

COMMISSION

COMMISSION DECISION

of 8 September 2004

amending Decision 2004/166/EC on aid which France intends to grant for the restructuring of the Société Nationale Maritime Corse-Méditerranée (SNCM)

(notified under document number C(2004) 3359)

(Only the French text is authentic)

(Text with EEA relevance)

(2005/36/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Commission Decision 2004/166/EC of 9 July 2003⁽¹⁾, and in particular Article 2 thereof,

Whereas:

new ships and signing contracts for building, ordering or chartering new or renovated ships. SNCM could only operate the 11 ships which it already possessed at the date of the final decision, namely: the *Napoléon Bonaparte*, *Danielle Casanova*, *Île de Beauté*, *Corse*, *Liamone*, *Aliso*, *Méditerranée*, *Pascal Paoli*, *Paglia Orba*, *Monte Cinto* and *Monte d'Oro*. The last paragraph of this Article reads: 'If for reasons beyond its control SNCM has to replace one of its ships before 31 December 2006, the Commission may authorise such a replacement on the basis of a duly reasoned notice served by France'.

- (2) In a letter dated 23 June 2004⁽²⁾, the French authorities requested permission from the Commission to replace the vessel *Aliso* with the *Asco* in the list of ships included in Article 2 of the final decision. Also, due to the difficulties encountered by SNCM in selling the *Asco*, the French authorities requested permission from the Commission to sell either the *Aliso* or the *Asco*, contrary to the provision made in the restructuring plan⁽³⁾.

1. PROCEDURE

1.1. Procedural overview

- (1) On 9 July 2003, the Commission adopted Decision 2004/166/EC on aid which France intends to grant for the restructuring of Société Nationale Maritime Corse-Méditerranée (SNCM) (hereinafter final decision), in which it declared part of the aid notified to be compatible with the single market provided that certain conditions were met. One of these conditions, which is stated in Article 2 of the final decision, is that until 31 December 2006 SNCM was to refrain from acquiring

1.2. Name of the measure

- (3) The name of the measure is 'Amendments to the Commission's final decision of 9 July 2003 on aid for the restructuring of SNCM'.

⁽¹⁾ OJ L 61, 27.2.2004, p. 13.

⁽²⁾ Registered by the Commission under reference TREN(2004) A/26015.

⁽³⁾ See recital 97 of the final decision.

1.3. Beneficiary of the measure

- (4) The beneficiary of the aid for restructuring is SNCM, a shipping company operating services to Corsica and northern Africa from the French mainland. The beneficiary of the proposed amendments would therefore be SNCM.

1.4. Objectives of the amendments

- (5) The main objective of the proposed amendments is to allow SNCM to use the Aliso rather than the Asco by amending the list of ships it is authorised to use under Article 2 of the final decision, and to facilitate the sale of the fourth ship provided for in the final decision by allowing potential purchasers to choose between the Aliso and the Asco, which are identical vessels.

2. DETAILED DESCRIPTION OF THE PROPOSED MEASURES

2.1. The proposal to replace the Aliso with the Asco

- (6) In their letter of 23 June 2004, the French authorities proposed replacing the Aliso with the Asco in the list of ships that SNCM is authorised to use throughout the restructuring period. This list is explicitly included in the second paragraph of Article 2 of the final decision of 9 July 2003. The high-speed vessel Asco had not yet been sold at the date of the French authorities' request.
- (7) The reason for the proposed change is that given SNCM's difficulties in disposing of the Asco, the French authorities wish to make it possible for the company to dispose of either of the two ships.
- (8) The French authorities have also forwarded a certificate from the Marseilles port authorities testifying that the Aliso has been berthed since 2 November 2003.

2.2. Proposal to allow SNCM to sell either the Asco or the Aliso

- (9) The French authorities have also requested permission for SNCM to sell either the Asco or the Aliso under the restructuring plan, depending on the requirements of the potential buyers.

3. EVALUATION OF THE PROPOSED AMENDMENTS

3.1. Impact of the proposal to replace the Aliso with the Asco

- (10) The Commission notes that the Asco and the Aliso are 'sister ships', i.e. twin vessels built using the same plans and by the same shipyard. They have exactly the same size, shape and capacity.

- (11) The Commission considers that replacing one ship with the other is not intended to increase SNCM's capacity and would therefore not affect the scope of the final decision, in particular with regard to the condition limiting the company's capacity as contained in Article 2 of that decision.

- (12) The Commission also notes that the composition of SNCM's authorised fleet may only be modified for reasons beyond SNCM's control. In the case at hand, the Commission considers that the problems encountered by SNCM in selling the Asco are beyond the company's control and were not foreseeable at the time the final decision was adopted.

3.2. Impact of the proposal to allow SNCM to sell either the Asco or the Aliso

- (13) The Commission considers that if SNCM were to find a buyer for the Aliso instead of the Asco, the sale of the Aliso would have the same effect on the Company's capacity as the sale of the Asco. It also considers that the French authorities would be in compliance with the restructuring plan in respect of the undertaking to sell the four vessels composing SNCM's operational fleet, since the Company has already sold three of the four ships whose disposal was envisaged in the restructuring plan.
- (14) If SNCM sells the Aliso instead of the Asco, the Commission considers that the condition regarding the disposal of the four ships as provided for in the restructuring plan will be deemed to have been fulfilled.

4. CONCLUSIONS

- (15) To conclude, the Commission considers that the amendments requested by the French authorities do not alter the scope of the provisions in the final decision and that aid to restructuring in the form of recapitalisation, subject to strict compliance with the conditions thus modified, is compatible with the single market.

- (16) The Commission invites France:

— to notify the Commission as soon as possible, and at the latest within 15 working days from the date of receipt of this decision, which information it considers to be covered by the obligation of professional secrecy pursuant to Article 25 of Regulation (EC) No 659/1999⁽¹⁾,

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

— to inform the beneficiary of the aid of this decision as soon as possible, concealing, as need be, the information it considers to be covered by the obligation of professional secrecy, communication of which to the beneficiary of the aid might be detrimental to some of the parties concerned, and to indicate in the version sent, if need be, any other information that it considers to be covered by the obligation of professional secrecy and has not concealed,

HAS ADOPTED THIS DECISION:

Article 1

1. In the second paragraph of Article 2 of Decision 2004/166/EC, the word 'Aliso' is replaced with 'Asco'.

2. Under the last indent in recital 97 of that Decision, the words 'high-speed ship Asco' are replaced with 'either the high-speed ship Asco or its sister ship, the high-speed ship Aliso'.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 8 September 2004.

For the Commission
Loyola DE PALACIO
Vice-President