23rd December 2004 - Vendée sea crossings - The Conseil rules that the Yeu Continent company did not use predatory pricing for the transportation of passengers between the Isle of Yeu and the French mainland

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At the conclusion of a case which started in 2001, following a complaint from the company VIIV (Vedettes Inter-îles Vendéennes), regarding the pricing practices used by the Vendée region's local authority-run sea transport corporation ***Régie départementale des passages d'eau de la Vendée*** (which has since become the Yeu Continent company), the Conseil today announced its decision, stating that it had found no proof that these practices were anticompetitive.

The practices questioned

The ***Régie départementale*** provides a regular crossing service, with two ferries and one "vedette" passenger boat, between La Fromentine and the Isle of Yeu.

VIIV, which runs a passenger boat service between two ports in the Vendée region and the Isle of Yeu during the summer season, accused the ***Régie départementale*** of having fixed the price of crossings on its vedette, "L'Amporelle" at very low levels, below its actual cost price.

It claimed that a company with a public services responsibility, which uses its dominant position to distort competition in a competitive market, by practicing predatory pricing, was contrary to the terms of article L. 420-2 of the code of commercial law, which prohibits abuse of a dominant position.

A seasonal market

The *Conseil* noted that the *Régie départementale* is the only company offering a ferry link on the Isle of Yeu – mainland route and therefore enabling the transportation of vehicles and bulky merchandise.
It also noted that, during the winter period, it is the only company offering passenger crossings on this route, in accordance with its public service mission.

The Isle of Yeu is a popular tourist destination in summer and in the summer season (April to September), the *Régie départementale* finds itself in competition with several other companies offering express passenger crossings.

L'Amporelle's prices are not anticompetitive

To determine whether its prices are "predatory", these must be compared with the company's costs.
Based on EC case-law (COMP/35.141 – Deutsche Post), the *Conseil* determined that, in this case, the costs to be taken into account for this calculation should be limited to its "incremental" costs, i.e. those which the Corporation would not bear if it were not involved in competitive activity.

The *Conseil* determined that it should:

- Include only those costs linked to the running of l'Amporelle during the summer season, as this is the only period during which the *Régie départementale* is involved in a competitive activity

- Exclude fixed costs linked to the purchase of the passenger boat and which the Régie départementale is obliged to bear in any case, to provide its public service mission, regardless of whether l'Amporelle remains in dock during the summer or is involved in a competitive activity.

Finally, as a result of this calculation, it was proven that the costs specifically generated by the express passenger boat, l'Amporelle's crossings from April to September are covered by the prices charged by the *Régie départementale*. It is not therefore proven that the Régie départementale abused its dominant position and attempted to push out its competitors.

The *Conseil* specified that this analysis is based solely on a strict evaluation of conformity under competition law and does not prejudge either the economic efficiency conditions within which the *Régie départementale* provides its public service (notably the choice of size of its vessels), or the value of the local authority subsidy to cover its public service expenses, as it is not competent to evaluate this.

> Decision 04-D-79 of 23 December 2004, relating to practices implemented by the Régie départementale des passages d'eau de la Vendée (RDPEV) corporation

> See decision of the Paris Court of Appeal (28th June 2005) and correcting decision dated 17th January 2006

> See decision of the Cour de cassation (Supreme Court of Appeals) of the 17th June 2008 and correcting decision dated 14th October 2008

> See decision of the Paris Court of Appeal (9th June 2009)

> See decision of the Cour de cassation (Supreme Court of Appeals) - 13 July 2010