27th February 2009: Ferry services to Corsica from the port of Marseilles

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The Conseil de la concurrence confirms SNCM behaved in an anticompetitive manner
during the call for tender in the second half of 2006

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In May 2006, the Office des Transports de la Corse (OTC, Corsican Transport Office), launched a call for tenders to renew the "public service delegation" contract for ferry services between the island of Corsica and the port of Marseilles. In August 2006, four bids were tendered: three "partial" bids - received respectively from Corsica Ferries, Compagnie Maritime de Navigation (CMN) and an ad hoc grouping of Corsica Ferries and CMN - and one global and indivisible bid from SNCM covering all of the routes to be operated.

In September and October 2006, the Conseil de la concurrence received complaints from CMN and Corsica Ferries. Noting that the renewal contract was due to be signed imminently, the Conseil handed down interim measures on 11th December 2006 (Decision 06-MC-03), ordering SNCM to make its global bid divisible, to enable the awarding public authority to compare the bids route by route, and therefore consider the possibility of splitting the contract between several competing bids. On 15th December 2006, the Conseil d'Etat (Administrative Supreme Court) ultimately annulled the tender process.
The Conseil de la concurrence has today issued its full decision on the merits, fining SNCM a total of 300,000 euros, for submitting and subsequently maintaining a global, indivisible bid during the tender process.

SNCM's global indivisible bid had the intention and potential effect of evicting competing partial bids

The Conseil de la concurrence took the view that the global and indivisible bid tendered by SNCM, and the company's refusal to offer a firm commitment on the amount of subsidies sought for each route to be operated, did indeed have the intention and potential effect of excluding its competitors from the tender process.

Given the restrictions imposed by the call for tender in terms of route and fleet requirements, the other competitors were unable to submit a global bid within the time permitted by the public authority. Consequently, the OTC had no option but to award SNCM the contract, at least for part of the services to the island. By submitting an indivisible bid, SNCM was guaranteed to win the contract for all of the routes available, since the OTC could not rule it out in favour of its competitors without losing some ferry services between Marseilles and Corsica.

Serious behaviour, but a limited fine due to the absence of real effects on the market

The interim measures handed down by the Conseil de la concurrence, and the subsequent decision by the Conseil d'Etat to annul the tender process, meant that SNCM's bid was ultimately not implemented. It therefore had no direct impact on the market concerned. For this reason, the Conseil de la concurrence imposed a fine of 300,000 euros.

For more details, see decision 09-D-10 of 27th February 2009.



> See decision of the the Paris Court of Appeal (9th March 2010)

> The ruling was appealed to the Cour de cassation (Supreme Court of Appeals)