were transferred to Financière Sernam constituted new State aid incompatible with the internal market. By decision of 9 March 2012,³ the Commission concluded that all the aid which Sernam had received, namely a total of more than € 642 million (excluding interest), should be reimbursed by Financière Sernam and its subsidiaries because of the economic continuity between Sernam and those companies.

SNCF brought an action before the General Court, seeking the annulment of the decision of 9 March 2012. By judgment of 17 December 2015,⁴ the General Court dismissed SNCF's action. It

¹ Commission Decision NN 122/00 (ex N 140/00) of 23 May 2001.

² Commission Decision 2006/367/EC of 20 October 2004 on the State aid partly implemented by France for the Sernam company (OJ 2006 L 140, p. 1).

³ Commission Decision 2012/398/EU of 9 March 2012 on State aid SA.12522 (C 37/08) — France — Enforcing the Sernam 2 Decision [of 20 October 2004] (OJ 2012 L 195, p. 19).

⁴ Case: [T-242/12](#) SNCF v Commission, see also Press Release No [151/15](#).

found that the condition for compatibility of the restructuring aid concerning the sale of Sernam's assets en bloc had not been complied with, that the inclusion in Sernam's payment liabilities of €41 million declared incompatible by the Sernam 2 Decision was not sufficient to eliminate the distortion of competition and that the obligation to reimburse the State aid of € 41 million had been transferred to Financière Sernam owing to the economic continuity between Sernam and Financière Sernam through the intermediary of Sernam Xpress (a wholly-owned subsidiary of Sernam). Lastly, the General Court further held that, in the specific circumstances of the case, the private investor test⁵ is not applicable to the implementation of a compensatory measure.⁶

SNCF was not satisfied with the judgment and lodged an appeal with the Court of Justice, seeking to have that judgment set aside.

By today's judgment, **the Court of Justice** dismisses SNCF's appeal and **upholds the judgment of the General Court**.

In particular, the Court confirms that the purpose of the Sernam 2 Decision was to eliminate Sernam's presence on a market with overcapacity in order to prevent any distortions of competition associated with the granting of the € 503 million in restructuring aid, by requiring the takeover of Sernam's road transport activities by other undertakings and the diversification of Sernam's activities towards rail freight. It follows that the General Court was correct in concluding that the purpose of the sale of Sernam's assets en bloc provided for in the Sernam 2 Decision was the interruption of Sernam's economic activity and its elimination. The Court of Justice also confirms that the condition relating to the sale of Sernam's assets en bloc provided for in the Sernam 2 Decision must be construed as excluding the liabilities, although the General Court concluded, correctly, that that condition had not been complied with, as the sale also covered almost all of Sernam's liabilities.

Similarly, the General Court and the Commission correctly concluded that there was economic continuity between Sernam and Financière Sernam through the intermediary of Sernam Xpress. Sernam Xpress was the debtor of the obligation to repay the illegal aid, an obligation ultimately passed on to Financière Sernam by reason of its merger with Sernam Xpress.

Lastly, the Court of Justice confirms that the private investor test is not applicable to the implementation of a compensatory measure. The compensatory logic of the sale of Sernam's assets en bloc, provided for in the Sernam 2 Decision, differs from the logic of a private operator seeking to maximise its profits or, as in this case, minimise its losses.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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⁵ The private investor test consists of ascertaining whether a private undertaking placed under the same conditions would have acted in the same way, so that the existence of State aid can be excluded.

⁶ The sale of Sernam's assets en bloc was a compensatory measure intended to prevent distortions of competition resulting from the restructuring aid.