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Judgments of the General Court in Cases T-7/19 | Scandlines Danmark and Scandlines Deutschland v Commission, T-364/20 | Denmark v Commission and T-390-20 | Scandlines Danmark and Scandlines Deutschland v Commission

### **State aid: the General Court dismisses the actions regarding the financing of the Fehmarn Belt fixed link project between Denmark and Germany**

The Fehmarn Belt fixed link project between Denmark and Germany takes the form, inter alia, of an immersed tunnel under the Baltic Sea between Rødby, on the Danish island of Lolland, and Puttgarden in Germany. The tunnel, which is approximately 19 kilometres long, will consist of an electrified railway line and a motorway. The Danish public entity Femern A/S is entrusted with the financing, construction and operation of the Fixed Link.

In 2014, the Danish authorities notified the Commission of the financing model for that project. On 23 July 2015, the Commission adopted Decision C(2015) 5023 <sup>1</sup>, by which it decided not to raise any objections to that model. It found, inter alia, that even if the measures granted to Femern A/S for the planning, construction and operation of the Fixed Link constituted State aid, they were compatible with the internal market.

Scandlines Danmark and Scandlines Deutschland provide, inter alia, ferry services between Denmark and Germany. In 2016, Scandlines requested the Commission to act in respect of certain measures granted for the Fehmarn project upon which, they claimed, the Commission had not adopted a position in its decision of 2015. On 28 September 2018, the Commission adopted Decision C(2018) 6268 <sup>2</sup>, by which it concluded that the measures at issue did not constitute unlawful aid and that those measures were, in any event, compatible with the internal market.

By judgments of 13 December 2018 <sup>3</sup>, upheld by the Court of Justice by judgment of 6 October 2021 <sup>4</sup>, the General Court of the European Union annulled Decision C(2015) 5023 as regards Femern A/S on the ground that the Commission had not initiated the formal investigation procedure. The Commission subsequently informed the Danish authorities of its decision to initiate that procedure in respect of the measures granted to Femern A/S for the financing of the Fixed Link.

On 20 March 2020, the Commission adopted Decision C(2020) 1683 <sup>5</sup>, according to which the measures consisting in capital injections and a combination of State loans and State guarantees in favour of Femern A/S, which Denmark at least partially put into effect unlawfully, constituted State aid. In view of the modification of those measures after the opening decision, the Commission nevertheless found those measures to be compatible with the internal market.

In **Case T-364/20**, Denmark seeks the annulment of Decision C(2020) 1683 in so far as the Commission

found that the measures consisting in capital injections and a combination of State loans and State guarantees in favour of Femern A/S constituted State aid. **The General Court dismisses the action.** It finds, inter alia, that the selective advantage granted to Femern A/S, which carries out an economic activity, strengthens its position on the transport services market for the crossing of the Fehmarn Belt between Rødby and Puttgarden when compared with the undertakings already operating on that market, in particular when compared with the ferry operator. Consequently, **the financing granted to Fehmarn A/S affects trade between Member States.**

In **Case T-390/20**, Scandlines Danmark and Scandlines Deutschland seek the annulment of Decision C(2020) 1683 on account of a series of errors allegedly made by the Commission. **The General Court dismisses the action in its entirety.** According to the General Court, the Commission was entitled to find that the Fixed Link project is of common European interest, inter alia because that project makes a significant and concrete contribution to the achievement of the European Union's transport policy objectives and broader EU objectives, and that it will improve the connection between the Nordic countries and central Europe. The General Court also finds that no evidence has been put forward to call into question the finding that the Fixed Link project is based on the principle that it must be prepared, constructed and operated so that harmful effects on nature and the environment are prevented.

Furthermore, in **Case T-7/19**, Scandlines Danmark and Scandlines Deutschland brought an action against Commission Decision C(2018) 6268. **The General Court dismisses the action.** It rules, inter alia, that, by the opening decision, the Commission withdrew Decision C(2018) 6268 in so far as it concerns the measures granted to Femern A/S and initiated the formal investigation procedure in respect of those measures. **There is therefore no longer any need to adjudicate on the arguments concerning annulment of that part of the Decision** <sup>6</sup>.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The full text and, as the case may be, the abstracts of the judgments ([T-7/19](#), [T-364/20](#) and [T-390/20](#)) are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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<sup>1</sup> [Commission Decision C\(2015\) 5023 final](#) of 23 July 2015 on State aid SA.39078 (2014/N) (Denmark) for the financing of the Fehmarn Belt Fixed Link project; see, also, Commission Press Release [IP/15/5433](#).

<sup>2</sup> [Commission Decision C\(2018\) 6268 final](#) of 28 September 2018 on State aid SA.51981 (2018/FC).

<sup>3</sup> Judgments of 13 December 2018, *Scandlines Danmark and Scandlines Deutschland v Commission*, [T-630/15](#), and, *Stena Line Scandinavia v Commission*, [T-631/15](#).

<sup>4</sup> Judgment of 6 October 2021, *Scandlines Danmark and Scandlines Deutschland v Commission*, [C-174/19 P](#) and [C-175/19 P](#).

<sup>5</sup> [Commission Decision C\(2020\) 1683 final](#) of 20 March 2020 on the State aid SA.39078 – 2019/C (ex 2014/N) which Denmark implemented for Femern A/S; see also Commission Press Release [IP/20/501](#).

<sup>6</sup> As regards the measures in favour of Femern Landanlæg A/S, another Danish public entity, which is entrusted with the rail hinterland connections in Denmark, the General Court dismisses the action on the ground that, inter alia, Femern Landanlæg A/S does not carry out an economic activity and, therefore, cannot be regarded as a beneficiary of aid.