COMMISSION

COMMISSION DECISION
of 30 October 2001
on the State aid awarded by France to the Société nationale maritime Corse-Méditerranée (SNCM)

(notified under document number C(2001) 3279)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/149/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 called on interested parties to submit their comments [1] pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2],

Whereas:

1. **INTRODUCTION**

(1) Scheduled maritime transport services between the ports of mainland France and Corsica have been provided as a public service since 1948. The French State has entrusted public undertakings with operating maritime services with Corsica since that date.

(2) SNCM (Société nationale maritime Corse-Méditerranée) and CMN (Compagnie méridionale de navigation) are the current concession-holders for this service pursuant to an agreement concluded in 1976 for a period of 25 years. Since 1991, the Corsican regional authority (collectivité territoriale de Corse) has been the authority responsible for guaranteeing the public service.

(3) Apart from the public service (the concessionary network), SNCM also provides scheduled maritime services to Algeria and Tunisia and, in the high season from April to September, to Sardinia (the open network). Since 1990 SNCM has been offering passenger transport services between France and Italy through its subsidiary, Corsica Marittima.

[1] OJ C 117, 21.4.2001, p. 9.
[2] OJ L 83, 27.3.1999, p. 1.

(4) Since 1 January 1999, pursuant to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ([3]), the free provision of regular cabotage services with the islands of the Mediterranean (with the exception of the Greek islands) is applicable to all Community shipowners operating vessels registered in a Member State and flying the flag of that Member State.

(5) In 1997, 1998 and 2000, the Commission received complaints from private operators regarding the subsidies awarded to SNCM in return for the cost of the public service obligations. The main thrust of these complaints was:

— the possible use of public funding to provide maritime transport services outside the concessionary network, notably for international maritime connections between France and Italy,

— the possible overcompensation of costs linked to the public service provided.

(6) In order to study the information brought to its attention and pursuant to the provisions of Article 88 of the Treaty, the Commission initiated two investigation procedures. The present final decision, taken when these procedures had been completed, closes Cases C-78/98 and C-14/01.

2. **PROCEDURE**

Case C-78/98

(7) On 5 February 1997 and 22 April 1998, the Commission received complaints regarding the aid which the company Corsica Marittima, a subsidiary of SNCM, was said to be receiving from the French State for transporting passengers between France and Italy on the Genoa-Bastia and Livorno-Bastia routes.

(8) By letter of 22 December 1998, the Commission notified France of its intention to initiate the procedure provided for in Article 88(2) of the Treaty to examine the compatibility of this aid with the common market. By letter of 8 March 1999, the French authorities forwarded their comments on that decision.

(9) The Commission Decision was published in the *Official Journal of the European Communities* ([4]). Following its publication, the Commission received comments from several private operators in competition with the companies of the SNCM group. These comments were forwarded to France, providing it with an opportunity to make its own observations concerning them.

Case C-14/01

(10) Following the initiation of the abovementioned procedure, the Commission received further complaints, this time denouncing the excessive amount of the aid compared with the cost of the public service obligations fulfilled by SNCM and the use of this over compensation to finance the activities of Corsica Marittima.

(11) By letter of 28 February 2001, the Commission notified France of its decision to initiate the procedure pursuant to Article 88(2) of the Treaty to assess the aid measures linked to the compensation of public service obligations provided by SNCM.

(12) The Commission Decision was published in the *Official Journal of the European Communities* ([5]). The Commission received comments from two interested third parties. The French authorities communicated their comments on this Decision and on the comments of the third parties by letters dated 26 April and 17 September 2001 respectively. Additional information in the form of accounting data was forwarded by France on 1 June 2001. Commission officials, accompanied by an independent auditor, verified these data at SNCM headquarters on 2 July 2001.

([3]) OJ L 364, 12.12.1992, p. 7.
([4]) OJ C 62, 4.3.1999, p. 9.
([5]) OJ C 117, 21.4.2001, p. 9.

3. THE MARKET AT ISSUE

(13) A total of 5,509 million passengers travelled between Corsica and the mainland by air and sea in 1999, of which 3,106 million by sea and 2,402 million by air. Taking all the shipping lines together between mainland France and Corsica, the total number of passengers was approximately 1,626 million, 1,480 million of whom travelled on scheduled international links. Nine shipping companies operated services to the island from 13 mainland ports (three in France: Marseilles, Toulon and Nice, and ten Italian ports). The share of passengers carried by sea within the framework of the public service was 1,450 million, including 510 000 for Ajaccio, 584 000 for Bastia, 69 000 for Calvi, 126 000 for Île Rousse, 59 000 for Porto-Vecchio and 97 000 for Propriano. On the passenger transport market as a whole in 1999, maritime connections between Corsica and mainland France represented less than 30 % of all traffic between the mainland (mainland France and Italy, essentially) and Corsica.

(14) Freight transport, which is provided in the context of territorial continuity (with the exceptions of cement and hydrocarbons) is divided more or less equally between SNCM (ferries and passenger-cargo vessels) and CMN (passenger-cargo vessels). In 1999, it amounted to 950 000 net tonnes, of which 799 000 entered and 151 000 left Corsica. This traffic was divided mainly between Bastia (504 000 tonnes) and Ajaccio (306 000 tonnes), while Porto-Vecchio accounted for fewer than 70 000 tonnes.

The SNCM Group

(15) SNCM-Ferryterranée is a State-owned holding company (80 % CGMF/20 % SNCF) which groups together several subsidiaries in the maritime transport sector ([6]). SNCM-Ferryterranée passenger and vehicle transport on the one hand and cargo transport on the other are concentrated around two major networks: the Corsica network (lines between mainland France and Corsica) and the international network (lines between mainland France and North Africa). Within the group, SNCM ([7]) operates both the public maritime service between Corsica and the south of mainland France and scheduled maritime services to Algeria and Tunisia from French ports. SNCM also operates seasonal lines with Sardinia. The activities of Corsica Marittima, 95 % of which is a subsidiary of SNCM, are concentrated on transporting passengers between France and Italy on the routes Genoa-Bastia and Livorno-Bastia ([8]). SNCM's fleet consists of six car ferries, three high-speed vessels (HSV) and four ro-ro mixed passenger and cargo vessels.

(16) As far as the lines between Corsica and the mainland French ports are concerned, at the end of 1999 SNCM had a market share of 83 % of the passenger transport segment and 77 % of the freight segment. According to data supplied to the Commission ([9]), SNCM lost more than 10 market share points (passengers and vehicles) between 1994 and 1999 on the Corsica network:

Total network	1994	1995	1996	1997	1998	1999
Passengers	1 227	1 091	1 144	1 282	1 463	1 626
Cars	417	374	395	444	499	553

([6]) The group is made up of the following companies: CGHT (100 % subsidiary), Sudcargos (50 %), Sara (89 %), Sotramat (100 %), Ferrytour (97 %), MCM (100 %), Cofremar (50 %), Corsica Marittima (95 %), SNCM Germany (50 %), Navitel (99 %), CMN (40 %), Someca (40 %), Sitec (35 %) and Esterel (13 %) (see the group's accounts).

([7]) For the purposes of this Decision, the term 'SNCM' means the company which carries out these activities, while the term 'SNCM-Ferryterranée' refers to the group, including all the subsidiaries mentioned in footnote 6.

([8]) In addition to the routes Genoa-Bastia and Livorno-Bastia, Corsica Marittima operated on the following routes: in 1997, Bastia-Island of Elba, Livorno-Porto-Vecchio, Bonifacio-S. Teresa (Sardinia), Genoa-Tunisia and, in 1998, Livorno-Porto-Vecchio, Genoa-Tunisia.

([9]) Report to the Office des transports de la Corse (OTC), *Suivi de la dotation forfaitaire de continuité territoriale*, May-July 2000.

SNCM	1994	1995	1996	1997	1998	1999
Passengers	1 145	1 011	1 013	1 096	1 233	1 352
Cars	383	342	348	378	416	453

(SNCM % market share)

Passengers	93,3	92,7	88,6	85,5	84,3	82,9
Cars	92,1	91,5	88,2	85,1	83,5	82,0

(17) The most salient feature of maritime traffic between Corsica and the mainland is the seasonal imbalance of passenger traffic, which fluctuates dramatically between the summer and winter periods. Traditionally, the months of July and August account for 50 % of the year's traffic ([10]). There are also marked variations during the school holiday periods, on some weekends and between the middle and the end of the week. In addition to the seasonal variations, traffic flows are not balanced in both directions. Volumes vary widely in the north-south and the south-north directions between the beginning and the end of the week. This concentration of traffic in a very short time span is a problem in that vessels have to be made available to operate the line to meet demand and a service has to be provided in the middle and low seasons, which are of scant interest to an operator.

4. **ORGANISATION OF THE MARITIME SERVICE**

4.1. **The legal framework**

(18) Between 1948 and 1976 the service to Corsica was carried out under a system partly regulated by French law and within the context of a national cabotage monopoly. The State paid companies providing the service a lump-sum subsidy to balance their accounts in return for fulfilling public service requirements concerning the ports to be served, the regularity, frequency and capacity of the service, the fares to be applied and the vessel's crew.

(19) In 1976 France redefined the conditions for providing the public maritime transport service with Corsica on the basis of the territorial continuity principle. This principle aims to limit the drawbacks of insularity and ensure that islands are served in ways as close as possible to purely mainland connections. A concessions scheme was set up with a set of specifications laying down the public service framework. A framework agreement was concluded with SNCM and CMN for a period of 25 years. This agreement expires on 31 December 2001.

(20) Between 1976 and 1982, the French Government established the procedures for providing the service based on this framework agreement. The Law of 30 July 1982 ([11]) transferred the management of territorial continuity in a contractual framework with the French State to the Corsican Parliament. Subsequently, the Law of 13 May 1991 ([12]) conferring status on the territorial community of Corsica (the Corsican regional authority) granted total jurisdiction to services to the island to that Parliament. Since that time, the service has been organised by the Office des transports de la Corse (OTC).

(21) Since 1991, two five-year agreements have been concluded between the OTC and two concessionary companies. The legal basis for these five-year agreements is the 1976-2001 framework agreement. These agreements specified the ways in which the public service was to be performed for the periods 1991 to 1996 and 1996 to 2001 respectively. They also defined the principles for the payment of the lump-sum subsidy from the budget for territorial continuity in return for the obligations imposed.

([10]) Tourists constitute approximately 85 % of the maritime passenger traffic. Residents constitute the remaining 15 % (source: Direction régionale de l'équipement).
([11]) Law of 30 July 1982 conferring special status on the region of Corsica.
([12]) Law of 13 May 1991 conferring status on the territorial community of Corsica.

4.2. **Public service obligations (PSOs)**

(22) Maritime services of public interest between the French mainland ports and Corsica were initially set out in the agreement of 31 March 1976 (framework agreement) and the annexed specifications. These documents indicate the ports to be served and the number of services to be provided according to the season, without quantitative indications as to the number of passengers or the freight capacity of the vessels which must perform these services. The initial specifications distinguished, however, between the permanent service which SNCM must provide throughout the year and the supplementary service to be provided during the thirteen weeks of the summer season.

(23) In particular, the framework agreement establishes ([13]) that:

— the number of connections offered and lines served can only be revised by decision of the public authorities,

— the public service fares are established by the public authorities by referring to the fares of travellers, accompanied vehicles and freight set by the Société Nationale des Chemins de fer Français (SNCF) (French National Railways),

— SNCM proposes draft timetables for services, which may be modified, and are then approved by the public authorities,

— decisions concerning the size of the fleet of ferries and cargo vessels assigned to the public service are taken by the public authorities. The specifications annexed to the framework agreement give details of the fleet assigned to this service. Pursuant to Article 4 of these specifications, SNCM is authorised to use the vessels assigned to the public service on lines outside the concessionary services within limits which are compatible with this service.

(24) As indicated above, the Law of 13 May 1991 granted the Corsican Parliament complete jurisdiction to organise services for the island, which is implemented by the OTC. The new five-year agreements concluded between the OTC and SNCM specify, in greater detail but in accordance with the principles of the framework agreement, the ways in which the public service is to operate. The agreement which is currently in force (for the period 1996-2001) provides for basic public services (transport of passengers and accompanied vehicles ([14])) as follows:

in the winter period:

— three crossings a week between Ajaccio and Marseilles or Nice,

— three crossings a week between Bastia and Marseilles or Nice,

— one crossing a week between Balagne and Marseilles or Nice;

in the intermediate autumn and spring periods:

— six crossings a week from Marseilles/Toulon mainly to the ports of Ajaccio and Bastia, some crossings being to Propriano,

— seven crossings a week from Nice by high-speed passenger craft to the ports of Bastia and Balagne;

in the summer period (13 weeks):

— basic crossings from Marseilles/Toulon by ferry: six crossings a week to Ajaccio, six crossings a week to Bastia and three crossings a week to Propriano,

— basic crossings from Nice are by high-speed passenger craft: 26 crossings a week in 1996 and 1997, mainly with the ports of Bastia and Balagne, 27 crossings a week as from 1998.

([13]) These are clauses and conditions which remain in force in the five-year agreements concluded by the OTC.
([14]) There is provision for stepping up the service in some periods (school holidays, long weekends). The agreement provides for a period for trying out high-speed vessels. Some services may be stepped up by additional connections according to the forecast demand.

(25) In accordance with clause III of the agreement for the period 1996 to 2001, the freight share of the overall public service for which SNCM is responsible between the French mainland ports and Corsica, is carried out using ro-ro cargo vessels and car ferries. This service includes the following crossings:

involving major ports:

— six crossings a week between Marseilles and Bastia, three of which are provided by SNCM ([15]),

— six crossings a week between Marseilles and Ajaccio, three of which are provided by SNCM;

involving departmental ports:

— three crossings a week between Marseilles and Porto-Vecchio,

— five crossings a week between Marseilles and Balagne or Propriano, two of which are provided by SNCM.

(26) As for the schedule of this service, clause VIII of the agreement provides that SNCM draws up draft timetables for its car ferries and, where applicable, high-speed passenger craft for the summer period, for the winter period and for the intervening autumn and spring periods, and submits them to the OTC for approval.

(27) On the basis of the statistical data available and taking into account, in particular, the transport capacities of the fleet assigned to the public service according to these agreements, the following tables offer a comparison ([16]) of the public service obligations set out in the agreements and the services actually provided by SNCM under these agreements:

PSO provided for in the agreements ([1])	1991-1995 agreement	1996-2001 agreement
Number of imposed crossings	2 428	3 068
Number of passenger seats	2 845 000	2 796 000
Number of places for cars	813 000	788 000
Freight (in linear metres)	1 398 000	1 703 000

([1]) The size of the SNCM fleet has been designed to provide these transport capacities.

Average annual performance per period ([1])	1991-1995 agreement	1996-2001 agreement
Number of crossings carried out	2 514	3 232
Number of passengers conveyed	1 137 000	1 173 000
Number of cars transported	414 000	382 000
Thousands of tonnes (1991-1995), then linear metres (after 1996)	822 000	661 000

([1]) These data correspond to actual market demand.

(28) It must be pointed out that the size of the SNCM fleet has been designed to offer sufficient transport capacities, given its public service obligations. These capacities greatly exceed the number of passengers, cars and volumes of freight actually transported. SNCM's loading ratios for the various types of transport are consequently very low. This stems from the nature of the public service, based on the logic of territorial continuity. This logic presupposes that there are sufficient means of maritime transport available at any moment of the year and for all the Corsican ports and that such means are capable of responding to a highly irregular demand (see recital 17).

([15]) The other crossings are provided by Compagnie méridionale de navigation.
([16]) The numbers of seats for passengers are not indicated in the agreements. The figures given here are an extrapolation taking into account the number of imposed crossings and the capacity of the vessels designated for the public service.

4.3. **The State's financial contribution**

(29) In consideration of the public service obligations defined in the agreements, SNCM receives an annual subsidy from the State, the amount of which is fixed for five years. This amount is revised every year according to the changes in gross domestic product at market prices and the information and the analytical accounts which SNCM is required to provide. The amounts of the annual territorial continuity subsidies awarded to SNCM during the period 1991 to 1999 were as follows (in millions of French francs) ([17]):

1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
480	489	501	503	508	515	525	528	553	4 602

(30) Under the terms of Article 4 of the 1976 agreement ([18]), the annual subsidy is awarded in the form of 12 equal monthly instalments. For the subsidy to be paid over, SNCM must submit its results for the previous financial year approved by the State financial officer. Any repayments owed by SNCM are deducted from the instalment or the instalments of the current financial year. The arrangements for adjusting instalments also provide for additional payments to be made by the State. Subsequent agreements also provide for penalties if the basic number of crossings that have not been made by SNCM in the course of the year exceeds 2 % of the basic number of crossings provided for in the agreement. The awarding authority may also notify SNCM that it is withholding the lump-sum payment for territorial continuity in the case of significant incidents causing the interruption of the public service.

4.4. **Ownership of the fleet**

(31) Annex II to the 1991 and 1996 agreements gives details of the composition of the SNCM fleet assigned to the public transport service, namely the car ferries, high-speed passenger vessels and ro-ro cargo ferries ([19]). As regards the public authorities' intervention in determining the size of the fleet in relation to the capacities judged necessary, the 1991 and 1996 agreements stipulate that 'every autumn, SNCM and the OTC will hold talks to adjust the service where necessary and, if need be, the size of the fleet, depending on traffic forecasts for the year to come and the results of the season that has just finished, in order to obtain an average loading coefficient of the vessels of between 55 % and 60 % in the summer season'. The following table shows the evolution of the passenger fleet capacities over the last 20 years:

Passenger transport unit capacities

Ferries — HSV's	1980	1985	1990	1995	2000
Napoléon	1 844	1 844	1 844	1 844	
Cyrnos	1 629	1 629			
Provence	1 288	1 288			
Comte de Nice	1 408				
Corse (old)	1 408				
Corse (new)		2 262	2 262	2 262	2 262
Esterel		2 262	2 262	2 262	
Ile de Beauté			1 660	1 660	1 660

([17]) Source: SNCM's audited accounts.
([18]) Conditions governing the State's financial contribution, given in clause IV of the five-year agreement between SNCM and the OTC for the period 1996-2001.
([19]) Some of these ro-ro ferries can also transport passengers.

Ferries — HSV's	1980	1985	1990	1995	2000
Danielle Casanova			2 772	2 772	2 772
Napoléon Bonaparte					2 680
HSV 1					530
HSV 2					1 100
Total	7 577	9 285	10 800	10 800	11 004

(32) The agreement system conceived in 1976 and on which the 1991 and 1996 agreements were based stipulates that the vessels acquired to provide the public service belong to SNCM and are not the subject of a clause of return to the concessionary authority. The concession scheme as conceived in 1976 does not provide for any specific remuneration to the concession-holder but, on the other hand, he remains the owner of his investments.

4.5. **Auditing arrangements**

(33) According to the arrangements introduced in 1976, SNCM is required to submit analytical accounts relating to the concessionary services every year. According to Article 5 of the framework agreement and clause VII of the five-year agreements for 1991-1996 and 1996-2001, a distinction must be drawn in these accounts between, on the one hand, ferries and any high-speed passenger craft and, on the other hand, ro-ro cargo vessels for freight transport. These accounts must firstly permit a distinction to be drawn between the concessionary services, maritime services and supplementary activities and secondly must be established according to procedures approved by the State financial officer.

(34) Article 6 of the Decree of 16 September 1983 stipulates that SNCM will forward to the OTC all documents and accounts concerning the concessionary services under the territorial continuity heading and all information needed for their comprehension, in particular how the structural charges associated with activities other than the concessionary network are passed on. Furthermore, the five-year agreements for 1991 to 1996 and 1996 to 2001 stipulate that SNCM must present a report each year to the OTC outlining the use that has been made of the annual lump-sum award which it has received on the basis of the previous year's activities and including an inventory of the services provided.

(35) Since 1991, the OTC has entrusted a consultant, Mr Paul Ménestrier, with monitoring SNCM's accounts and the use of the territorial continuity lump-sum award from the previous financial year. Finally, SNCM is subject to economic and financial supervision by the State under the conditions applying to public undertakings laid down by Decree No 55-733 of 26 May 1955.

5. **THE AID MEASURES UNDER EXAMINATION**

5.1. **Case C-78/98**

(36) Case C-78/98 concerns the operations of the SNCM-Ferryterranée group through the intermediary of its subsidiary Corsica Marittima. Corsica Marittima, which has its own administrative staff, leases available SNCM vessels with their crews for a number of hours on certain dates between the end of March and the beginning of September in order to operate services between Corsica and mainland Italy ([20]). The rentals paid by Corsica Marittima are credited to the concessionary network.

(37) When it initiated the investigation procedure, the Commission identified the following types of possible aid within the meaning of Article 87 of the Treaty:

— the financing of Corsica Marittima's operating losses by the parent company, SNCM,

— low rentals paid by Corsica Marittima to SNCM to lease its vessels with the crews needed to operate them.

([20]) In addition to the Genoa-Bastia and Livorno-Bastia routes, Corsica Marittima was operating on the following routes: in 1997, Bastia-Island of Elba, Livorno-Porto-Vecchio, Bonifacio-S. Teresa (Sardinia), Genoa-Tunisia and, in 1998, Livorno-Porto-Vecchio, Genoa-Tunisia.

5.2. **Case C-14/01**

(38) Case C-14/01 concerns the possible overcompensation by the State for the cost of the public service obligations linked to maritime services with Corsica borne by SNCM. Such overcompensation would result from the excessive level of subsidies granted under the agreements (see recitals 29 and 30). This might give rise to the misuse of the public service subsidy to finance SNCM activities on markets open to competition.

(39) When the investigatory procedure regarding this question was initiated, the Commission also indicated that it would examine additional financial compensation of FRF 20 million awarded annually to SNCM for a three-year period, and which the French authorities approved on 6 November 1998 ([21]). This additional compensation was awarded subsequently in the form of a rider to the agreement currently in force, covering the period 1996-2001. Thus an amount of FRF 20 million is to be added to the annual sum of FRF 515 million (1996 francs) laid down in Section IV of the said agreement (territorial continuity lump-sum award).

6. **COMMENTS FROM INTERESTED PARTIES**

6.1. **Case C-78/98**

Comments from private operators

(40) The Commission received comments from several private operators in competition with the concession-holders, which mainly emphasised the following points:

— SNCM's and Corsica Marittima's poor management and the fact that the latter company is operating in a competitive market thanks to subsidies which the parent company receives under the cover of public service obligations,

— the extremely aggressive price policy ([22]) applied by Corsica Marittima in the competitive market, despite its heavy operating losses. Italian tour operators were said to have been offered drastic reductions on the fares officially published by Corsica Marittima,

— the fact that the reports by Mr Ménestrier establish that the 'free network' operated by SNCM is loss-making and that it emerges from the further analysis performed by Mr Ménestrier that SNCM is financing the operating losses of its subsidiary Corsica Marittima from the budget for the 'territorial continuity public service network' supplied by subsidies from the French State.

Comments from the French authorities

(41) By letter of 8 March 1999, the French authorities forwarded their comments on the initiation of the procedure. Primarily, these authorities contest the existence of State aid in the financing of Corsica Marittima by SNCM. The French authorities point out that the agreement between SNCM and the OTC ([23]) sets out the applicable rules concerning the cost of making maritime equipment available to the concessionary network, while authorising and encouraging the concession-holder to deploy vessels from the territorial continuity fleet on other networks whenever these are not being used for the concessionary network.

(42) According to the French authorities, SNCM made an economically rational choice in leasing its vessels to its subsidiary Corsica Marittima to respond better to the demand for transport between Corsica and the mainland for the least cost. The rentals paid by Corsica Marittima would broadly cover the marginal cost of using vessels which otherwise would remain unused. To leave these vessels unused would have deprived SNCM of the resources from these rentals. This constitutes, therefore, additional income generated by an activity open to competition to benefit the concessionary network.

([21]) Decision No 4/98 of 6 November 1998 by the Management Board of the Office des transports de la Corse (OTC).
([22]) A file on 'clandestine price-cutting by Corsica Marittima' was supplied to the Commission.
([23]) Agreement for the period 1991-1995, p. 20.

(43) With regard to Corsica Marittima's losses since its creation, the French authorities observe that SNCM's decision to pursue the operations is not contrary to the principles of market economy. Quite apart from the strategic aspect, which may justify the existence of losses for several years (as this is a commercial investment), an operator reasons in a consolidated manner. Corsica Marittima's losses were made essentially in the first two years (45 % of the losses for the period 1990-1997 occurred in 1990 and 1991). Corsica Marittima's results became positive for the first time in 1997.

(44) The French authorities conclude that, by leasing its vessels to its subsidiary Corsica Marittima in a period of low traffic at a rate which does not cover the total cost, SNCM behaved like an entrepreneur consciously seeking to optimise the use of his fleet throughout the year.

(45) Finally, the French authorities provided data from SNCM's analytical accounts showing that the result of the free network activities enabled Corsica Marittima's losses to be covered, particularly since the sharp drop in traffic in 1995.

Comments from SNCM

(46) By letter of 2 April 1999, SNCM produced extracts from its analytical accounts for the years 1990 and 1995 and extracts from the report by Mr Ménestrier for the year 1995. Together with these documents, SNCM submitted its comments, contesting Mr Ménestrier's further analysis and opinions concerning the company's analytical accounts.

(47) SNCM also noted that one of the complainants in the case enjoys a dominant position on the maritime transport passenger services market between Corsica and Italy on which Corsica Marittima operates. The general fares charged by Corsica Marittima to private individuals and travel agencies for its services on this market were very close to those of the complainant. The prices offered to Italian tour operators were also within the market price range.

6.2. **Case C-14/01**

Comments from private operators

(48) The Commission received comments from two private operators in competition with SNCM on the Corsican lines. These comments stress, in particular, the considerations which formed the basis of the complaints forwarded in the first place to the Commission:

— the territorial continuity system introduced by France constitutes an obstacle to forming a trade network between France and Italy. The system has the direct effect of promoting connections with mainland France using the three ports of Marseilles, Nice and Toulon, to the detriment of connections with Italian ports, which are much closer to Corsica,

— SNCM establishes the public service obligations itself. According to its competitors, it appears unlikely that the seasonal promotional fares were really decided upon by the public authorities, as provided for in the agreements. In addition, the frequencies of service, decision as to which ports are served and transport capacity are all, in practice, left up to SNCM,

— maritime services to Corsica, also known as the territorial continuity services, are principally governed by fleet capacity, since it is the nature and size of the SNCM fleet which determines the content of the public service obligations and not the reverse. SNCM acquired and put into service vessels to provide the public service despite the negative opinion of the OTC awarding authority,

— the aid awarded to SNCM exceeds the amount needed to carry out the public service task, this overcompensation being inherent in the very structure of the annual territorial continuity award. This overcompensation is revealed, in particular, by the inclusion of costs which are completely external to the public service obligations in the compensation awarded,

— at a national Parliament hearing ([24]), the Corsican officials responsible themselves identified the components of this excess cost, pointing out, in particular, the excess costs imposed on SNCM by systematically choosing French yards for shipbuilding and through the cost of social coverage for dockers in the port of Marseilles, which was said to have been set off against the funds awarded under the territorial continuity scheme. The competitors also state that there are too many staff allocated to the public service and that they cost too much when compared with the service requirements,

— finally, the comments received question the system for constituting the fleet assigned to the public service as set out in the agreements, denouncing the fact that, at the end of the concession period, the fleet constituted thanks to the territorial continuity award would be totally dispensed from operating services to Corsica. The capital gains which SNCM made on vessels financed by the award were registered in the accounts, not for the territorial continuity network, but for the so-called free network ([25]).

Comments from the French authorities

(49) The French authorities forwarded their comments in a letter dated 1 June 2001. In order to justify the need for a public service to provide maritime connections with Corsica, the French authorities begin by stating that it is their responsibility to maintain a continuous link between the mainland and the island (the territorial continuity policy). This policy aims to reduce the drawbacks of insularity, seeking to integrate Corsica more effectively into the European area. The French authorities point out that the territorial continuity policy calls for a level of maritime transport services which no shipowner would assume to the same extent and under the same conditions if he were considering his commercial interests.

(50) More precisely, the French authorities stress some of the specific features of the maritime services for Corsica which led the public authorities to intervene in the organisation of transport very early on and to participate in its financing to provide sufficient and regular shipping services and in order to organise and rationalise the service. These specific features were:

— the relatively low level of maritime traffic between mainland France and Corsica,

— the seasonal imbalance of passenger traffic, very high transport capacities being required during the summer period, without being necessary the rest of the year,

— dissymmetry of traffic: traffic is not balanced equally in both directions, the volumes varying sharply according to the direction north-south or south-north, according to the season, and between the beginning and the end of the week,

— the service concerned a high number of ports in relation to existing traffic. The need to serve all the secondary ports, which account for less than 20 % of total tonnage, is regarded as essential for territorial management reasons.

([24]) Hearing of Mr Piazza-Alessandrini, Chairman of the Office des transports de la Corse (OTC), by the national Parliament's fact-finding mission on Corsica on 21 April 1997.

([25]) See the report of the OTC inspector and the analysis made by Mr Ménestrier and contested by SNCM (see recital 46). The comments received refer in particular to the resale of the *Esterel* in 1997 and the indemnity paid by the insurance company following the total loss of the *Monte Stello* in 1994.

(51) The French authorities emphasise that the companies responsible for the public maritime transport service to Corsica have never benefited from exclusive arrangements and that the operators of lines to and from Corsica are only interested in exploiting those which are of real economic interest, namely the major lines in the high season. Outside of the season and of these lines, there would be a noticeable shortage of regular transport services compared with the public service obligations which the public authorities must fulfil.

(52) The French authorities also evoked their obligation to ensure that the fleet was capable (in the number and type of vessels and crews to be deployed) of coping both with a large capacity required for a small part of the year and with highly variable traffic. According to the authorities, the average annual loading coefficient for vessels assigned to the public service is around 40 % ([26]). This low average and the marked variability of the coefficient would be very damaging to a carrier operating without financial compensation in a competitive market. Maintaining a fleet capable of meeting the public service obligations would entail substantial structural costs and the under-use of resources for a considerable period of the year. In addition, the physical features of Corsican ports limited the size of vessels, particularly at Bastia ([27]), making the use of specific ferries mandatory, and which thus determined the composition of the fleet.

(53) Finally, the French authorities point out that an invitation to tender, open to all European maritime operators, for the Corsican services at the end of the year 2000 had not encouraged many tenderers to come forward, even among those now operating from France and Italy. The limited amount of interest shown illustrated the difficulty of guaranteeing services to the island in a way which complied with the wishes of the public authorities in economic and financial conditions which were acceptable for a private operator, even with the contribution of public funding.

(54) The French authorities claimed that concluding a public service contract had enabled them to obtain transport services which meet these specific requirements, while at the same time ensuring the existence of:

— a programme to provide the public with sufficient services which met standards of continuity, regularity, capacity and quality, with fixed fares and conditions, particularly for certain categories of traveller,

— sufficient transport capacity to guarantee a public service throughout the year, given seasonal imbalances and the dissymmetry of traffic,

— moderate fares, fixed according to the principle of territorial continuity,

— a balance between the ports served, both regarding the two major ports of the north and the south of the island and regarding the four secondary ports, independently of the economic viability of each connection,

— security of service: the contract permits having the vessels needed to guarantee continuity of service when there are technical stoppages, operating incidents or unpredictable bad weather.

(55) Lastly, the French authorities point out that, under Article 4(3) of Regulation (EEC) No 3577/92, existing public service contracts in the Member States may remain in force until their expiry date.

7. **ASSESSMENT OF AID**

(56) Pursuant to Article 87(1) of the Treaty 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.

([26]) Whereas it can reach 100 % in the direction of Marseilles to Ajaccio during the first week of August.
([27]) Port limited to vessels less than 175 m long.

(57) Making public money available to SNCM constitutes without any doubt a State aid. SNCM is an operator engaged in the provision of international maritime transport services. Since 31 December 1989, maritime transport between Member States and between Member States and third countries has been open to all operators referred to in Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ([28]), amended by Regulation (EEC) No 3573/90 ([29]). Since 31 December 1989, aid granted to an undertaking transporting passengers and freight between France and third countries, including Italy, may affect trade between Member States and threatens to distort competition, which would confirm the presence of aid within the meaning of Article 87(1) of the Treaty. It will be recalled that the SNCM-Ferryterranée group operates on intra-Community connections in direct competition with operators such as Corsica Ferries, Moby Lines, Happy Lines, Tris, Lauro and Saremar and, as regards freight traffic with the North African countries ([30]), it is also in competition with other European operators.

(58) Generally speaking, according to case law, State financing aimed at compensating the additional costs arising from public service obligations constitutes a measure falling under Article 87 of the Treaty ([31]).

(59) This would also be the case for the financing of Corsica Marittima's activities on the France-Italy connection if the free network were partly financed thanks to the subsidy awarded by the State to SNCM for the public service obligations on the concessionary network.

Notification requirement

(60) In accordance with Regulation (EC) No 659/99, any aid awarded to SNCM from 1 January 1990 at the latest constitutes a new aid and as such is subject to the requirement of prior notification to the Commission. There are no exceptions to this rule in the maritime transport sector. It is applicable even if the undertaking receiving the aid is likely to benefit from an exemption from the competition rules as provided for in Article 86(2) of the Treaty ([32]).

7.1. **Assessment of the compatibility of the aid**

(61) As for the compatibility of State aid with the common market, aid is prohibited unless one of the specific exemptions provided for by the Treaty applies. Exemptions may be granted pursuant to Article 87(2) and (3) and Article 86(2) of the Treaty.

(62) The aid awarded to SNCM under the territorial continuity subsidy does not fall under any of the exemptions provided for in Article 87(2) of the Treaty, being neither aid having a social character, granted to individual consumers, nor aid to make good the damage caused by natural disasters or exceptional occurrences, nor aid granted to the economy of certain areas of the Federal Republic of Germany.

([28]) OJ L 378, 31.12.1986, p. 1. SNCM operations between Corsica and the French mainland within the context of the 1976 agreement are considered maritime cabotage. Scheduled passenger transport services and ferry transport along the French coasts have been open to all operators since 1 January 1999 pursuant to Regulation (EEC) No 3577/92.
([29]) OJ L 353, 17.12.1990, p. 16.
([30]) The countries concerned are Tunisia and Algeria, whose maritime relations with France have been governed for a long time by shared cargo agreements between the national maritime companies. These agreements were cancelled to make way for traffic liberalisation in 1987 in the case of Algeria and 1988 in the case of Tunisia.
([31]) See the judgment of the Court of First Instance of the European Communities of 27 February 1997, Fédération française des sociétés d'assurances (FFSA) *et al.* v. Commission, T-106/95, [1997] ECR, p. II-229, point 165.
([32]) See in particular the judgment of the Court of Justice of the European Communities of 22 June 2000, Aid to the Coopérative d'exportation du livre français (CELF), C-332/98, [2000] ECR, p. I-4833.

(63) Nor can this aid benefit from any of the exemptions referred to in Article 87(3) of the Treaty. For the aid in question is not intended to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the economy of a Member State, within the meaning of Article 87(3)(b) of the Treaty, nor aimed at promoting culture and heritage conservation, referred to in (d) of that paragraph. Nor can the aid in question be qualified as regional development aid pursuant to Article 87(3)(a) or (c), as it is not part of a multisectoral aid scheme which is open in a given region to all the undertakings of the sectors concerned (see the guidelines on national regional aid ([33])). Nor can this aid be regarded as aid to facilitate the development of certain activities as referred to in the abovementioned subparagraph (c), since the aid in question is intended to cover the operating costs of a specific maritime operator and is not part of a general plan to render the beneficiary undertaking economically and financially efficient without recourse to further aid.

(64) Article 86(2) of the Treaty states that 'undertakings entrusted with the operation of services of general economic interest […] shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

(65) In accordance with case law, as this provision lays down a derogating rule, it must be interpreted restrictively ([34]). It is not therefore sufficient in this respect that the company in question has been entrusted by the public authorities with the operation of a service of general economic interest; the application of the rules of the Treaty, specifically those of Article 87, must also obstruct the performance of the particular tasks assigned to the company and the interests of the Community must not be affected ([35]).

(66) In order to assess whether the subsidies paid to SNCM under the 1991 agreement qualify for the exemption referred to in Article 86(2) of the Treaty, the Commission must in turn:

— verify whether the services whose management has been entrusted to SNCM can be qualified as a service of general economic interest. This qualification presupposes that there would be insufficient scheduled transport services if the latter were left up to market forces alone ([36]), and

— examine whether the amount of the subsidies awarded to SNCM in the context of its public service obligations for maritime services to Corsica matches the excess costs borne by SNCM to satisfy the fundamental requirements of the public service contract.

(67) In 1997, the Commission established Community guidelines on State aids to maritime transport, specifying the conditions under which State aid awarded in exchange for fulfilling public service obligations will be considered compatible with the common market.

7.2. **Justification of the public service**

(68) Article 2(4) of Regulation (EEC) No 3577/92 defines public service obligations as 'obligations which the Community shipowner in question, if he were considering his own commercial interest, would not assume or would not assume to the same extent or under the same conditions'.

(69) In accordance with the Community guidelines on State aid to maritime transport, 'public service obligations may be imposed for scheduled services to ports serving peripheral regions of the Community or thinly served routes considered vital for the economic development of that region, in cases where the operation of market forces would not ensure a sufficient service level'.

([33]) OJ C 74, 10.3.1998, p. 9.
([34]) See the abovementioned judgment 'FFSA', point 173.
([35]) See the abovementioned judgment 'FFSA', point 173, and the Judgment of the Court of Justice of 10 December 1991, Merci convenzionali porto di Genova, C-179/90, [1991] ECR, p. I-5889, point 26.
([36]) Judgment of the Court of Justice of 20 February 2001, Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) *et al.* v. Administración General del Estado, C-205/99, [2001] ECR, p. I-1271, point 34.

(70) In addition, the Treaty, as amended by the Treaty of Amsterdam, takes the special nature of island regions into consideration in the conditions for which it provides as set out in the second paragraph of Article 158. The special nature of island regions was also acknowledged in declaration No 30 on island regions, annexed to the final act of the Treaty of Amsterdam.

(71) The Commission is not contesting the so-called territorial continuity policy that France has been implementing for some time, nor the obligation of the public authorities to examine and, where necessary, ensure that there are sufficient scheduled maritime transport services for passengers and goods to and from Corsica so as to meet the economic and social development requirements of this island region.

(72) The Commission notes that, historically, this objective, which is of legitimate public interest ([37]), has not been achieved through the interplay of market forces alone. Indeed, from 1976 until the late 1990s, SNCM enjoyed a *de facto* monopoly on nearly all the lines concerned ([38]). According to the information available to the Commission, it was only from 1996 that a private operator, Corsica Ferries, opened the market to competition by serving the island from Nice with high-speed vessels during the summer months. This service was subsequently extended in the following manner:

Toulon-Bastia line

Since 18 December 2000, four crossings per week in the season and three crossings per week out of season;

Toulon-Ajaccio line

Since 1 April 2000, four crossings per week in the season and three crossings per week out of season;

Nice-Bastia line

Since 4 July 1996, seven crossings per week in the season and, since 18 March 1999, one crossing per week out of season;

Nice-Calvi line

Since 4 July 1996, eight crossings per week in the season and, since 18 March 1999, one crossing per week out of season;

Nice-Ajaccio line

Since 1 April 2001, one crossing per week out of season.

(73) The agreement concluded by the State with SNCM in 1976 for a period of 25 years aimed, precisely, at remedying the proven lack of scheduled maritime transport services between mainland France and Corsica and at permitting the compensation of the costs connected with the deficit recorded by the company in satisfying these obligations. In accordance with the legal framework and the provisions of the agreement described above, SNCM was subject, on all its routes, to a series of obligations regarding the ports to be served, voyage frequencies, times of departure and arrival, types of vessels to be used and fares to be charged, which obligations the company would not assume or would not assume to the same extent or under the same conditions if it could act solely in its own commercial interests.

(74) No competing operator was able to fulfil the requirements of annual regularity and frequency of service provided for by the agreement scheme, neither for passenger nor for goods transport. Even the presence, since 1996, of a private operator on a limited number of lines and during a part of the year only has not been able to satisfy the public service requirements deemed necessary by the French public authorities. In this context, it must be noted that, within the framework of the implementation of Regulation (EEC) No 3577/92, the Commission considers it legitimate to impose obligations for a period covering both the low and the high season in order to avoid the risk of shipowners creaming off the market and who, operating only in the summer, would leave the operator in charge of the public service obligations with all of the non-profitable lines. Consequently, the Commission comes to the conclusion that the absence of competition observed by the French authorities in 1991 and 1996, when the two five-year agreements were concluded, justifies the need for providing a public service within the framework of an agreement scheme.

([37]) See the abovementioned judgment 'Analir', point 27.
([38]) Including five from Marseilles (to Porto-Vecchio, Propriano, Bastia, Ajaccio and Balagne), three from Toulon (to Propriano, Bastia and Ajaccio) and three from Nice (to Bastia, Calvi and Ajaccio).

(75) The system introduced by the French authorities sets out, in the agreements themselves and in the annexes to these agreements, precise rules governing continuity, regularity, capacity and fares which the carrier must respect in order to provide the public service. Thus the five-year agreement from 1996 determines the basic connections which constitute the maritime transport public service, stipulating that the service timetable for each of the periods provided for must be submitted in good time for prior approval by the OTC. Finally, the vessels assigned to the public service are also identified in the agreements.

(76) With regard to the additional financial compensation approved on 6 November 1998, the Commission notes that the rider to the agreement takes account of a change to the public service decided on by the public authorities, consisting of an increase in the services provided by SNCM. The provisions of this rider comply with those of the 1976 framework agreement and the 1996 five-year agreement (Part II, Article 4(2)). For these reasons, the comments by certain third parties to the effect that SNCM had fixed the public service obligations itself are not pertinent.

(77) It must be pointed out however that maritime transport with Corsica is a market which is subject to a great deal of competition, in addition to the permanent competition from air transport (which also receives subsidies). This maritime competition is very fierce, particularly from Italy, with scheduled services from the ports of Livorno and Savona to Corsica.

(78) As far as services from the French mainland ports are concerned, the market has evolved significantly in recent years, to the extent that the need for public service obligations for all the lines throughout the whole year has been questioned. According to the data of the Observatoire régional des transports de la Corse ([39]), since 1995, the growth in the supply of summer services on French lines resulting principally from the successive opening to competition of the Nice and then the Toulon lines and the putting into service of new maritime transport vessels ([40]), has meant that the number of crossings offered has tripled and the number of seats offered has increased by 77 %.

(79) This progression in the volume of summer services offered in 2001, due to the opening up of competition, could lead to a restructuring of the summer services and a new sharing out of traffic between operators to the detriment of SNCM.

Seats offered — mainland France-Corsica

Companies	2000	2001	Trend
SNCM	2 238 449	2 364 915	+ 6 %
CMN	63 595	66 633	+ 5 %
Corsica Ferries	321 500	1 025 600	+ 219 %
Total	2 623 544	3 457 148	+ 32 %

Seats offered — mainland France-Corsica

Month	2000	2001	Trend
May	333 844	454 052	+ 36 %
June	470 932	570 857	+ 21 %
July	710 054	894 039	+ 26 %
August	728 358	922 270	+ 27 %
September	380 356	615 930	+ 62 %
Total	2 623 544	3 457 148	+ 32 %

([39]) *Évolution structurelle de l'offre 'passagers' sur les lignes maritimes françaises, saison 2001* (document dated April 2001).
([40]) Particularly HSVs, with up to 1 700 seats.

(80) In the light of these data, the Commission's conclusion regarding the real need for a public service resulting from the service system provided for by the framework agreement signed between the State and SNCM in 1976 and, within the framework of this agreement, by the five-year agreements concluded between the OTC and SNCM in 1991 and 1996, cannot be extrapolated beyond the deadline of 31 December 2001, the date on which the framework agreement expires. This conclusion is supported by the French authorities' intention ([41]) to reduce, as from that date, the level of public service obligations imposed.

7.3. **Matching of compensation to public service costs**

Absence of a call for tenders

(81) With regard to public service contracts in the maritime transport sector, the Commission considers that, if there has been public procurement according to transparent and non-discriminatory procedures, the reimbursement of operating losses incurred as a direct result of fulfilling services of a general economic interest pursuant to Article 86(2) of the Treaty does not comprise overcompensation and remains compatible with the common market ([42]). In the present case, there has been no call for tenders. As a result, the financial compensation could comprise operational aid incompatible with the common market.

The non-lump-sum character of the subsidy

(82) The French authorities believe that the territorial continuity award is a lump-sum award and should not be used for either operating costs or investment costs. However, even if it is true that the terminology used in clause IV of the agreement to define the subsidy is a 'territorial continuity lump-sum award', the second part of clause IV stipulates that 'should economic conditions and, in particular, operational costs and traffic levels that have served as the basis for calculating the subsidy deteriorate substantially, SNCM and the OTC will get together to study the measures to be implemented regarding the service, fares or raising of the amount of the award in order to re-establish the financial equilibrium of the company'.

(83) The Commission is of the opinion that this possibility of upwardly adjusting the subsidy in order to offset a financial imbalance which is connected to the disparity between the real operational costs and the costs which served as the basis for calculating the subsidy is evidence that the subsidy is not a lump sum.

Additional financial compensation

(84) In part II of the 1996 five-year agreement, Article 4(2) provides for the possibility of changing the distribution of the various connections to be provided by SNCM as a public service, with the agreement of the Office des transports de la Corse, depending on the forecast demand, so long as the total number of connections does not fall below the total number of basic connections mentioned in the agreement. Part 1 of the 1996 agreement also provides that the OTC may ask SNCM to allow refunds or rebates on the fares charged, these refunds or rebates giving rise to financial compensation in favour of the company.

(85) The French authorities have explained that the rider to the 1996 agreement, decided upon on 6 November 1998 in order to award an additional financial compensation of FRF 20 million to SNCM, is the result of a change in the public service obligations, consisting of an increased level of services to be provided by SNCM. The provisions of this rider are said to comply with those of the agreements. According to the French authorities, the extra costs connected with this change give rise to the following charges:

— the putting into service of an additional service ferry (the *Île de Beauté*) in the low and mid-season periods at a cost of FRF 14,7 million,

— a stepping-up of the frequency of service provided for in the agreement as regards Ajaccio, at a cost of FRF 1,1 million,

— reduction of the crossing fares stipulated in the agreement at a cost of FRF 8 million.

([41]) See recital 120.

([42]) See the third paragraph of Section 9 of the Community Guidelines on State aid to maritime transport and the Commission Decisions of 19 July 2000 in Case C-10/98 — Spain, New maritime public service contract (not yet published in the Official Journal) and of 6 August 1999 in Case C-64/99 — Italy, Gruppo Tirrenia di Navigazione (OJ C 306, 23.10.1999, p. 2).

(86) The *Île de Beauté* ferry was made available at the request of the OTC to increase, as a back-up vessel, the HSV connections from Nice in the autumn and the spring. The decision to charge reduced fares was made by the OTC and the Executive Council of Corsica as from 1996 in order to step up traffic in the south-north direction at the beginning of the summer and in the north-south direction at the end of the summer. However that may be, the amount of additional financial compensation must be taken into account in order to assess whether the total amount of subsidies awarded matches the extra costs engendered by the public service obligation.

Matching of the total subsidies to the public service costs

(87) As indicated above, the Commission must examine whether the amount of the subsidies matches the costs sustained by SNCM to satisfy the fundamental requirements of the public service contract. The requirements in question are set out in the specifications annexed to the five-year agreements of 1991 and 1996. Among other things, these specifications determine the services to be provided, the number of connections, the ports served, the fares to be charged and the timetables, all of which are the responsibility of SNCM. The annexes to the agreements also determine the technical specifications, capacity and number of vessels which have to be assigned to the public service obligations and the expected evolution of the fleet until the expiry of the agreement.

(88) In this respect, the Community Guidelines on State aid to maritime transport point out that the additional costs which Member States may reimburse to an operator providing a service under public service obligations contracts must be directly connected to the calculated deficit recorded by the operator on that occasion. They must be accounted for separately for each service of that type to permit verification that there has been no overcompensation or cross subsidy so that the system cannot be used to support inefficient management and operating methods.

(89) On the basis of the audit arrangements provided for in the agreements, the French authorities indicated that the financial compensation in question had been calculated, using the operating accounts of the company as a basis, taking account of the real cost of carrying out the public maritime transport service provided by SNCM. In addition, on 27 April 2000 the authorities had provided a report prepared by an independent consultant on the breakdown by sector ('concessionary network' and 'other activities') of SNCM's analytical results. According to the analysis of this consultant, the subsidy which SNCM had received from the State was necessary to offset the operating deficits of the Corsica network. The net results of the concessionary network were clearly in deficit for the years covered by the analysis.

(90) At the same time, on 7 August 2000 the complainants submitted the report of another consultant on the profitability of French cabotage lines with Corsica ([43]) to the Commission. The conclusions of this report are used to question the amount of the subsidies which SNCM receives from the State. In addition, the Commission's attention was drawn on several occasions to the reports prepared by Mr Paul Ménestrier as the auditor of the OTC monitoring the territorial continuity lump-sum award. Information was also received regarding a report of the French Court of Auditors analysing the management of SNCM in the period 1992 to 1996.

(91) A detailed examination of these apparently contradictory documents and data led the Commission to call upon an outside consultant to study the different charging criteria applied and to throw light on the apparent contradictions. The audit by the consultant was intended to examine whether there was any possible overcompensation or cross subsidies linked to the subsidies awarded by the French State to SNCM in the period 1990 to 1999. The scope of the study requested by the Commission was limited to the question of State aid within the meaning of Article 87 of the Treaty. This analysis did not aim and must not serve to question the conclusions of the reports drawn up by the various national and/or regional audit bodies in other contexts and for other purposes.

(92) The expert hired by the Commission first examined the analytical accounting of SNCM from the company's annual accounts, the reports from the SNCM to the OTC, Mr Ménestrier's report and the report prepared by the consultant hired by the French authorities. He next offered explanations of the noted disparities between these reports before giving his opinion.

([43]) PWC report entitled 'Analysis of the profitability of some French cabotage lines'.

(93) As far as the report drawn up by the consultant hired by the complainants is concerned, the Commission expert is of the opinion that the study is based to a large extent on a theoretical model, founded on working hypotheses, and hence remote from the specific case of SNCM. For this reason it was impossible for him to compare the figures given in the model with those of SNCM's accounts. This report does not therefore make it possible to conclude whether or not there was overcompensation. Indeed, a conclusion of this kind presupposes an examination of compensation paid compared with the real costs of SNCM in a given context. But this research had not been carried out. The author confined himself to showing that, under certain conditions and if certain working hypotheses were valid, a company entrusted with the management of a public service could make a profit.

(94) With regard to the report drawn up by the consultant hired by the French authorities, it appears that this report refers to three specific financial years: 1993, 1995 and 1997. These financial years are considered representative of the variable operating conditions observed during the last decade with regard to the number of passengers transported and political and social occurrences which could have a significant impact on the company's results. It is not however possible to arrive at the conclusion that there was no overcompensation in favour of SNCM connected with the subsidies received under the 1991 and 1996 agreements on the basis of data confined to only three financial years.

(95) Finally, the expert hired by the Commission examined the criteria for allocating the costs of the various activities of SNCM, in particular those connected with the public service (services to Corsica), international trade (freight and passenger traffic between France and North Africa) and those of its subsidiary, Corsica Marittima.

(96) There is a need here to distinguish between the direct costs which, on account of their nature, are directly attributable to one or the other of the subsidiaries of the SNCM-Ferryterranée Group and, in the case of SNCM, to each operational activity (Corsica network or international network), and the structural charges common to all the enterprises and activities of the group. In the case of direct costs, the separation between companies ([44]) and activities in the accounts guarantees transparency concerning the allocation of the costs linked to the provision of the public service.

(97) The group's common structural charges are allocated on a flat-rate basis to the various subsidiaries and branches of activity, including the provision of the public service. These charges, which are few in number, represent in particular all the operational charges for the group's administrative services. They are distributed according to the network concerned, Corsica or international, in the following way (most important headings):

— charges related to fleet management structures: commissioning, supplies, technical expenses, catering expenses. They are attributed to the vessels in proportion to their use of these facilities,

— charges for the 'Corsica' operations, including the regional office for Corsica, the agencies in Nice, Bastia and Ajaccio, the management of hangars in Nice, commission for travel agents, commercial inspection costs, etc. These are attributed according to the number of reservations per destination,

— 'mainland agency' charges (Paris, Nancy, Lille, Brussels), distinguishing between the cost of the agency's activity and the cost of commercial inspection per network. They are attributed according to the number of reservations per destination,

— charges for the 'North Africa' operations. These are directly attributable to the network concerned,

— the 'maritime operations' structure charges. Expenditure on publicity campaigns is attributed directly to the network concerned,

— the 'port agency of Marseilles' structure charges. These are divided into passenger and freight charges and distributed among the different networks according to the number of reservations recorded,

— charges relating to the company structure. Central office overheads and management expenses are distributed on a *pro rata* basis according to the net income (operating income less commercial expenditure) of each network.

([44]) Corsica Marittima has its own headquarters whose structural costs it sustains. Consignment expenses and other maritime expenses with regard to the vessels which it uses (i. e. direct costs, including port charges, fuel, etc.) are also borne directly by Corsica Marittima.

(98) On the basis of the accounting and management data put forward by the French authorities, the expert hired by the Commission believes that all the assets, liabilities and profit and loss account items presented as components of the public service cost correspond precisely to that activity. The other costs are charged to the international network. Consequently, the Commission may conclude that public service subsidies have not served to compensate the costs of the competitive activities performed by SNCM. The separation of the accounts relating to the provision of that service ([45]) and the audits carried out by the regional and national audit bodies ([46]) also guarantee that the annual accounts plotting the use of the territorial continuity subsidy provide a faithful image of the cost of providing the public service.

Audit results

(99) Taking account of these details, the opinion of the expert hired by the Commission is that, independently of the criteria applied for the breakdown of the analytical accounts according to the various layouts ([47]), the aggregate results before tax of the 'Corsica fleet' activity which emerge from the accounting and management data provided by the French authorities reasonably reflect SNCM's costs in providing the public service. This opinion is accompanied by comments on the inclusion of capital charges in these costs concerning the making of vessels available to the concessionary network.

Capital charges

(100) According to the five-year agreement currently in force ([48]), the capital charges include:

— financial charges connected with financing the acquisition of vessels. These are calculated on 90 % of the investment and applying a 5,5 % net rate for the change in the price of gross domestic product,

— (straight-line) depreciation of vessels, calculated on 90 % of the investment in a linear manner over a duration of 20 years for passenger ferries and ro-ro cargo ships and over a period of 10 years for high-speed passenger craft,

— leasing and hiring charges.

The capital charges (depreciation and interest) are maintained throughout the period the ship is used, regardless of the length of life used to calculate the depreciation.

(101) In this context, the Commission would point out that the Community guidelines on State aid to maritime transport state that the amount of the subsidy awarded as compensation for public service obligations should take account 'of a reasonable return on capital employed', which was the case in the five-year agreements of 1991 and 1996 ([49]).

Capital gains made

(102) During the period 1991-1999, three vessels were sold, leading to the following capital gains: FRF 7,2 million in 1993 (sale of the *Aude* ([50])), FRF 95,4 million in 1994-1996 (sale of the *Monte Stello* ([51])) and FRF 79,5 million in 1997 (sale of the *Esterel* ([52])), i.e. a total of FRF 182,1 million.

([45]) In accordance with the legislative and regulatory framework applicable in France (Law of 3 January 1985 and implementation decrees) and with the Order of 9 December 1986 issued following the opinion of the Conseil national de la comptabilité.

([46]) See the reports of the OTC auditor, the report of SNCM's auditors and the reports of the French Court of Auditors. Any use of the territorial continuity subsidy for purposes other than those of connections with Corsica would be contrary to French law.

([47]) Audited accounts, analytical accounts of SNCM, reports from SNCM to the OTC and Mr Ménestrier's reports to the OTC.

([48]) The 1991 agreement with the OTC set out the following formula: 'the annual instalment for each of the vessels deployed on territorial continuity has been determined from the financial criteria habitually taken into account for long-term contracts. It is established on the basis of the true cost price of the vessel in francs, less a residual value of 10 % at the end of the period and by agreement includes a net interest rate of 7 % for the change in the market price of GDP. The duration is 16 years for ferries and 14 years for ro-ro ships'.

([49]) The returns calculated on the GDP price variation index have been on average lower than the returns resulting from the rates applied on the capital markets during the years in question.

([50]) See the Ménestrier report, p. 179, and the PWC report, p. 19.

([51]) See the Ménestrier report, p. 179.

([52]) See the Ménestrier report, p. 179, and the PWC report, p. 19.

(103) These three capital gains made on vessels deployed as part of the Corsican fleet had been charged by SNCM to the free network and other activities in the analytical accounts. It is true that this does not contravene the agreement between the OTC and SNCM, as the agreement does not provide for anything in this regard. However, even if the agreement has no provisions to this effect, the Commission is of the opinion that, from an economic standpoint, it is more appropriate to assign the capital gains from the cessation of an activity to the activity which sustained the investment costs, namely the Corsica network. Indeed, the vessels in question, whose priority use was to provide the public service ([53]), were purchased and fully depreciated over the period covered by the agreement. Thus the financing and depreciation of the vessels was borne entirely by the public service. For this reason, the Commission's general conclusion, based on the opinion of its expert's as to overcompensation, must take account of this correction.

Absence of overcompensation

(104) The table below summarises the reconciliation of the accounts carried out by the expert hired by the Commission between the costs chargeable to the public service (operating deficit plus capital charges) and those chargeable to other company activities and their level in relation to the subsidies paid.

Overall summary table for the years 1991 to 1999 ([1])

(in FRF thousands)

	Total Corsica fleet (public service)	International network and other activities	Total
Net operating margin	(2 984 913)	340 140	(2 644 773)
Capital charges	(2 080 916)	(333 799)	(2 414 715)
— Financial charges	(521 914)	(33 792)	(555 705)
— Leasing	(18 810)	0	(18 810)
— Depreciation	(1 540 192)	(272 792)	(1 812 984)
— Provisions and other	(222 800)	(27 215)	(222 800)
Total charges	(5 065 829)	6 341	(5 059 487)
Subsidy	4 602 486	0	4 602 486
Exceptional result	64 262	202 660	266 925
Result before tax	(399 080)	209 001	(190 079)
Capital gains adjustment	*182 100*	*(182 100)*	*0*
Total	(216 980)	26 901	(190 079)

([1]) This table corresponds to the consolidated accounts of the group. The expert hired by the Commission checked the concordance between these figures, the analytical result accounts, the social accounts results account, the accounts presented in SNCM's report to the OTC and the accounts taken up in Mr Ménestrier's reports to the OTC.

([53]) Subject to the reservation of recital 108.

(105) Taking account of the above, the Commission comes to the conclusion that, during the period examined (agreements of 1991 and 1996), SNCM's income from managing the public service providing maritime services to Corsica, including the subsidies received, does not exceed the reported charges connected with the public service. According to the analysis of the expert hired by the Commission, the Corsican fleet's result remains in substantial deficit (FRF – 399 million). Even if we include the capital gains made on certain vessels for an amount of FRF 182,1 million ([54]), the net result remains negative (– 399,1 + 182,1 = FRF – 217 million).

(106) In coming to this conclusion, the Commission is not giving an opinion as to whether or not the cost of the public service obligations is excessive. As the Court of First Instance has pointed out ([55]), '... in the absence of Community rules governing the matter, the Commission has no power to take a position on the organisation and scale of public service tasks assigned to a public undertaking or on the expediency of political choices made in this regard by the competent national authorities [...]'. Within the limits provided for in Article 86 of the Treaty, it is up to each Member State to determine the level of public service required and what means need to be used to provide such a service.

7.4. **Corsica Marittima's activities**

(107) During the financial years 1991 to 1999, the overall result of Corsica Marittima's activities, which depends mainly on the level of rentals fixed by the parent company, showed a net loss. These losses amounted to approximately FRF 36 million. The reconciliation of the accounts carried out by the expert hired by the Commission shows that it is the result of the international network activities which permitted these losses to be covered. It appears that, in the absence of over-compensation for the public service costs, the financing of Corsica Marittima's activities by SNCM was not financed by subsidies paid under the public service obligations.

(108) In addition, clause III of Annex 2 to the agreement between SNCM and the OTC stipulates that 'SNCM will endeavour to reduce the burden which the vessels for territorial continuity represent whenever their use is not required for the concessionary service by deploying them whenever possible on external connections in order to seek, in matching supply to demand, a better adaptation of the cost of the public service to transport requirements; the result of voyages made on these external connections by the territorial continuity fleet vessels will be credited to the concessionary network. These external connections will be carried out by an SNCM subsidiary, while the territorial continuity fleet vessels will be remunerated in the form of charter contracts per voyage'. Thus the OTC authorises transferring vessels between networks.

(109) In this way, SNCM makes vessels available to its subsidiary Corsica Marittima; which, when they are not needed for the public service, would otherwise remain unused (certain car ferries in the middle of the week, cargo vessels Saturday lunchtime to Sunday evening) ([56]). As was announced when the procedure in case C-78/98 (see recital 7) was initiated, the Commission has examined the calculation method used by SNCM to fix the charter rates billed to Corsica Marittima. From the examination carried out by the Commission, it appears that in the case of the HSVs, the rentals charged to the subsidiary cover the complete cost of chartering the vessel, whereas in the case of mixed cargo and car ferries, these rentals are lower than the full charter costs but higher than the marginal operating costs ([57]).

([54]) See recital 102.
([55]) See the abovementioned 'FFSA' judgment, point 192.
([56]) Their use is confined to the restricted time periods when vessels are available.
([57]) The French authorities have justified these differences by the nature of the vessels leased. They say that the HSVs correspond precisely to the demand expressed by Corsica Marittima. In the case of cargo vessels, on the other hand, only the passenger section (which is only accessory) is of commercial interest. Similarly, the capacity offered by SNCM's car ferries in the middle of the week is much greater than the ad hoc requirements of Corsica Marittima.

(110) It is true that the rental fees set enabled SNCM to show a profit of some FRF 18 million for leasing the ships to Corsica Marittima in the analytical accounts for the period 1991-1999. This profit helped to compensate partly the costs of the public service because it was credited to the concessionary network in the SNCM accounts. Such leasing helped compensate SNCM for expenditure which had in any case already been incurred ([58]). That is why SNCM acted in an economically rational way when leasing vessels to its subsidiary Corsica Marittima. Leaving these ships unused would have deprived it of resources deriving from rentals. An investor in a market economy would also have sought out such resources if he had had assets of this kind in his possession under the same conditions of use.

(111) However, the fact that leasing ships to its subsidiary permitted SNCM to compensate for the costs of the public service does not exclude the possibility that such leasing procured an advantage for Corsica Marittima. It must be remembered that SNCM is a State-owned company, an important part of whose activity (services between Corsica and the mainland) is financed through public subsidies. In its SFEI judgment, the Court of Justice observes that the provision of logistic and commercial assistance by a company to its subsidiaries exercising an activity open to competition is likely to constitute State aid within the meaning of Article 87 of the Treaty if the consideration received in return is lower than that which would have been called for under normal market conditions ([59]).

(112) It is necessary, therefore, to examine the situation from the point of view of the subsidiary, which is Corsica Marittima in this case, and to determine whether it was able to hire ships at a price which it would not have been able to obtain under normal market conditions. In order to check whether the rentals in question satisfy this condition, the economic analysis must take account ([60]) of all the facts which an undertaking, acting in normal market conditions, would have had to take into consideration when fixing the remuneration for the services provided ([61]).

(113) Accordingly, the Commission examined whether the rental fees charged by SNCM could correspond to the market rates for leasing ships similar to those used by its subsidiary in recent years. The reference data supplied to the Commission ([62]) permit it to conclude that it would have been possible for Corsica Marittima to hire similar vessels at conditions more advantageous than those offered by its parent company. These data distinguish between 'bare boat' leasing and the additional costs of commissioning and fitting out the vessels in question. It appears that the calculation method used by SNCM to work out the charter prices included all the costs of commissioning vessels under the French flag and including the costs of insurance, maintenance and accidental damage excess and the corresponding share of the financial charges and depreciation of the vessels in question. The experts consulted by the Commission point out that an operator acting under normal market conditions in the Mediterranean would have been able to lease similar vessels at markedly lower prices than those fixed by SNCM and commission these vessels under a cheaper flag ([63]). These data confirm that the consideration received by SNCM for leasing its vessels is comparable to that which would have been asked for by a private investor operating in similar conditions. In conclusion, the Commission observes that the prices for hiring vessels were not fixed by SNCM for the advantage of its subsidiary ([64]) and do not contain aid elements within the meaning of Article 87(1) of the Treaty.

([58]) The crews of cargo ships that have stopped at the end of the week in Corsica do not go ashore for a day and the same applies to the crews of car ferries in the middle of the week.
([59]) Judgment of the Court of Justice of 11 July 1996, Syndicat français de l'Express international (SFEI) *et al.* v. La Poste *et al.*, C-39/94, [1996] ECR, p. I-3547, point 62.
([60]) The analysis must be performed abstracting from the various privileges and aids, etc. of the service company.
([61]) See the judgment of the Court of First Instance of 14 December 2000, Union française de l'Express (Ufex) *et al.* v. Commission, T-613/97, [2000] ECR, p. II-4055, point 70.
([62]) These are, on the one hand, 'bare boat' chartering of HSVs and cargo ferries in the high season for short periods in the Mediterranean (particularly in Greece, Italy, France, Spain and Tunisia) in recent years and, on the other hand, the costs of commissioning and equipping these ships.
([63]) The Commission's third report on the implementation of Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (1997-1998) (Document COM(2000) 99 final of 24.2.2000) notes that the costs of manning French vessels are among the highest in Europe. It turns out that the wage bill and taxes borne by SNCM (ships flying the French flag) are clearly higher than the corresponding costs of private shipowners who operate according to market conditions and whose vessels fly a cheaper flag.
([64]) In the case of HSVs, the market prices obtained are lower than the leasing price paid by Corsica Marittima. They amount to approximately 70-80 % of that price. The disparity is even more pronounced in the case of cargo ferries.

(114) From a more general standpoint, regarding the coverage of Corsica Marittima's losses by SNCM and the appropriateness of extending the activity of a subsidiary which overall presents a negative result, the French authorities argue in favour of the strategic aspect of taking up a position in a market other than the traditional one following the liberalisation of cabotage in the Mediterranean area. This strategy has taken into account the prospect of increased competition in traffic headed for Corsica and the fact that the future public service agreements will be of a much more limited duration. In terms of commercial investment, Corsica Marittima's losses over the period in question (FRF 36 million) are relatively modest compared with the turnover of the international network of SNCM-Ferryterranée during the same period (FRF 3 800 million). The total amount of rentals paid by Corsica Marittima permitted the group to obtain some income, however marginal, from assets which would otherwise have remained underutilised.

(115) Taking the above into account, Corsica Marittima's activity may be seen as part of the logic of a group of companies that are pursuing a structural, global or sectoral policy, guided by the long-term outlook ([65]).

(116) Finally, the Commission has not become aware of any abnormal practices regarding Corsica Marittima's activity in the market. The complainants denounced the company's aggressive price policy. Such a policy may correspond to the legitimate strategy of a company trying to enter a new market. It is established that, following the introduction of high-speed vessels (HSVs) through competition in the market of maritime connections between Corsica and Italy, the fares charged by Corsica Marittima are higher than the market average. What is more, on the basis of information obtained from SNCM, the volumes transported by Corsica Marittima in the period 1990-1999 were very low. The average turnover of Corsica Marittima during this period was FRF 7,75 million ([66]) and its market share did not exceed 6,5 %.

7.5. **Proportionality of the aid**

(117) The exemption provided for in Article 86(2) of the Treaty is subject to the condition that the aid is proportional. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community. At the end of the examination carried out by the Commission, it is clear that the system of agreements introduced in 1976 has not led to the overcompensation of the costs of the public service rendered by SNCM. The examination has nevertheless disclosed a number of undesirable effects stemming from the agreement system which could affect trade in the future.

(118) In this regard, it may be wondered whether the logic of the public service, which requires a very large fleet, surplus to requirements during a large part of the year, does not encourage the development of ancillary activities, such as the Corsica-Italy service. One could therefore argue that the system of agreements has, to a certain extent, made possible the activity of Corsica Marittima which, on its own, would doubtless not have been able to obtain such resources nor to procure the ships under SNCM conditions.

(119) The 1976 agreement between the State and SNCM expires on 31 December 2001. The French authorities are currently preparing a new public service contract to guarantee continuity of service. Under the terms of Article 4 of Regulation (EEC) No 3577/92, whenever a Member State concludes public service contracts, it must do so on a non-discriminatory basis in respect of all Community shipowners.

(120) The Corsican regional authority has launched a call for tenders ([67]) for the new contract awarding the public service for the maritime transport of passengers between Marseilles and various Corsican ports for the period between 1 January 2002 and 31 December 2006. The French authorities' proposed new contract concerns much more limited public service obligations than in the past. What is more, the Commission notes that, as already indicated above ([68]), the increase in the services offered in the summer of 2001 due to competition is leading to a restructuring of the summer service and to a new sharing-out of traffic between operators, to the detriment of SNCM.

([65]) See the abovementioned 'Ufex' judgment, point 75.
([66]) FRF 13,3 million in 1999.
([67]) OJ S 236, 8.12.2000.
([68]) See recital 77.

(121) According to the complainants, this market could be negatively affected if the territorial continuity fleet were to be redeployed on connections other than those of Corsica. If SNCM were not to be chosen to fulfil the public service obligations once again when the agreement which is currently in force expires, the company would probably be obliged to find an alternative solution for part of its fleet which will have become surplus to requirements.

Ownership of the fleet

(122) As far as the fleet currently in service is concerned, the vessels which are part of the territorial continuity fleet were purchased to fulfil transport requirements determined by the public authorities, under the responsibility of SNCM, which assumed all the risks. SNCM provides the necessary financing and remains responsible for repaying the loans contracted to that end.

(123) It appears that a substantial part of the investment costs entered into will remain SNCM's responsibility on 31 December 2001 ([69]). This situation is the consequence of the investment policy pursued in recent years, characterised, in particular, by the introduction of high-speed vessels and the putting into service of the ferry *Napoléon Bonaparte*. It emerges from the Commission's examination of the accounts that the financial resources obtained by SNCM under the 1991 and 1996 agreements are quite insufficient to fulfil the financial obligations (investments and repayment of loans) which SNCM will have to continue shouldering after the expiry date of the present agreement. It has been demonstrated that, if SNCM no longer benefited from the subsidy which it is awarded, it would no longer be able to face the capital charges inherent in the investments made in order to guarantee the public service. The oversizing of its fleet could also compromise the length of its life. In these conditions, the Commission notes that the system set up by the 1976 agreement does not procure any unlawful advantage for SNCM in this respect.

(124) For these reasons, the Commission considers that it is necessary to invite the French authorities, with a view to monitoring the effects of the aid in question beyond the date of expiry of the public service contract which is currently in force, to inform it, before the date on which the new scheme for public services to Corsica enters into force and which the territorial community of Corsica must implement when the current agreement expires, of the measures they are planning to adapt SNCM's structure to the new market conditions.

8. **CONCLUSIONS**

(125) In the light of the preceding developments, the Commission notes that the doubts concerning the compatibility of aid paid to SNCM within the framework of the 1991 and 1996 five-year agreements have been resolved.

(126) To the extent that the aid awarded to SNCM has not exceeded the costs sustained by this company in providing the public maritime service to Corsica, as established by the public authorities, it may be concluded that there were no cross-subsidies in favour of its subsidiary Corsica Marittima. In addition, the Commission's examination has shown that the rentals paid by the latter company were fixed in line with market conditions.

(127) The French authorities should inform the Commission of the measures that will be taken, upon the expiry of the 1976 agreement, concerning the structural adaptation of SNCM to the new market conditions resulting from the application of Article 4 of Regulation (EEC) No 3577/92,

([69]) As already indicated in recital 100, the territorial continuity subsidies have permitted the partial financing of the fleet through financial charges related to the financing of vessels and related depreciation in the capital charges. According to these rules, ships are depreciated on a reducing-balance basis over the following periods: 12 years for conventional and ro-ro ferries, 20 years for the *Napoléon Bonaparte* and 10 years for high-speed vessels.

HAS ADOPTED THIS DECISION:

Article 1

The aid paid by France to the Société nationale maritime Corse-Méditerranée under the five-year agreements concluded with the Office des transports de la Corse in 1991 and 1996 as compensation for public service obligations is compatible with the common market.

Article 2

The covering of Corsica Marittima's losses by SNCM and the conditions for leasing the vessels of the latter to its subsidiary did not contain elements of State aid within the meaning of Article 87(1) of the Treaty.

Article 3

Before the date of entry into force of the new contract awarding the public service for connections with Corsica, France is to inform the Commission of the measures that will be taken to structurally adapt SNCM to the new market conditions resulting from the application of Article 4 of Regulation (EEC) No 3577/92.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 30 October 2001.

For the Commission

Loyola DE PALACIO

Vice-President