COMMISSION DECISION

of 8 May 2001

concerning State aid implemented by France in favour of the Bretagne Angleterre Irlande company ('BAI' or 'Brittany Ferries')

(notified under document number C(2001) 1422)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/15/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]),

Having called on interested parties to submit their comments and having regard to those comments,

Whereas:

1. PROCEDURE

1.1. Procedural overview

(1) By a complaint of 25 March 1996, registered on 1 April 1996, the Commission was informed that France was intending to grant financial support to the Bretagne Angleterre Irlande shipping company (hereinafter 'BAI' or 'Brittany Ferries').

(2) In an exchange of letters between 1996 and 1998, France sent a certain amount of information on the matter, at the Commission's request.

(3) By letter dated 8 May 1998, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of aids NN 64/97 and N 9/98, as case C 31/98.

(4) Having sent further information to the Commission, France submitted a new notification as part of the same dossier by letter dated 15 October 1998. This aid was registered as N 618/98. By letter dated 30 December 1998, the Commission informed France of its decision to extend proceedings C 31/98 to include aid N 618/98.

(5) The Commission's decisions to initiate and extend the investigation procedure in the abovementioned case were published in the *Official Journal of the European Communities* ([2]). The Commission invited interested parties to submit their comments on the aid in question.

(6) The Commission received comments from interested parties regarding both the initiation and the extension of the procedure. It forwarded them to France ([3]), giving it the opportunity to react, and received France's comments plus additional information, notably by letters dated 20 November 1998 and 18 February and 9 April 1999.

(7) The French authorities sent the Commission the following documents, *inter alia*:

— in July and October 1998, a response to the initiation of the aforementioned procedure, comprising a study by Mazars & Guérard ([4]), 'Comments from Brittany Ferries' and a document entitled '1999 to 2003 plan',

— by letter dated 30 March 1999, further comments and the 'May 1997 Agreement between the State and BAI', and documents entitled '1997 to 1999 three-year plan' and '1997 to 1999 restructuring plan' dated October 1996 and March 1997 respectively, and

([1]) OJ L 83, 27.3.1999, p. 1.

([2]) OJ C 244, 4.8.1998, p. 9 (initiation of the procedure); OJ C 61, 3.3.1999, p. 11 (extension of the procedure).

([3]) Letter dated 25.9.1998.

([4]) Mazars & Guérard, (hereinafter 'M & G') *'Diagnostic sur la situation financière et les perspectives du groupe BAI'* ('Diagnosis of the BAI group's financial situation and prospects'), April 1998; study commissioned by the French authorities.

— in May and June 1999, comments on the report by the Dynamar consultancy ([5]), with particular reference to the findings of a counter-study carried out by the NERA consultancy ([6]) at the request of Brittany Ferries.

(8) In addition, the Commission obtained a study by an independent expert, the Institute of Shipping Analysis, concerning ship financing.

(9) The French authorities also provided the Commission with information on the 'semi-public companies' and on the system whereby those companies finance the ships BAI operates. This arrangement had also been questioned in the complaint.

(10) In addition, a number of meetings took place between the Commission, the French authorities and BAI's representatives, the last two being held on 11 and 18 January 2001. In this context, and following these meetings, a number of documents was submitted to the Commission.

(11) Meetings were also held with the complainant, notably on 19 September 2000 and 24 January 2001, and an exchange of letters took place. On 1 March 2001 the complainant instituted proceedings for failure to act in respect of the matters of complaint submitted on 29 February 2000 regarding the Brittany Ferries case.

1.2. **Title of the aid**

(12) The aid in question is entitled 'Aid in favour of the Bretagne Angleterre Irlande company ("BAI" or "Brittany Ferries")', dossier C 31/98 (ex NN 64/97, N 9/98 and N 618/98).

1.3. **Recipients of the aid**

(13) The direct recipient of the restructuring aid was the Bretagne Angleterre Irlande shipping company ('BAI' or 'Brittany Ferries'). BAI and its partners have also received other State subsidies, as indicated below.

1.4. **Purpose of the aid**

(14) The main purpose of the restructuring aid was to enable BAI to complete its restructuring process and so ensure its long-term viability. Other subsidies, most of which had already received Commission approval, were intended to support the company.

1.5. **Possible effect of the aid**

(15) As Brittany Ferries operates between four different Member States (France, the United Kingdom, Ireland and Spain), subsidies granted to it are liable to cause a distortion of competition which would be contrary to the common interest.

(16) These subsidies may, however, contribute directly towards preserving around 2 000 jobs through BAI's restructuring and may, in so doing, contribute towards the development of the regions BAI serves.

2. **BAI, ITS ACTIVITIES AND THE RESTRUCTURING**

(17) This section first describes the company, its partners and its market. It goes on to describe the developments which forced the company to restructure and the strategic restructuring measures it implemented. It then sets out the cost of the restructuring and the State subsidies which accompanied it.

2.1. **BAI and its subsidiaries**

(18) The Bretagne Angleterre Irlande maritime transport company ('BAI' or 'Brittany Ferries') was set up in 1972 by farming cooperatives and Chambers of Commerce and Industry from North Finistère and by a number of private investors ([7]), essentially to boost vegetable

([5]) Dynamar Consultancy BV: 'Review — Restructuring Plan — Ferry Company', Alkmaar, the Netherlands, December 1998. Study commissioned by the Commission, DG 'Energy and Transport'. In particular, the consultant was asked to determine whether the information submitted to the Commission by the French authorities demonstrated adequately that:
— the public subsidies granted to Brittany Ferries in the recent past by the State or through State resources had been granted in accordance with criteria acceptable to a private investor,
— the planned restructuring measures (taking account of the earlier subsidies) would restore Brittany Ferries to long-term economic viability within a reasonable period of time, in accordance with the criteria laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994).
The Dynamar report was already finalised when the Commission received the 1996 to 1998 restructuring plan and the study by the NERA consultancy (see below). Accordingly, the NERA study was not examined by Dynamar.

([6]) NERA: National Economic Research Associates, 'An assessment of Brittany Ferries' viability plan' 29 March 1999, London. Study commissioned by Brittany Ferries. The French authorities made use of this study. The NERA study was submitted as additional information for the dossier, and provided a certain amount of explanatory material which Dynamar had considered was lacking.

([7]) A majority of Brittany Ferries' capital (64,81 %) is held by Soparfi (Economic Committee of Agricultural Cooperatives). Another significant share (12,35 %) is held by the Chambers of Commerce and Industry. The remainder is held by Divers Groupe SDR (8,52 %), Sofipar (5,37 %), the *Caisse régionale d'assurances mutuelles agricoles* (CRAMA) of Brittany (4,73 %) and other shareholders (4,21 %). (See correspondence from the French authorities dated 30 March 1999 and 16 February 1998 and 'Comments from Brittany Ferries' dated 31 March 1999). These figures show BAI's capital to be mainly private (80 %), with the remainder held by Divers Groupe SDR (8 %) (some shareholders quoted on the stock exchange) and by the CCIs (12 %).

exports to the United Kingdom and open up direct access to Brittany for British tourists. It operates routes between France and the United Kingdom (central and western Channel), France and Ireland, and the United Kingdom and northern Spain. In so doing, BAI plays an important part in improving communications with the regions concerned.

(19) The company carries out its activities either directly in the case of passenger transport, or through wholly owned subsidiaries: 'Truckline' for freight and 'Serestel' for on-board catering. Its foreign subsidiaries (BAI UK, Ireland and Spain) provide certain commercial services and perform reservation services and port operations abroad.

(20) Since being set up in 1972, BAI has thus helped develop the cross-Channel transport market, particularly in terms of carrying passengers and vehicles between Brittany and Normandy on the one hand and south-east England and Ireland on the other. Between 1972 and 1982 BAI bought or rented a number of ships to operate from Brittany.

(21) BAI currently runs four permanent daily connections between Great Britain and France using the following ships:

— Cherbourg/Poole (*Barfleur* and *Coutances*)

— Caen/Portsmouth (*Duc de Normandie* and *Normandie*)

— Saint Malo/Portsmouth (*Bretagne*)

— Roscoff/Plymouth (*Quiberon* and *Val de Loire*).

In season, BAI runs a weekly service between Brittany and Ireland (Roscoff/Cork: *Val de Loire*) and another between Great Britain and Spain (Plymouth/Santander: *Val de Loire*).

2.2. **Operation of the BAI-SPC group**

2.2.1. *BAI and the SPCs: a closely linked economic group*

(22) French law ([8]) provides for (local) semi-public companies (*sociétés d'économie mixte*) (hereinafter 'SPCs'). These are public limited companies whose majority shareholders are the local authorities and whose object is linked both to the public interest and to the jurisdiction of the said authorities. In other words, SPCs are characterised by the composition of their capital and by their company purpose.

([8]) *Code général des collectivités territoriales.*

(23) An SPC's object may only involve activities relating to the public interest and falling within the legal jurisdiction of the local authorities. Possible SPC objects may include running public services of an industrial or commercial nature, public services of common interest relating to cross-border cooperation and/or any activity of public interest. French law requires intervention by local authorities to respect the freedom of commerce and industry, and case-law requires it to be justified by particular circumstances, such as the need to meet a requirement of the local community.

(24) In view of their object, the SPCs' priority is not to generate maximum economic and financial return for their shareholders, but rather to achieve the regional development/general economic interest objectives pursued by the public authorities. SPCs have appreciable influence over the management and strategy of the private undertakings with which they associate.

(25) In 1982 the BAI group ran into financial difficulties owing to the substantial cost of acquiring ships. These difficulties prompted it to consider reducing its capacity, *inter alia*, by discontinuing several maritime services operated from the Brittany region. The local authorities reacted by successively setting up three SPCs to acquire the ships BAI needed in order to maintain its activities. Thus it was that the semi-public companies Sabemen ([9]), Senacal ([10]) and Senamanche ([11]) were set up in 1982, 1985 and 1991 respectively, essentially to act as partners to BAI.

([9]) In October 1996, 55,21 % of Sabemen's capital was held by various regional and local authorities and 44,8 % by BAI. (See 1997 to 1999 three-year plan, pp. 3 and 4).
Currently, the regional and local authorities as a whole hold 69,07 % and Brittany Ferries 30,93 % of Sabemen's capital (see correspondence from french authorities dated 16.2.1998 and comments from Brittany Ferries dated 31.3.1999).

([10]) In October 1996, 50,21 % of Senacal's capital was held by various regional and local authorities, 46,67 % by BAI, 2,35 % by the Caen Chamber of Commerce and Industry, 0,71 % by Crédit Agricole and 0,05 % by various shareholders (see 1997 to 1999 three-year plan, pp. 3 and 4).
Senacal's share ownership is currently as follows: 65,83 % regional and local authorities, 32,03 % Brittany Ferries, 1,61 % Caen CCI, 0,49 % Crédit Agricole and 0,03 % various (see correspondence from French authorities dated 16.2.1998 and comments from Brittany Ferries dated 31.3.1999).

([11]) In October 1996, 50,00 % of Senamanche's capital was held by various regional and local authorities, 49,98 % by BAI and 0,02 % by various shareholders (see 1997 to 1999 three-year plan, pp. 3 and 4).
Currently, regional and local authorities hold 68,75 %, Brittany Ferries 31,24 % and various shareholders 0,01 % of Senamanche's shares (see correspondence from French authorities dated 16.2.1998 MABL/dm No 233 and comments from Brittany Ferries dated 31.3.1999).

(26) Though its partnership with the SPCs gives it access to public capital, BAI is at the same time bound by conditions laid down in its collaboration agreements with the latter. These agreements binding BAI to the SPCs and, ultimately, to the requirements of the SPCs' regional shareholders, require BAI to provide maritime transport services of at least a certain frequency from specific ports. It must also report the results of its operations and provide a forecast of proposed action to the SPCs' management boards. The agreements also give the SPCs observer status, with two observers (*censeurs*) on BAI's management board.

(27) Both de jure and de facto, therefore, the legal and financial relations between BAI and the SPCs give the latter a decisive influence over the former. They have the power to guide BAI's strategic decisions, since it is they who decide on the acquisition/sale of the ships BAI operates (fleet composition), the operating conditions for those ships, the general traffic conditions BAI has to meet, and the capital increases needed to maintain those conditions.

(28) Information from the French authorities ([12]) shows the SPCs to form an integral part of the Brittany Ferries group, in which their role is that of investment while BAI and its subsidiaries together constitute the group's operating and marketing structure.

(29) A large part of Brittany Ferries' debt therefore lies with these three semi-public companies. The SPCs either own ships directly, where they have been financed by borrowing, or they hold leasing contracts with economic interest groupings ('EIGs') which have themselves acquired the ships, where this form of financing has been preferred. As shipowners, the SPCs have an appreciable influence over the BAI group's business decisions, particularly when it comes to deciding the group's strategy on the maritime connections (ports of departure/arrival, frequency, fleet composition, services to be provided, passenger/freight transport capacity, etc.) it has to provide inasmuch as the public authorities consider them necessary for the achievement of their objectives, particularly in terms of return and general interest.

(30) In this context, the SPCs' shareholders have on several occasions increased the latter's capital. Except on the last occasion in 1996, these capital increases have involved all the shareholders (both public and private). It should nonetheless be noted that the main private shareholder in the SPCs is the BAI company.

2.2.2. *EIGs*

(31) In this same context, several financial institutions established economic interest groupings ('EIGs'). These EIGs are governed by the order of 23 September 1967 and their financing mechanisms come under common law ([13]). Forming an EIG opens the door to tax optimisation when acquiring heavy industrial assets. In practice, this involves fiscal transparency vis-à-vis the EIG members, i.e. any profits or losses made by the EIG are passed on to its members. EIGs are common in France and may be set up in any sector of economic activity. According to the French authorities, this mechanism comes under common law.

(32) What the EIGs do is purchase ships, with the help of loans, and lease them to the SPCs. The information available to the Commission shows that fiscal EIGs were involved in the financing of three ships: the *Bretagne*, the *Normandie* and the *Barfleur*.

(33) Specifically, in the three cases in this dossier in which ships have been financed by fiscal EIGs, it should be noted that the EIGs own the ships and have taken out bank loans to finance them. The EIGs rent the ships to the SPCs under leasing contracts. The SPCs then rent the ships to BAI through subchartering contracts, as described below.

(34) In the EIG accounts, the acquired ships are written off degressively over a period of around eight years. Degressive amortisation produces fiscal deficits at the beginning of the contract; given the EIG's fiscal transparency these are passed on to the EIG members, which thus enjoy bank interest rate subsidies. As the EIG is normally in deficit during the first eight years, the tax savings made by its members are in some cases returned to it in the form of a loan. The EIG normally starts paying back this loan once it shows a profit.

([12]) Letter from the French authorities dated 25 June 1999, p. 2.

([13]) Applicable across the board irrespective of sector.

2.2.3. *The SPCs: rents charged to BAI*

(35) As indicated above, aside from three cases of financing through EIGs, the SPCs directly acquire ships to rent to BAI. The rent actually paid by BAI includes:

— the rent charged by the SPCs (corresponding to the leasing charged by the EIGs to the SPCs, including depreciation and financing costs) or rents directly charged by the leaser (Trovil for the *Quiberon*),

— the amortisation of additional ship-related investments (upgrading to meet standards, fitting-out, etc.) accounted for in BAI's books,

— exchange-rate differentials where ships are financed in foreign currencies (*Val de Loire*, *Normandie*, etc.), directly recorded in BAI's accounts.

(36) Since the credit institutions apply a margin to the interest rate charged to the SPCs, the SPCs pass on this margin to BAI. The French authorities and BAI have indicated that charging these rents allows the SPCs to balance their budgets (no profit, no loss) until such time as the ships are definitively sold on.

(37) Dynamar's report criticised the fact that the level of rent the SPCs charge to BAI is around 15 % below the market rate. The French authorities and NERA ([14]) rejected this, arguing that Dynamar's finding was based on a misleading comparison with certain P & O ships.

(38) Moreover, in January 2001 Brittany Ferries and the broker Brax Shipping ([15]) produced a more detailed estimate of the bareboat chartering rates which would have been charged on the market in 1999 for the ships chartered by BAI. BAI also submitted figures for the rent paid since 1989 for the ships it chartered.

(39) The complainant, too ([16]), has submitted its own estimates of the rent it believes BAI should be paying for the ships it operates. The complainant also argues that the rents charged to BAI are well below market rates, as they only cover the external financing of the ships. The complainant further argues that, (public) capital increases and investment aid allowed external financing to be kept at a level well below the market price. A list of rents actually paid by BAI has also been supplied ([17]).

([14]) See in particular the letter from the French authorities dated 25 June 1999, registered at the Commission on 28 June 1999.

([15]) In its letter to the Commission dated 29.1.2001, Brax Shipping argues that it is unrealistic to estimate charter rates for Brittany Ferries' ships over the last 10 years, given the difficulty of obtaining meaningful results over such a period.

([16]) See document sent by the complainant on 9.2.2000.

([17]) See document submitted by BAI's representatives, registered at the Commission on 25.1.2001.

(40) To test these various arguments and determine whether the rents paid are acceptable (in the past and in future, following restructuring), the following table compares the above claims regarding the market rents for ships of the type operated by BAI:

Table 1

Rent paid by BAI to the SPCs								
SPC/Ship	BRAX estimate July 1999 (annual rent)	Conversion of BRAX estimate to FRF (July 1999 rate: $ 1 = FRF 6,329602)	Complainant's estimate of market rent for BAI	Rent actually paid by BAI	Rent actually paid by BAI	Rent actually paid by BAI	Rent actually paid by BAI	Rent actually paid by BAI
	1999	1999	1999	1999	1998	1997	1996	1995
	USD million	FRF million	FRF million	FRF million	FRF million	FRF million	FRF million	FRF million
Sabemen								
Armorique	out of service							
Bretagne (EIG)	7	44	43	[…] (*)	[…]	[…]	[…]	[…]
Quiberon	3	18		[…]	[…]	[…]	[…]	[…]
Duchesse Anne	out of service							
Cornouailles	out of service							
Val de Loire (EIG)	9	58	70	[…]	[…]	[…]	[…]	[…]
Senacal								
Duc de Normandie	4	23		[…]	[…]	[…]	[…]	[…]
Normandie	8	51	82	[…]	[…]	[…]	[…]	[…]
Reine Mathilde	out of service							
Senamanche								
Barfleur (EIG)	7	42	53	[…]	[…]	[…]	[…]	[…]
Truckline Ferries								
Coutances	100 % BAI owned							
Trovil Shipping								
Quiberon	leasing							

(*) Passages between square brackets indicate business secrets or confidential information.

The table shows that while two rents are below the estimates of the experts and the complainant, all the others match or even exceed those estimates, so that the SPCs cannot be said to charge rents which are, all in all, below the market rates.

2.2.4. *Financing system and return on investment*

(41) It must be borne in mind that the SPCs' capital has been constituted by both public partners (the regions) and private partners (BAI and Crédit Agricole). BAI, which holds a significant proportion of the SPCs' shares, itself has a majority of private shareholders. Moreover, private financial institutions (mainly Crédit Agricole) have granted loans for successive acquisitions of ships.

(42) All decisions to increase capital have been linked to new investments (to develop further the market the group has built up), with BAI subscribing to these capital increases in proportion to its holdings in the SPCs ([18]). The capital increases have thus been implemented by both the public and the private shareholders at the same time and in proportion to their respective shareholdings.

(43) It should also be emphasised that since being set up in 1995 the SPCs have been balancing their budgets by means of the rents charged to BAI; it is in selling on ships that they have realised capital gains giving them annual profits ranging from 5,9 % to 9 % (see Table 2) ([19]). These profits have been regularly reinvested in the group.

(44) According to the French authorities, this system enabled the SPCs to avoid making losses until 1995. The losses recorded from then on resulted from the difficulties Brittany Ferries encountered as of 1993 (see also below), which prompted the SPCs (and their majority of public shareholders) to grant a temporary deferment of part of the rent paid for the ships (FRF 250 million), repayment of which was made conditional by a 'better fortunes' clause. The French authorities indicate that the regional and local authorities had never previously intervened to recapitalise Sabemen, Senacal and Senamanche following losses.

(45) This system of financing is explained below.

(46) Generally speaking, virtually all the SPCs' rights and obligations under these financing arrangements are delegated to BAI. Unless specifically decided otherwise, all the SPCs' costs and revenue are billed to BAI as rent under a chartering contract ([20]). It is thus through its chartering contracts with the SPCs that BAI finances ships by paying rent. This rent is intended to cover both the depreciation of the ships and the SPCs' financing costs. This is how the SPCs balance their budgets, as mentioned above.

(47) When ships are sold, the SPCs recover their capital, achieving an average annual return ([21]) of around 7 % on the invested capital ([22]). These earnings have been regularly reinvested in new ships.

(48) The capital gains break down as follows:

([18]) Letter from the French authorities dated 25 June 1999, p. 2.

([19]) The table also shows the purchase price and the capital made available by the group for each ship acquired.

([20]) See copies of contracts submitted by Brittany Ferries at the meeting on 18 January 2001; see M & G, p. 8.

([21]) Annual return for the duration of use is calculated from the original capital sum provided by the SPC shareholders and the capital gains realised on the sale of the ship (SPC's capital after disposal of the ship in question).

([22]) According to information from Shippax, as submitted by BAI at the meeting held on 18 January 2001, the life expectancy of a ferry is around 40 years, i.e. around twice the depreciation period.

Table 2

(in FRF million)

Return on ships											
						A	B	A + B = C1	T1	A + B = C2	T2
SPC/Ship	Date or entry into SPC	Initial value	Repurchase value (end of leasing)	Duration of use by SPC/BAI (years)	Date of sale of ship on market	Original capital provided by SPC shareholders (and reconstituted)	Capital gains from sale of ship	SPC capital after disposal and before recapitalisation in 1996	Rate of return before recapitalisation in 1996 (in %)	SPC capital after disposal and after recapitalisation in 1996	Rate of return after recapitalisation in 1996 (in %)
Sabemen											
Armorique	1982	[…]		[…]	[…]	[…]	[…]	[…]	[…]		
Bretagne	1989	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Quiberon	1984			[…]	[…]		[…]				
Duchesse Anne	1988	[…]		[…]	[…]	[…]	[…]	[…]	[…]		
Cornouailles	1982	[…]		[…]	[…]	[…]	[…]	[…]	[…]		
Val de Loire	1993	[…]		[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Senacal											
Duc Normandie	1985	[…]		[…]	[…]	[…]	[…]	[…]	[…]		
Normandie	1992	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Reine Mathilde											
Senamanche											
Barfleur	1992	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(49) To examine market practice regarding financing methods and return on investment, as applied to ferries, the Commission referred, *inter alia*, to an independent expert study by the Institute of Shipping Analysis ('ISA') ([23]), and also compared the ISA's opinion with other sources of information, e.g. the material supplied by Brax Shipping and the complainant.

(50) According to the ISA's general description of financing arrangements for acquiring, renting and selling passenger ferries, it is common practice in the shipping industry for non-operating shipowners to rent their ships to operators. This may be by leasing or via a chartering contract. Market practice ([24]) shows that return on investment during the ship's life time can vary between a balanced return without profit during the period the ship is used and enough profit during the operational period to cover the cost of the capital and the costs subject to market fluctuation ([25]).

(51) It is also usual in the industry for shipowners to realise a profit on their ships only via the residual capital gains realised when they sell them. According to the ISA, 10 years ago some ferries were even sold at a premium over their original construction cost. However, for the last 10 years or so the second-hand market for ferries has been far less lucrative. Generally speaking, the ISA indicates that resale values can vary greatly and that investors may have highly different investment strategies

([23]) Institute for Shipping Analysis working in collaboration with Shippax.

([24]) Taken from Stena annual report, Annex 11 to the document submitted by BAI and registered on 25 January 2001.

([25]) To maintain the borrower's liquidity, it is also common for loans taken out to finance ships to involve payments of large sums at the end of the loan ('balloon payments').
The normal depreciation period for ships is 20 to 25 years (sometimes up to 30) and payback arrangements are usually linear, based on interest rate development (e.g. LIBOR: London interbank offered rate).

depending on their anticipation of market developments.

(52) Similar arguments have been advanced by Brax Shipping ([26]) which has also provided examples showing how the second-hand market for ferries has declined sharply since 1996 following the announcement that duty free was to be abolished, but that it could nonetheless pick up again.

(53) Illustrative information received from Crédit Agricole Indosuez ([27]) shows that certain investors may consider an annual return of around 7 % acceptable ([28]). This nonetheless reflects the relatively difficult present situation on the ferry resale market.

2.2.5. *Transactions within the group (BAI and SPCs)*

(54) The Commission considered it necessary to compare the way the three SPCs operate with BAI, to check for consistency.

(55) It should be borne in mind here that the three SPCs do make a profit, as shown for instance in Table 2. However, only Senacal and Senamanche retain their profits. Sabemen's profits from rental income and from sales of the ships it acquires and which must be used from Roscoff and Saint Malo for services to Plymouth, Portsmouth, Cork and Santander, are transferred to BAI (in an internal transaction within the group). These transactions are stipulated by the chartering contract ([29]) between Sabemen and BAI, as is BAI's obligation to serve the ports of Roscoff and Saint Malo.

(56) As explained above, Sabemen expects a return on its investments, even though this is returned to BAI within the (BAI-SPC) group. However, after the Commission indicated that the three SPCs' operations needed to be aligned within the group they form with BAI, the French authorities stated in a letter dated 8 March 2001 that Sabemen's operation would be aligned on that of Senacal and Senamanche in terms of the agreement linking it to BAI.

([26]) Brax Shipping was consulted by BAI. Brax then wrote to DG 'Energy and Transport' on 29 January 2001.

([27]) Shipping Finance Annual 2000/2001, a Euromoney publication, places Crédit Agricole Indosuez among the top 20 shipping financiers.

([28]) As a practical example, BAI indicates that the resale value of the *Duc de Normandie*, as shown in Table 2, is the result of a real estimate provided by an expert in 1999.

([29]) See copy of M & G, p. 8.

2.2.6. *Guarantees*

(57) BAI has also indicated that regional guarantees have been provided on three occasions as part of the financing of ships:

— a guarantee of FRF 24 million given to Sabemen in 1983 by the Brittany region for the financing of the *Quiberon*, the total loan being FRF 80 million,

— a guarantee of FRF 270 million given in 1987 by the Brittany and Pays de Loire regions for the financing of the *Bretagne*, the total being FRF 295 million,

— a guarantee of FRF 10 million given by the *Conseil général de la Manche* in 1992 as surety for Senamanche's obligations in the financing of the *Barfleur* (as part of the extension loan of FRF 178 million).

2.2.7. *The role of Crédit Agricole*

(58) Crédit Agricole, and more specifically *Crédit Agricole Caisse régionale du Finistère*, as Brittany Ferries' main banker since its creation in 1972, meets virtually all the company's operational cash requirements, and plays the leading role in fleet financing operations. Crédit Agricole was privatised in 1988.

(59) The French authorities have explained ([30]) that the Crédit Agricole banking group is not a public undertaking but a strictly private credit institution. The capital of the *Caisse nationale du Crédit Agricole* (CNCA) is held exclusively by the 56 regional banks (*caisses régionales* — CRCA) and their directors. The capital of the CRCA is held by the 2 775 local banks (*caisses locales* — CLCA) or by individual members. The capital of the CLCA is in turn held by some 5,5 million members, either natural or legal persons.

2.3. **BAI's market (geographical map Annex 1)**

2.3.1. *The cross-Channel passenger market*

(60) The passenger and tourist vehicle market is subject to a certain degree of one-way substitutability, i.e. prices charged by operators in the North Sea and the central/western Channel are to some extent influenced by prices charged in the Channel strait between Calais and Dover, though the reverse is not evident ([31]).

([30]) Correspondence of 16 July 1998.

([31]) Commission decision of 26 January 1999 (OJ L 163, 29.6.1999, p. 61).

Information supplied by Brittany Ferries ([32]), NERA ([33]) and M & G ([34]) in the context of this case shows that the opening of the Channel tunnel in 1994 and the subsequent fire had a direct impact on the strait segment but a far more limited effect on the western Channel. The information also shows that BAI operates in the western and central Channel (west of the Dieppe/Newhaven line), and to Ireland and Spain.

(61) M & G and BAI indicate that in 1998 the western/central Channel sector represented around 5 million passengers and 1,2 million tourist vehicles. This corresponds to around 13 % of the market segment running from the central Channel to the strait in terms of passengers and 16 % in terms of tourist vehicles. BAI's share of passenger traffic is fairly stable at between 45 % and 50 % of the central/western Channel market ([35]).

(62) According to the information at the Commission's disposal, in 1999 the central and western Channel sectors were shared between:

— BAI on the Roscoff/Plymouth, Saint Malo/Portsmouth, Cherbourg/Poole and Caen/Portsmouth routes,

— the P & O company on the Cherbourg/Portsmouth and Le Havre/Portsmouth routes ([36]),

— the Condor Ferries company on the Saint Malo/Weymouth and Poole routes. It should also be noted that Condor Ferries operates via the Channel Islands, and only during part of the year.

(63) It should further be noted that BAI operates a route between the south-west of the United Kingdom and Santander, Spain, and a service to Ireland. On the Spanish route it competes with P & O (which operates on similar routes in the sector) and on the Irish route with Irish Ferries.

(64) BAI's representatives say it is the company's activity which has created a market from Brittany/lower Normandy which previously did not exist as such.

([32]) Comments from Brittany Ferries, p. 11.
([33]) NERA, pp. 14 and 15.
([34]) M & G, p. 6, states that BAI's relevant market for cross-Channel traffic is the western/central Channel.
([35]) Brittany Ferries operates west of the Dieppe/Newhaven line.
([36]) The Dieppe/Newhaven line, operated by P & O-Stena until the beginning of 1999, is now operated on a very reduced basis by Hoverspeed.

2.3.2. *The cross-Channel freight market*

(65) Substitutability from the strait has a far more marked impact on the freight market than on the passenger market ([37]). Brittany Ferries also comments that its relevant market in terms of freight has to be defined as a regional market consisting in the carriage of freight between the United Kingdom and the continent and comprising the strait and the Channel ([38]). Nonetheless, Brittany Ferries has indicated ([39]) in the course of this case that the opening of the Channel tunnel caused freight traffic in the strait to fall by around 22 % (see also NERA ([40])), while traffic in the central/western Channel remained stable. According to NERA, the impact on the western and central Channel market was borne by the Dieppe/Newhaven route ([41]). With P & OEF having ended its operations on this route, and Hoverspeed having resumed them only in part, the strait market's impact on that of the central/western Channel would appear to have been weakened. Thus some distinction between the market segments of the strait and the central/western Channel might also be made with regard to the freight.

(66) According to BAI's estimates ([42]), in 1998 the central/western Channel market represented 354 000 lorries carried, i.e. 14,5 % of the overall cross-Channel freight market of some 2,3 million lorries. BAI has a fairly stable share of between 45 % and 50 % of the central/western Channel freight market. On the other hand, its market share in terms of total cross-Channel traffic has gradually eroded in recent years, from 12 % in 1994 to 10 % in 1995, 9 % in 1996 and 1997, and 7,5 % in 1998.

(67) With regard to freight, for which the whole of the relevant market must be considered, BAI's competitors within the framework of this dossier (central/western Channel and the strait) are P & O Portsmouth, Commodore, P & O Stena Line, Sea France, Eurotunnel, Hoverspeed and Holyman Sally.

2.4. **Deterioration in Brittany Ferries' economic situation**

(68) Before describing the various restructuring aid measures, it will be useful to describe the main factors which led to the need to restructure Brittany Ferries.

([37]) An analysis extending geographically beyond the strait towards the North Sea is not required in the context of this case, since BAI does not operate in the strait or in the North Sea.
([38]) See also Commission decision of 30 October 1996 (OJ L 26, 29.1.1997, p. 23).
([39]) Comments from Brittany Ferries, p. 13.
([40]) NERA, p. 16.
([41]) In terms of substitutability, the Dieppe/Newhaven route acts as a vector for prices charged in the strait and those charged in the central/western Channel.
([42]) Comments from Brittany Ferries, p. 10.

(69) Owing primarily to external factors, Brittany Ferries' economic situation began declining rapidly in 1992, indicating that the company needed to restructure internally in order to cope with its changing environment.

2.4.1. *The external factors*

(70) According to Brittany Ferries' indications, as submitted by the French authorities, two main coincident external factors prompted the crisis which hit the company in 1992:

— the devaluation of the pound sterling from FRF 9,70 to 8,50 in September 1992, followed by a further fall to below FRF 8, where it remained in 1995 and 1996, and

— the opening of the Channel tunnel in 1994.

2.4.2. *The internal results*

(71) As a result of these events, which of course did not only affect BAI, the scale of the company's losses threatened its very survival in 1996. The Commission's information ([43]) shows that a fall of FRF 0,50 in the value of the pound automatically reduces BAI's turnover by at least FRF […](*), quite aside from any impact on traffic and passenger yield.

(72) The combined impact of the devaluation of sterling and the opening of the Channel tunnel caused increasing losses, as shown by the results below ([44]):

Table 3

(in FRF million)

Results prior to 1996				
	30.9.1992	30.9.1993	30.9.1994	30.9.1995
Turnover	1 342,6	1 389,6	1 451,2	1 284,5
Operating result	24,3	– 28,3	18,9	– 44,9
Financial result	– 6,7	– 4,8	– 10,8	– 16,3
Net result	22,1	– 12,3	– 13,9	– 80,3

([43]) See M & G, p. 12 of the summary.

([44]) Agreement of 26 May 1997 between the French Republic and BAI.

(*) Passages between square brackets indicate business secrets or confidential information deleted.

According to the Commission's information ([45]), one year later in 1996 the net accounting result would probably have fallen to FRF – 169 million had it not been for State assistance for 1996 ([46]). As BAI's fortunes affect the entire group — BAI uses its revenue to pay rent to the SPCs, which use that rent to balance their annual budgets — the aforementioned result had a decisive influence on that of the BAI-SPC group.

2.5. **The restructuring plan**

(73) Brittany Ferries' restructuring plan comprises a coherent set of measures. The Commission in fact received a succession of documents concerning Brittany Ferries' restructuring, and considers these to form an ensemble constituting a single restructuring concept. This set of documents describing the overall restructuring plan consists of a concept formulated in October 1996 and supplemented in 1997 and 1998 (1999 to 2003 plan), an audit carried out by M & G (see below), comments from BAI, the NERA study (see below), and the decision by the French State (central Government and regions) to grant the company restructuring aid (FRF 70 million, around FRF 246 million and then a sum of FRF 80 million). The restructuring measures concerned both BAI, as operator of the ships owned by the SPCs, and the SPCs themselves in their role as the ships' owners.

(74) The aid proposed by the central Government involves two tranches of direct State aid to BAI, notified in succession to the Commission (FRF 70 million and then FRF 80 million), while regional support for restructuring totalled around FRF 250 million (some FRF 246 million of public capital). The latter amount consisted in a capital increase by the SPCs' shareholders (except BAI), which the SPCs passed on to BAI as a temporary waiver of rent (accompanied by a 'better fortunes' clause, whose conditions the French authorities say have now been met). The sums of FRF 70 and 250 million have been paid.

(75) The aim of the restructuring support which the regional authorities provided in 1996 with a capital increase of FRF 250 million for the SPCs was first of all to implement financial restructuring measures, following which it would be possible to achieve the material and

([45]) See M & G, p. 6 of the summary.

([46]) ACOMO payment, see Table 4.

structural restructuring objectives (ship replacement and reorganisation of services) set out, *inter alia*, in the restructuring plan of October 1996 and adjusted in 1997 and 1998. This support in fact served both to finance the repayment of loans during a critical period, above all at the beginning of Brittany Ferries' restructuring, and to preserve the SPCs' initial investments (in ships), and contributed, lastly, to the acquisition of the *Normandie 2*, which is to replace the *Quiberon* in conjunction with a reassignment of ships among the existing routes with a view to rebalancing those routes and making them more profitable.

(76) The following expert documents require closer attention: the Mazars & Guérard audit ([47]) providing, in April 1998, a picture of the financial situation in the period 1996 to 1998; the Dynamar report ([48]), whose main task was to check whether the documents held by the Commission were sufficient for assessing the restructuring (report produced in December 1998); the NERA study ([49]), supplying the bulk of the outstanding documents needed to analyse the restructuring.

(77) The first of these, entitled *Diagnostic de la situation financière et les perspectives du groupe BAI*, was produced in April 1998 by Mazars & Guérard ('M & G') at the request of the French authorities. This detailed analysis of BAI's economic situation focuses chiefly on the years 1996 and 1997, with a forecast for 1998 and 1999.

(78) In April 1998 M & G concluded that:

'Internal measures and external support, in conjunction with positive developments such as the rise in value of the pound sterling, will enable BAI to achieve the recovery envisaged in the three-year plan.

This translates into short-term profitability. In the medium term this recovery will not provide lasting solutions to expected events, such as the financing — whether imposed by competition or by obsolescence — of the fleet or the ending of duty-free sales, or to unexpected events, such as the significant fall in the pound or the development of competition in the central/western market.'

(79) In December 1998, the Dynamar consultancy presented its report, and referred mainly to the findings of M & G to argue that the documents submitted to the Commission did not constitute a restructuring plan, as certain key elements of analysis — such as an analysis by profit centre and an analysis of the relevant market — were lacking. Dynamar also criticised the company's high central costs, while acknowledging that Brittany Ferries had to maintain its image, which Dynamar described as the 'strongest brand'. Dynamar concluded that the data available to the Commission at the time it compiled its report (December 1998) were insufficient to settle the question of the company's long-term viability.

(80) In March 1999, Brittany Ferries submitted, *inter alia*, the NERA study, which supplied the missing information, particularly in the major areas indicated by Dynamar (including a market description, a company analysis by profit centre, a viability analysis-forward projection.

(81) While M & G focused mainly on the years 1996 to 1998, NERA focused essentially on Brittany Ferries' future development, projecting an economic model for the years 1998 to 2006. This projection took account of a preliminary study incorporating an analysis by profit centre, an analysis of central service costs, analysis of necessary future investments and a market analysis.

(82) On this basis NERA analysed Brittany Ferries and the three SPCs as a single economic entity, as described above, and concluded, around a year after M & G drew its conclusions ([50]), that the group would be viable in the long term.

(83) With regard to this, the external factors (pound sterling/French franc parity, market developments) and internal factors in the group's restructuring are examined in section 5.

(84) The main measures involved in the restructuring are set out below.

2.5.1. *Capacity reduction*

(85) BAI's downsizing consisted in withdrawing from two routes (Saint Malo/Poole and Saint Malo/Cork) out of a total of eight, reducing and rationalising the winter rotations and laying up and selling two ships (*Normandie Shipper* and *Duchesse Anne*) out of a fleet of nine, along with a programme to sell off non-core assets (e.g. its 17 % share in the British television company West Country TV).

([47]) Requested by France.
([48]) Requested by DG 'Energy and Transport'.
([49]) Commissioned and submitted by Brittany Ferries. The French authorities based their arguments on this report.
([50]) Market conditions had altered substantially during the intervening period, particularly the parity between the pound sterling and the French franc.

(86) The service Brittany Ferries supplies, measured in terms of sailings and rotations, will remain constant in 2001 compared with 1998, and well below what it was in 1995 before restructuring, without Brittany Ferries being able to increase the number of sailings, enter new routes or assign additional ships to existing routes ([51]). Between the financial years 1995 and 1998, Brittany Ferries' passenger capacity was reduced by 12 % (− 1 375 passengers), its berth capacity by 9 % (− 539 berths) and its garage capacity by 17 % (−1 480 lane metres). Between the financial years 1995 and 2003, once the *Quiberon* is replaced by the *Normandie 2* on the Caen/Portsmouth route in mid-2002, Brittany Ferries' overall capacity will remain below its pre-restructuring capacity, i.e. a reduction of 5 % in passenger capacity (− 554 passengers), 9 % in berth capacity (− 523 berths) and 4 % in garage capacity (− 367 lane metres) ([52]).

2.5.2. *Reorganisation of sailings — replacement of a ship*

(87) With regard to sailings, the Caen/Portsmouth route is currently operated using two ships, the *Normandie* and the *Duc de Normandie*, of very different size and capacity. Given the length of the crossing, there are three departures each day from Caen to Portsmouth and vice versa. Each ship thus makes a return journey plus a single leg each day, starting from Caen one day and from Portsmouth the next. The ships' differing capacities thus cause major fluctuations in supply from one day to the next (65 % from Caen to Portsmouth and 35 % from Portsmouth to Caen one day, and the other day round the next), causing logistical problems and significant productivity losses.

(88) To achieve in full the 1996 restructuring plan's objective of 'pursuing efforts to rationalise and save so as to improve the breakeven point' ([53]), it was decided, in addition to the capacity reduction measures, to replace a ship in order to rebalance and thus improve profitability on the routes being served. Accordingly, the *Normandie 2*, of similar size and features to the *Normandie*, will be assigned with the *Normandie* to the Caen/Portsmouth route. The *Duc de Normandie* will replace the *Quiberon* on the Roscoff/Plymouth route, helping to optimise the operation of that route. Since an old ship is to be replaced in 2001 by a new one complying with the new safety rules, the total number of ships operated by Brittany Ferries, reduced from nine to seven under restructuring, will not have risen at the end of the company's 1999 to 2003 plan.

2.5.3. *Refinancing of two ships*

(89) BAI refinanced the ships for which this was both an option and of interest in the short term. Firstly, it arranged the leaseback of the *Quiberon* ([54]), allowing a short-term refinancing (to generate short-term liquidity) but resulting in higher rent ([55]) of FRF […] spread over the years 1995 to 2001 ([56]).

(90) Secondly, the financing period for the *Val de Loire* was extended by means of a deferment of payment over a three-year period (from 1 January 1995 to 1 January 1998) on the loan taken out for that ship with Crédit Agricole (private bank). No capital was repaid during that period, generating costs (in additional interest) of FRF […] ([57]). This additional interest was charged to the SPC, which passed it on to BAI.

(91) By refinancing these two ships the SPC was able to reduce its operational cash requirements by around FRF […] over three years (i.e. three repayments of FRF […]). By easing its operational cash situation, the refinancing operation enabled Sabemen to limit BAI's operational cash requirements. In any event, the refinancing of the *Val de Loire* was without cost for Sabemen since the rent from BAI continued to cover both the depreciation of the ship and the additional financing costs of the refinancing.

2.5.4. *Injection of public capital (around FRF 246 million)*

(92) To support the restructuring process, the SPCs granted BAI a partial deferment of rent over three years for the

([51]) See comments from Brittany Ferries of 31 March 1999, p. 19, and letter from Brittany Ferries dated 9 July 1999, registered in DG 'Energy and Transport' as No 62620.

([52]) See BAI correspondence of 9 July 1999, p. 2.

([53]) Plan for a return to competitiveness, October 1996, p. 15.

([54]) Sold to the Trovil Shipping company and leased back by BAI. The rent paid under the leaseback comprises capital repayment and payment of interest. As a result of the leaseback, the rent paid is considered high by M & G (M & G, Annex 4). Nonetheless, the operation was carried out with the general aim of financing the company.

([55]) See M & G, Annex 4.

([56]) See information sheet on the impact of the restructuring measures on Brittany Ferries, submitted by the company's representatives at a meeting and registered under No 60243.

([57]) See information sheet on the impact of the restructuring measures on Brittany Ferries, submitted by the company's representatives at a meeting and registered under No 60243. See also M & G, p. 16 and Annex 7.

ships it operates. This deferment totalled FRF 250 million ([58]) for the financial years 1996 to 1998. It was financed by an increase of around FRF 246 million in the SPCs' public capital ([59]).

(93) Although this sum was the subject of transactions between the SPCs and BAI (within the group), the fact is that there was an input of (external) public capital of around FRF 246 million into the Brittany Ferries group.

2.5.5. *Reduction of central costs*

(94) It should first be recalled that, within the Brittany Ferries group, BAI reduced its capacity (two out of nine ships), reorganised services on its routes (closure of two out of eight routes) and reduced its traffic, thereby reducing the company's 'allocated costs'.

(95) In addition to reducing its allocated costs, BAI also reduced its non-allocated costs, both by cutting its own costs (reorganisation of land-based services, renegotiation of contracts, sale of non-core assets) and by redistributing its terminal costs in proportion to the various routes it operates, thereby allocating some 20 % of the formerly non-allocated costs ([60]).

(96) The remaining non-allocated costs are made up of obviously general expenses. They relate to land-based services in the United Kingdom — including ticket sales, central BAI staff, Serestel staff (on-board services), Truckline staff (freight service), advertising and general expenses — which in total and following redistribution of harbour fees represent around 16 % of total operational costs ([61]).

2.5.6. *Redundancy programme*

(97) The information supplied by the French authorities shows that BAI implemented a redundancy programme affecting 24 office staff and 58 regular seamen. It is also noted that further company measures, in addition to the redundancy plan, led to the shedding of 35 office staff and 129 on-board staff, i.e. staff reductions of 11 % and 10 % respectively ([62]). All in all, these measures cost the company FRF 19 million.

(98) In particular, the French authorities intervened through the National Employment Fund (NEF) in respect of four office staff ([63]), and applied four types of measure in respect of seamen (introduction of part-time working, support for voluntary retirement, reduced working hours and early cessation of activity (ECA)). According to the French authorities, only the ECA scheme involves a State contribution. The ECA scheme was notified to the Commission by letter dated 25 January 1990 (registered on 26 January 1990) in the context of the 'Public programme for the commercial fleet'. The Commission approved this programme ([64]) for the period 1990 to 1994; it was renewed by France for the period 1995 to 1997 and approved by the Commission. The ECA scheme was re-notified by France by letter dated 7 September 1998 ([65]) and was again approved by the Commission ([66]).

(99) The measures financed through the ECA will have cost FRF 0,1 million, while the NEF measures will have cost FRF 0,01 million.

(100) The French authorities indicate that no other arrangements were applied in the context of the redundancy programme.

2.5.7. *Savings*

(101) The internal and external cost-cutting measures included a wage freeze and abandonment of part of the 13th month, a 15 % cut in the advertising budget, reorganisation of land-based services and of the medical service, and the renegotiation of subcontracting contracts (e.g. laundry and cleaning).

(102) The above restructuring measures (before the replacement of a ship) produced overall savings of FRF 60 million in 1996 and FRF 50 million in 1997 compared with the respective previous financial year. In conjunction with an improvement in the external context, the measures served to reduce the operating deficit by 60 % in 1997 and to eliminate it altogether in 1998 ([67]).

([58]) Of which Sabemen granted FRF 150 million, Senacal FRF 64 million and Senamanche FRF 36 million.

([59]) NB: Around 1,49 % of the sum of FRF 250 million came not from the regional and local authorities but from the Chambers of Commerce and Industry, Crédit Agricole and other shareholders.

([60]) See NERA, p. 31.

([61]) See NERA, pp. 26 and 31.

([62]) See in particular the letter from the French authorities dated 16 July 1998.

([63]) See letter from the French authorities dated 15 October 1998. Involved were two pre-retirements and two shifts to part-time working.

([64]) Letter to France dated 9 July 1990.

([65]) Registered at the Commission on 8.9.1998.

([66]) Letter to France dated 11 November 1998.

([67]) Brittany Ferries' 1999 to 2003 plan, September 1998, Annex 3, p. 6.

2.5.8. *Cost and cumulation of restructuring aid (1995 to 1999/2002)*

(103) A full picture is needed of the aid given to the Brittany Ferries group during the restructuring period. Accordingly, the restructuring aid proper and the parallel aid ([68]) granted during the restructuring period have been cumulated in Table 4 below:

Table 4 ([69])

(in FRF million)

Period 1995-2003 Cost of restructuring							
Year	1995	1996	1997	1998	1999/2002		Total
Cost of restructuring							
Redundancy programme	[…]	[…]	[…]	[…]	[…]		[…]
Withdrawal of the Normandie Shipper	[…]	[…]	[…]	[…]	[…]		[…]
Development of yield management	[…]	[…]	[…]	[…]	[…]		[…]
New reservation software	[…]	[…]	[…]	[…]	[…]		[…]
Sale of West Country TV	[…]	[…]	[…]	[…]	[…]		[…]
Leaseback of the Quiberon	[…]	[…]	[…]	[…]	[…]		[…]
Refinancing of the Val de Loire cost SPC	[…]	[…]	[…]	[…]	[…]		[…]
subtotal (1)	[…]	[…]	[…]	[…]	[…]		206,00
Restructuring investments							
Normandie 2						860,00	860,00
subtotal (2)						860,00	860,00
Other costs							
Investments under ACOMO	87,30	108,30	129,60	0,00	0,00		325,20
subtotal (3)	87,30	108,30	129,60	0,00	0,00		325,20
Total costs (1+2+3)	105,40	169,00	200,40	51,20	6,20	860,00	1 392,20
State aid							
Restructuring aid							
Ad hoc restructuring aid (*non-authorised)	70,00	80*	0,00	0,00	0,00		70,00
Injection of public capital		246,00					246,00
subtotal (1)	70,00	246,00	0,00	0,00	0,00		316,00
Other aid							
ACOMO (authorised)	40,00	70,00	50,00	0,00	0,00		160,00
Early cessation of activity (ECA) (authorised)							0,10
Reimbursement of business tax (authorised)	8,49	9,61	9,71	0,00	0,00		27,81
Reimbursement employer's contributions (authorised)	0,00	0,00	0,00	37,77	39,70		77,47
subtotal (2)	48,49	79,61	59,71	37,77	39,70		265,38
Total (1+2)	118,49	325,61	59,71	37,77	39,70		581,38
Intensity of cumulated aid						%	41,76
Intensity of restructuring aid (in the strict sense)						%	29,62

([68]) Apart from the ECA scheme (applied in the context of the redundancy programme), this parallel aid is not linked to the restructuring plan, but results from the application of schemes approved prior to restructuring.

([69]) See information sheet on the impact of the restructuring measures on Brittany Ferries, submitted by the company's representatives at a meeting and registered under No 60243.

(104) The cumulated measures taken during its restructuring phase will have cost the Brittany Ferries group FRF 1 392 million. Cumulated aid received during this period totals FRF 581 million.

The intensity of the aid cumulated during restructuring is 42 %.

The intensity of the restructuring aid proper is 30 %.

2.5.9. *Aid received before 1995*

(105) Aid paid before the restructuring period and which does not constitute restructuring aid is indicated in Table 5.

(106) This aid involves the application to Brittany Ferries of schemes approved by the Commission, and payment of guarantees. The public programme for the French commercial fleet, which includes ACOMO, investment aid ([70]), the reimbursement of business tax ([71]) and the ECA scheme, was approved in 1990 ([72]) and renewed up to 1997 ([73]).

Table 5

Period 1986-1994											
Year	1983	1986	1987	1988	1989	1990	1991	1992	1993	1994	Total
Aid	'existing aid':										
Investments (authorised)		18,49	40,00				40,00	65,00			105,00
ACOMO (authorised)						13,00	12,00	10,00	22,00	28,00	85,00
Reimbursement business tax (authorised)			0,73	0,98	1,05	1,66	2,03	3,30	4,03	6,01	19,06
Aid for guarantees	24 (*)		270 (*)					10 (*)			
Total		18,49	40,73	0,98	1,05	14,66	54,03	78,30	26,03	34,01	209,06

(*) Aid equivalent not established for these amounts.

2.6. **Description of grounds for initiating the procedure**

(107) As a result of the complaint referred to at recital 1, the information received from the French authorities and articles in the press, the Commission had a body of material at its disposal which included information regarding aid allegedly paid to Brittany Ferries and information according to which various interventions involving State resources (subsidies of around FRF 246 million, unpaid interest, alleged aid in respect of a redundancy programme, prolongation of the ACOMO scheme, investment aid, loans from Crédit Agricole and reductions in port charges (part NN 64/97)) were liable to benefit the company. The French authorities went on to notify restructuring aid first of FRF 70 million (part N 9/98) and then of FRF 80 million (part N 618/98).

(108) In the light of this varied information, the Commission decided to initiate the formal investigation procedure provided for in Article 88(2) of the Treaty in respect of aids N 9/98 and NN 64/97 and to extend the procedure to aid N 618/98. It should be recalled that, in initiating and then extending the formal investigation procedure, the Commission has twice given interested parties the opportunity to have their full say on all the aspects involved, including the restructuring and financial arrangements of the Brittany Ferries group.

([70]) In its decisions of 1987, 1990 and 1995 on investment aid, the Commission raised no objections to investment aid up to and including 1997, or regarding its application prior to 1987.

([71]) The submitted documents which led to notification of the scheme to reimburse business tax as part of the public programme for the French commercial fleet mentioned that the scheme was applied (partial reimbursement) for the 1980, 1981, 1987 and 1988 financial years. Partial application was also planned for 1989 and 100 % application was planned for the financial years 1990 onwards. In 1990 the Commission approved the scheme for the years 1989 to 1994. The scheme was then renewed up to 1997, and no objections were raised regarding its application prior to 1989.

([72]) Commission Decision addressed to France by letter dated 9 July 1990.

([73]) Commission Decision addressed to France by letter dated 10 June 1997.

(109) The text indicating the main points mentioned as remaining unresolved when the investigation procedure was initiated/extended is quoted below:

2.6.1. *The restructuring*

As regards subsidies N 9/98 and N 618/98, 'the Commission would emphasise that these would have to be based on a plan aimed at restoring the long-term viability of Brittany Ferries. The French authorities did not include such a plan with the notification. Moreover, the Commission does not consider that the planned capital injection could overcome the structural handicaps suffered by the company, as detailed by the French Government, which have led to the present financial situation […]'.

The Commission considered that, notwithstanding this rationalisation plan implemented in the process, 'the company and the French authorities have not so far provided significant evidence that a restructuring process is under way with the aim of restoring long-term viability. As a general rule, the measures to support the company appear to have been implemented as a reaction to the unfavourable financial situation in which the company has found itself since 1993 in order to cover successive operating losses and protect the company against the effect of market forces. Such aids are likely to distort competition between shipping companies in the various Member States to an extent contrary to the common interest'.

'The French authorities should therefore present a sound restructuring plan to which the aids are tied and furnish systematic proof that the proposed aid meets all the general conditions for authorisation referred to above.'

2.6.2. *The SPCs, investment subsidies, regional guarantees*

Regarding part NN 64/97 the Commission raised the following points: 'As regards the semi-public companies (Sabemen, Senacal and Senamanche), it was stated that they agreed to reduce the rents for the ships paid by Brittany Ferries over three years and that in return the public shareholders [in the SPCs] increased their capital holdings in these companies. However, the three companies have generated losses and accumulated successive debts in spite of the fact that they receive investment subsidies from the State and loan guarantees from the regional authorities. Serious doubts persist, therefore, as to whether, in the two cases, the entities concerned (the three companies and the public shareholders) acted in the way private investors would' ([74]).

([74]) See communication from the Commission to the Member States published in OJ C 307, 13.11.1993, concerning the principle of an investor in a free market economy.

2.6.3. *Crédit Agricole*

'It was stated [to the Commission] that the *Caisse Régionale du Crédit Agricole de Bretagne* has covered the successive cash losses incurred by Brittany Ferries since 1993 (including those of FRF 80,2 million in 1995 and FRF 16,2 million in 1996). In spite of the restructuring measures taken by the company and its partners, both public and private, it is not very clear for which economic reasons and with which guarantees the bank agreed to cover the company's deficits. Under normal market conditions, a bank would not agree to cover the cash deficits of a company in such an economic position without having solid guarantees. It does not appear, therefore, that the intervention by Crédit Agricole has been made on terms which would be acceptable to an investor operating under free market conditions.'

2.6.4. *Redundancy programme*

'In the application of its social plan, Brittany Ferries seems to have received State aid under the statutory provisions which apply specifically to the maritime sector. The Commission would like to receive further information on all these provisions which would allow it to determine whether these aid measures form part of measures applicable to all sectors of the economy or whether this is a special scheme for shipping companies.'

2.6.5. *ACOMO*

'The Commission reminds the French [authorities] that the current general French scheme for aid to merchant shipping (which includes ACOMO aid) approved by the Commission extends over three years (1995 to 1997) and can no longer be applied in 1998, contrary to what they have stated. Any new aid scheme would therefore have to conform to the new Community guidelines.'

2.6.6. *Reduction of port charges*

'The French authorities maintain that the measure relating to the port solidarity fund has not been implemented. However, they have stated that port charges have recently been reduced as a result of commercial decisions taken by the port authorities. The Commission would like more information on the ports concerned, the underlying reasons and the beneficiaries of the reductions.' France has explained with regard to this that rates are negotiated and set between ports (administered by chambers of commerce and industry) under the rules of private law with various (international) operators.

3. **COMMENTS FROM INTERESTED PARTIES**

3.1. **Initiation of the procedure**

3.1.1. *Permanent Representation of the United Kingdom to the European Union*

(110) The United Kingdom believes any aid granted to shipping companies should comply with the Community guidelines on State aid to maritime transport and the Community guidelines on State aid for rescuing and restructuring firms in difficulty. Moreover, it should be fully transparent so that compliance can be clearly demonstrated. The United Kingdom agrees with the Commission's view that the competitive situation faced by Brittany Ferries is no unique to that company and does not, of itself, justify State aid. Aid granted in these conditions cannot do otherwise but distort competition. The consequence is an adverse impact on other ferry companies competing within the market without the benefit of State aid.

(111) It is reasonable to assume that the aid given to the company has protected it from market pressures and enabled it to take market share and revenue from other companies. This is evidenced by the fact that Brittany Ferries was able to expand its services in 1996, at a time when Stena withdrew from the western Channel and P & O European ferries rationalised its services in the area.

(112) In the absence of a clear restructuring plan designed to ensure the company's longer-term viability, the Commission would seem to be right in inferring that the granted aid is disproportionate and inappropriate.

3.1.2. *P & O European Ferries*

(113) P & O European Ferries ('P & OEF'), which competes with Brittany Ferries on several routes in the western Channel, believes the Commission's preliminary findings warrant further investigation of the factors which the French Government claims justify the intervention of regional bodies in favour of Brittany Ferries.

(114) According to P & OEF, Brittany Ferries cannot be said to be the only company affected by factors which in fact affect all operators, including its competitors. For instance, tougher competition on the market in question (which became even keener when the Channel tunnel opened in 1995) forced Stena Line to abandon its western Channel operations entirely in 1996, while P & OEF was obliged to undertake a material restructuring of its own western Channel operations. In both cases, Brittany Ferries' competitors engaged in costly restructuring exercises without the benefit of State aid.

(115) P & OEF therefore believes that any aid granted to Brittany Ferries needs to be justified in accordance with the Community rules on State aid.

3.1.3. *The Chamber of Shipping (United Kingdom)*

(116) The Chamber of Shipping ('the Chamber') points out that the market for ferrying passengers and vehicles between the United Kingdom and the continent is keenly competitive. Recalling also that operating aid is incompatible with the common market, the Chamber argues that the market between the United Kingdom and the continent cannot in general be considered to be either 'peripheral' or 'thinly served', as would be necessary in order to justify a direct operating subsidy.

(117) The Chamber also argues that the guidelines on State aid for rescuing and restructuring firms in difficulty are highly pertinent in this context.

(118) Regarding case NN 64/97, the Chamber notes that the French Government is trying to justify the granting of subsidies by asserting that Brittany Ferries is at a commercial disadvantage vis-à-vis its competitors. It believes this assertion to be spurious.

(119) Regarding the relations between Brittany Ferries and the semi-public companies, the Chamber, having reviewed the information presented by the Commission, believes the decision to reduce the ships' rents against a promise of reimbursement in more propitious trading conditions when none are in prospect lacks commercial credibility — and thus becomes a State aid.

(120) According to the Chamber, the relations reviewed in this case appear to fit into a wider pattern of more or less opaque measures to support the operations of Brittany Ferries on the part of public and semi-public French organisations. The Chamber recalls, in particular, Commission Decision 88/437/EEC, which forbade an attempt by the French Government to grant an excessive subsidy for the building of a new ship for Brittany Ferries.

(121) With regard to the restructuring aid (case N 9/98), the Chamber argues that there is no indication that the aid will address the handicaps from which Brittany Ferries is alleged to suffer.

(122) Accordingly, the Chamber encourages the Commission to insist on an acceptable justification for these subsidies from the French authorities. If none is forthcoming or credible, the Chamber urges the Commission to ensure that the proposed State aid, or any amount found to be excessive, be prevented from reaching Brittany Ferries

and causing further distortion of competition in the ferry services market between the United Kingdom and the continent.

3.2. **Extension of the procedure**

3.2.1. *P & O European Ferries*

(123) P & O European Ferries refers to the comments it submitted when the procedure was initiated (see above), stating that they also apply to the further aid tranche of FRF 80 million covered by the extension of the investigation procedure.

3.2.2. *The Chamber of Shipping (United Kingdom)*

(124) The Chamber states that the comments it submitted when the procedure was initiated (see above) still stand.

(125) The Chamber disputes the French authorities' argument, recalling the latter's admission that the previously notified aid package (covered by the initiation of the procedure) was not sufficient to restore Brittany Ferries' long-term viability. The Chamber believes this confirms that the rationalisation programme did not constitute a meaningful restructuring of the company's core operations.

(126) The Chamber maintains that it is implausible that activities which are currently loss-making will become viable simply as a result of an injection of aid, without restructuring.

(127) The Chamber points out that restructuring aid:

— should normally only need to be granted once and that it is disingenuous to assert that repeated instalments of aid constitute a single one-off grant,

— should include measures to offset as far as possible adverse effects on competitors, but that there has been no sign of such measures.

(128) The Chamber therefore asks that, unless the French authorities can provide a credible justification for these subsidies, which must meet the abovementioned criteria, the Commission prevent these funds from reaching Brittany Ferries and distorting competition in the ferry market between the United Kingdom and the continent.

3.2.3. *Ian Bruce, Member of Parliament — House of Commons*

(129) According to Mr Bruce, the unfair subsidies received by the company have directly affected shipping operations from Weymouth and Portland, in Mr Bruce's constituency, and have affected operations out of other south coast ports, particularly Poole, which is adjacent to Mr Bruce's constituency in Dorset.

(130) Given that, according to Mr Bruce, countries such as France consistently act to prop up their inefficient companies simply because they are French-owned, thereby preventing the most efficient operator within Europe from providing the necessary services, Mr Bruce asks that the subsidies in question be sorted out.

3.2.4. *Brittany Ferries*

(131) Brittany Ferries presented a series of documents, the main ones being:

— 'Plan for a return to competitiveness' covering the period 1996 to 1998 (October 1996),

— 'Plan for a return to competitiveness' covering the period 1996 to 1998 (March 1997),

— 'Viability plan' covering the period 1999 to 2003 and annexes (September 1998),

— Agreement of 26 May 1997 between the French State and Bretagne Angleterre Irlande (BAI SA),

— comments from Brittany Ferries,

— annexes to the comments from Brittany Ferries,

— study by the NERA consultancy 'An assessment of Brittany Ferries' viability plan' dated 29 March 1999.

(132) Brittany Ferries' argument in the abovementioned documents is designed to demonstrate that the Brittany Ferries group (BAI-SPCs) is returning to long-term viability following restructuring. This conclusion results from an overall analysis set out in various study and forecasting documents submitted by the company.

3.2.5. *Associated British Ports, Plymouth*

(133) Associated British Ports, Plymouth, ('ABP') is the harbour authority of Millbay docks within the port of Plymouth. In its comments, ABP points out that of a total of around 8 million pounds sterling (GBP) invested in the ferry facilities in the port of Plymouth, GBP 2,8 million has been funded by ERDF grants, Plymouth having Objective 5b status. Plymouth has been granted the status of an Objective 2 region, and the county of Cornwall, adjacent to Plymouth, has recently obtained Objective 1 status.

(134) According to ABP, over the last 20 years traffic volumes have increased year-on-year between Plymouth and Roscoff and now total 500 000 passengers a year, along with 130 000 passengers between Plymouth and Santander. Over 300 jobs — including high-tech jobs, which are scarce in the Plymouth region — depend directly upon Brittany Ferries' operations in the City of Plymouth, where the company has sited its information technology and training centre.

(135) A termination of the services offered by Brittany Ferries would be catastrophic for the port and the city of Plymouth, not only in terms of the severe economic and logistic effects on local commerce, but also in terms of the perceived isolation of the entire south-west community from the rest of Europe. Lastly, the linking of the regions of the Atlantic Arc is essential to the development of each of those regions.

(136) ABP therefore asks the Commission to decide in favour of Brittany Ferries and approve the aid in question, which will ensure that links from Plymouth to the continent and other Community regions continue.

3.2.6. *Poole Harbour Commissioners*

(137) Poole Harbour Commissioners ('PHC') is the harbour authority for Poole, Dorset, in the United Kingdom. PHC states that Poole is in the top 15 of all United Kingdom ports and that PHC receives no public aid. PHC also emphasises that 50 % of its annual turnover is generated by the activities of Brittany Ferries, which is the only company providing a year-round ferry service out of Poole. PHC's other points are set out below.

(138) In addition to the 160 jobs provided directly by PHC, some 450 local jobs are dependent on the success of Poole harbour's commercial operations. Over the years PHC has invested GBP 15 million to help Brittany Ferries develop its services from Poole.

(139) PHC argues that the ferry services market in the western Channel displays no overcapacity and that Brittany Ferries operates in a niche market by having specialised in linking outlying regions of the United Kingdom and France. Complete termination of the Brittany Ferries service would result in an immediate loss of 100 to 120 jobs, which would be followed by the complete closure of the commercial port, given that the remaining trade would not cover operating costs. It is hard to see Poole harbour developing new trades, not least because of the shallowness of the harbour and the increasing size of ships.

(140) PHC also believes it is unlikely that other operators would use the facilities offered by the port of Poole.

(141) PHC negotiated a reduction in port charges with Brittany Ferries so as to help the company restructure and above all to avoid any further reduction in rotations by Brittany Ferries.

(142) For the above reasons, PHC asks the Commission to approve the aid to Brittany Ferries. It points out that Brittany Ferries' withdrawal from Poole would probably result in the closure of the commercial port.

3.2.7. *Port of Santander*

(143) The port of Santander ('PoS') states that the United Kingdom is its main commercial partner, particularly in the area of ro-ro ferry transport. This is why PoS has continually invested in the expansion of its ro-ro infrastructure. Brittany Ferries, which is the only company offering a scheduled passenger service to the port, has been using PoS's facilities for over 25 years, linking Santander with Plymouth and Portsmouth on a twice-weekly basis.

(144) Brittany Ferries accounts for around 20 % of PoS's ro-ro activities and contributes substantially to the regional economy (PoS impacts the regional economy at a rate of some 16 % to 17 % in terms of the region's jobs, revenue, gross earnings and added value). The existence of the ferry link has improved the regional infrastructure.

(145) PoS also maintains that Brittany Ferries operates in a niche market between these outlying regions and that the Community has always supported initiatives to develop maritime links in the Atlantic Arc so as to relieve road congestion and reduce pollution from lorries.

(146) PoS therefore believes the Commission ought to approve the aid in question.

3.2.8. *Comments from the Conseil régional de Basse-Normandie, the Conseil général du Calvados and the Conseil général de la Manche*

(147) The various regional authorities referred to above submitted comments to the Commission individually. For the most part, these comments expressed similar opinions, which have been grouped and summarised below.

(148) The Lower Normandy region, comprising the three departments of Calvados, la Manche and Orne, has

partial Objective 2 and 5b status, qualifying it for Structural Fund and regional aid in accordance with Article 87(3)(c) of the Treaty.

(149) Lower Normandy's two main ports, Caen-Ouistreham and Cherbourg, are both served by Brittany Ferries, which plays a crucial role in the economic life of the departments of la Manche and Calvados. In addition, both the Lower Normandy region and the departments of Calvados and la Manche became actively involved in maritime transport by becoming shareholders in the semi-public companies Senacal and Senamanche respectively (the SPCs), which own ships assigned to routes operated by Brittany Ferries. In view of the consequences of the opening of the Channel tunnel and the fact that the pound sterling fell to a significantly lower level and remained there for a long period, the SPCs agreed to support Brittany Ferries, granting it a temporary deferment of rent during its restructuring period.

(150) Following the recent difficulties in the cross-Channel sector, Brittany Ferries has restructured and become a viable operator.

(151) Following P & O's sudden closure of routes (Boulogne, le Havre and Dieppe, for instance) the regional authorities wanted at all costs to avoid tying the future of the region's ports to a single shipping company. The disappearance of Brittany Ferries would hand the P & O ferry company a monopoly on routes in the central and western Channel.

(152) The October 1998 report and opinion entitled Basse-Normandie, les retombées du trafic transmanche en Basse-Normandie (Lower Normandy, the impact of cross-Channel traffic for Lower Normandy) submitted to the Commission by the Conseil régional de Basse-Normandie support the above argument.

3.2.9. *Comments from the Conseil régional de Bretagne, the Conseil général d'Ille-et-Vilaine, the Conseil général des Côtes d'Armor, the Conseil général du Finistère and the Conseil général du Morbihan*

(153) The various regional authorities referred to above submitted comments to the Commission individually. For the most part, these comments expressed similar opinions, which have been grouped and summarised below.

(154) These regional authorities, too, emphasise the regional importance of Brittany Ferries, which they say should not be seen as a simple company when what is at stake is the survival of an economic player and the preservation of jobs in the Brittany region. Behind Brittany Ferries there lies an entire region.

(155) To slow down or stop the driving force of regional development which is the operation of Brittany Ferries would fly in the face of other Community policies, such as cohesion and regional development. The regions point out that much of Brittany is eligible for Objective 2 and 5b programmes.

(156) Moreover, Brittany Ferries directly employs 1 741 workers in the Brittany and Lower Normandy regions under French labour contracts, subject to the national social security scheme. Representing around 20 % of the French merchant navy, it also contributes to the sustainability of the French institutions, including the balance of the French merchant navy's pension fund.

(157) The future of the ports of Roscoff and Saint Malo is closely linked to Brittany Ferries continuing its activities. It is also argued that Brittany Ferries' operations have recovered thanks to the implementation of a company restructuring plan.

(158) In the light of the above arguments, the abovementioned public authorities invite the Commission to approve the aid notified by the French Government in order that the company may continue to play its key role in the regional economy.

4. COMMENTS FROM FRANCE FOLLOWING INITIATION/EXTENSION OF THE PROCEDURE

(159) The French authorities submitted a whole series of documents following the initiation and extension of the procedure, as cited in the descriptive section. Nonetheless, some features of the comments submitted during the procedure are given below.

4.1. Recap of certain main arguments

(160) The French authorities argue that the business handicaps which affected the company were compounded over a period of around four years by major economic handicaps (such as the relaxing of controls on duty-free sales in the strait, the opening of the Channel tunnel and the devaluation of the pound sterling), causing the company to make operating losses during that period.

(161) The problems affecting the company were so great that the French authorities agreed to lend their support to its restructuring process. The French authorities told the Commission that, given the exceptional circumstances described, public support for Brittany Ferries could in no way be seen as operational aid to offset the company's operating losses and protect it from normal competition forces. On the contrary, the company has engaged in a genuine restructuring of its operation, from which it will emerge stronger and more competitive, and able to operate without further need for aid.

(162) The French authorities point out what Brittany Ferries has meant for the last 25 years and emphasise that they want to see the company continuing to serve as a national instrument for European regional planning, indicating that the company is a means of satisfying national interests for strategic purposes.

(163) On these grounds, the French authorities ask the Commission to recognise that the support they decided to grant to Brittany Ferries is in conformity with the Community guidelines on State aid to maritime transport and with the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

4.2. **Risk of monopoly**

(164) The French authorities also point out that they wish to maintain a credible competitive alternative in the central and western Channel, where Brittany Ferries' only serious competitor is P & O European Ferries (Portsmouth). The disappearance of Brittany Ferries would be liable to create a de facto monopoly for P & O in the sector.

4.3. **Temporary waiver of rent, financed by a capital increase**

(165) Regarding the capital increase which in 1996 allowed the SPCs to grant BAI a temporary waiver of rent, the French authorities state that the SPCs acted as a private investor would. As shipowners, the SPCs had the choice either of seeing Brittany Ferries run into difficulty, and having to sell their ships without recuperating the full value of their investments in terms of purchases and fitting-out, or of accepting a temporarily reduced rent (but higher than the realisable value of the ships or the value of renting to other maritime transport companies) and so contributing to the company's recovery. The rent would be repaid once Brittany Ferries' capital was back up to its 1992 level.

(166) These rent reductions were financed by SPC capital increases subscribed by all shareholders except Brittany Ferries, which thus saw its capital holding in the companies slip from around 45 % to 30 %. The local authorities intervened in accordance with the principle of equalisation, to protect all the economic and commercial activities in which they have a direct interest and to which the activity generated by Brittany Ferries contributes directly. The French authorities argue, in this context, that both the amortisation and the profitability of their commercial, port and touristic operations depend on the success of Brittany Ferries' operations, so that, all in all, it is in the local authorities' economic interest to lend temporary support to these loss-making activities, this being very much the sort of analysis an informed investor would make.

4.4. **Investment subsidies (granted in the past)** ([75])

(167) In addition, in their letter of 15 October 1998 ([76]) the French authorities indicate that the subsidies referred to below were granted exclusively as part of public aid measures for the commercial fleet sector.

(168) The particular measure which entered into force on 29 December 1989, i.e. post-dating the Commission guidelines of 3 August 1989 on financial and fiscal measures concerning shipping operations with ships registered in the Community, was approved by the Commission under Articles 87 and 88 of the Treaty.

([75]) Past investments not relating to the restructuring.
([76]) Letter from the French authorities dated 15 October 1998.

(169) Since 1982, the following ships and amounts have been involved:

Table 6

Investment subsidies				
Ship	Year of subsidy decision	Contract price of ship (FRF million)	Amount of subsidy	Rate (in %)
Quiberon	1986	97,27	8,38	8,60
Duc de Normandie	1986	101,80	10,11	9,90
Barfleur	1991	495,10	40,00	8,00
Normandie	1992	769,60	40,00	5,20
Val de Loire	1992	700,00	25,00	3,50

The *Quiberon* and the *Val de Loire* were acquired secondhand in Sweden and the *Duc de Normandie* secondhand in the Netherlands. The *Normandie* and the *Barfleur* were ordered from Masa-Yards of Finland.

(170) Lastly, the French authorities indicate that investment aid of FRF 40 million was granted to BAI in 1987 for the ferry *Bretagne*. In addition, FRF 70 million of shipbuilding aid was granted to Chantiers de l'Atlantique to build the ferry on the basis of a contract price notified to the Commission of FRF 450 million and in accordance with the decision taken by the Commission and notified to the French authorities.

4.5. **Crédit Agricole**

(171) In their correspondence of 16 July 1998 the French authorities explained that the Crédit Agricole banking group is not a public undertaking but a strictly credit institution. The capital of the Caisse nationale du Crédit Agricole (CNCA) is held exclusively by the 56 regional banks (caisses régionales — CRCA) and their directors. The capital of the CRCA is held by the 2 775 local banks (caisses locales — CLCA) or by individual members. The capital of the CLCA is in turn held by some 5,5 million members, either natural or legal persons.

(172) Crédit Agricole's decisions are taken on an entirely internal basis and loans are granted using funds of private origin deriving from private savings. It is also indicated that the State provided no guarantee for the loans granted to Brittany Ferries by Crédit Agricole du Finistère.

(173) According to the same letter, Brittany Ferries asked Crédit Agricole for sums corresponding to the amount of aid expected from the State, which would not be rapidly available to it on account of administrative payment procedures. According to the French authorities, this step was taken without any intervention by the State, which had no reason to be informed.

(174) The French authorities also indicated that Crédit Agricole acted in accordance with the principle of an investor in a free market economy, taking into account both Brittany Ferries' recovery prospects and the declared intention of the French State to support the company in the implementation of its restructuring plan.

(175) Crédit Agricole, which holds mortgages on the ships as surety for the loans advanced to Brittany Ferries, indeed had every interest in preventing the company from going bankrupt between late 1996 and early 1997. Calling in the mortgages at this time would not have enabled Crédit Agricole to recover the value of what was owed to it. Although Brittany Ferries' fleet is the most modern in the Channel and therefore has high intrinsic value, the ship supply market was in a very depressed phase at the time, with older ships being offered at lower prices.

(176) Regarding Crédit Agricole's relationship with the EIGs, the French authorities point out that, in any event, the financing mechanisms in which the EIGs act as intermediaries, as described above, come under common law.

4.6. **ACOMO**

(177) By letter dated 16 July 1998 the French authorities informed the Commission that up to 1997 Brittany Ferries had regularly received consolidation and modernisation aid in view of the international nature of its operations, but that there were no plans to extend such aid beyond 1 January 1998.

4.7. **Reduction of port charges**

(178) The French authorities have indicated that there was no reduction of port charges as such, but rather a system of discounts on turnover, negotiated between the port concessionaires, the chambers of commerce and industry ('CCIs') and the shipping companies.

(179) According to the French authorities, this type of agreement is common where shipowners operate a scheduled route generating a large turnover, as in the case of ferry companies. Such agreements include obligations both for the port and for the shipowner, the latter undertaking, *inter alia*, to guarantee minimum takings to cover the port's financial commitments. They may also stipulate that, should actual takings be higher than the 'guaranteed' amount, the companies may enjoy a discount on any turnover in excess of the 'guarantee'. It is in this context that Brittany Ferries concluded such agreements with the CCIs of the ports it serves: Roscoff, Saint Malo, Caen and Cherbourg.

(180) According to the French authorities, Brittany Ferries is not the only company to have concluded agreements of this type with the CCIs: by way of example, they indicate that Irish Ferries concluded one with the CCI of Morlaix for the port of Roscoff, and P & O with the CCI of Cherbourg.

(181) The French authorities also point out that the ports served by Brittany Ferries fall into the category of 'ports of national interest'. They are operated under a 'public equipment' concession granted by the State to the CCIs, which legally are administrative public institutions administering an 'industrial and commercial public service' and which constitute a privately managed public service operating according to the rules applying to private undertakings. Accordingly, the agreements which the industrial and commercial services conclude with their users are common law contracts over which the public authorities exercise no control.

5. **ASSESSMENT OF THE AID**

5.1. **Legal basis of the assessment**

(182) Article 87(1) of the Treaty stipulates that '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, in so far as it affects trade between Member States, be incompatible with the common market'.

(183) However, Article 87(2) and (3) of the Treaty stipulates that some State aid is compatible or may be considered to be compatible with the common market.

(184) For assessing restructuring aid to shipping companies, the Community guidelines on State aid to maritime transport ([77]), which interpret Article 87 of the Treaty in respect of maritime transport, refer to the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([78]). The only basis for granting a derogation for rescuing and restructuring aid granted to firms in difficulty is Article 87(3)(c). By virtue of this Article, the Commission can authorise 'aid to facilitate the development of certain economic activities … where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. Aid compatibility is analysed according to five main criteria, namely the existence of restructuring aid, the return to viability via a restructuring plan, the prevention of distortions of competition, the proportionality of the aid and, lastly, implementation of the restructuring plan.

(185) Furthermore, the Commission communication to the Member States on the application of Articles 87 and 88 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector ([79]) may be applicable in individual cases or in sectors which are unrelated to the manufacturing industry, in so far as the principles of the communication are applicable to those sectors and if the Commission considers it is essential to determine whether State aid exists.

(186) There follows an examination of the various elements of dossier C 31/98 in respect of the existence of State aid within the meaning of Article 87 and the possible compatibility of such aid with the Treaty. In this context, and so as to verify the extent to which the restructuring of Brittany Ferries will result in an operation which will not require aid in the future, there follows an analysis of the mechanism by which the ships operated by BAI are financed and of the parallel aid received in the past, as described by the complainant, notably in its correspondence of 29 February 2000 and as explained by the French authorities and Brittany Ferries at the meetings with them and in the documents they submitted.

5.2. **BAI and SPCs: a single economic group**

(187) The judgment of the Court of Justice of the European Communities in the Intermills case ([80]) confirms that such an approach is acceptable:

> 'It must therefore be accepted that, in spite of the fact that the three manufacturing companies each

([77]) OJ C 205, 5.7.1997, p. 5.

([78]) OJ C 368, 23.12.1994, p. 12.

([79]) OJ C 307, 13.11.1993, p. 3.

([80]) Judgment of 14 November 1984 *SA Intermills* v *Commission*, aid for the conversion of a paper-manufacturing undertaking, Case 323/82, ECR 1984, p. 3809.

has a legal personality separate from the former SA Intermills, all those undertakings together form a single group, at least as far as the aid granted by the Belgian authorities is concerned. The Commission was therefore justified in considering the entire group to be a single "undertaking" for the purposes of the application of Article 92 [now 87] of the Treaty.'

'Moreover, it should be noted that the applicants, in stressing that the restructuring carried out by means of the aid in question constituted an indivisible whole, from an industrial and financial point of view, have implicitly acknowledged that the original undertaking and the new manufacturing companies form a single economic unit.'

(188) In the light of the explanations given in section 2 and the above indications, and since it is essential for an analysis of restructuring to consider an undertaking's investment and operating activities together, the Commission believes it must in any case take account of all of BAI's assets and liabilities, as reflected in the accounts of the SPCs. Moreover, as the SPCs are closely linked to Brittany Ferries' operations, the Commission believes that in examining the granting of State aid it is relevant to analyse the whole of the Brittany Ferries (economic) group.

(189) Accordingly, the Commission will not analyse the group's internal relations from the point of view of State aid, as it wishes to avoid counting the State aid twice (once to the group and once within it).

(190) Nonetheless, the analysis presented in section 2 (see in particular Tables 1 and 2) shows that the rent-charging mechanism applied within the Brittany Ferries group (BAI-SPCs) is in line with market practice, including in terms of the amount of rent charged.

(191) In short, the above analysis serves both to clarify the group's internal transfers and to show that group practice is in line with market practice in the sector concerned.

5.3. **Existence of aid in the form of financing of the BAI-SPC group**

(192) In addition to the restructuring aid granted by the French Government, the Commission must check for the existence of any other aid resulting from BAI's partnership with the SPCs.

(193) Firstly, with regard to economic interest groupings and the tax advantages they may confer, the Commission considers that they constitute a general measure, given that they are common in France, can be set up in all sectors of economic activity and come under common law.

(194) Regarding Crédit Agricole's operations in respect of the BAI group, both as a creditor and as a minority shareholder in the SPCs, it should be noted that, as the French authorities have explained, the institution's capital has, since privatisation, been held by a large number of members, most of them private. It is true that mutual agricultural credit institutions are subject to particular checks by the public authorities and that the CRCA and CLCA are themselves subject to CNCA checks, as stipulated for instance by certain provisions of the 'Code rural'. However, such checks are only to ensure that their books are in order and that they comply with current statutory or regulatory requirements, and do not extend to decisions the 'Caisses' take autonomously as part of their credit institution activity. Accordingly, the Commission considers that the State is no answerable for Crédit Agricole's activities and that there is therefore no need to check for the existence of other features inherent in the notion of State aid within the meaning of Article 87(1).

(195) It should be pointed out here that the SPCs are controlled by the public authorities and therefore have access to funds of State origin. The Commission's analysis has shown the following measures could involve State aid within the meaning of Article 87 of the Treaty: (a) the ship-financing mechanism employed by the Brittany Ferries group (BAI-SPCs) and (b) the guarantees provided for that financing.

(196) To determine any aid element involved in operations BAI conducted as a result of (public) financing of ships via the SPCs prior to 1996, the aspects below are considered with reference to the principle of an investor in a free market economy ([81]), as interpreted in particular in the Commission's position on the application of Articles 92 and 93 of the EC Treaty to public authorities' holdings ([82]).

5.3.1. *Financing mechanism and return on investment*

(197) It should be borne in mind that from the creation of the SPCs up until the appearance of the difficulties which led to the restructuring (the 1996 unilateral capital increase being part of that restructuring), the financial

([81]) Commission communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

([82]) EC Bulletin 9-1984.

situation of the Brittany Ferries group (BAI-SPCs) was such that a normal return was earned. The group expected to achieve a return on investments via its operating revenue and via the residual value achieved upon the sale of the ships, covering the capital originally used to make the investments in question. The Commission can conclude, in this regard, that it is common and accepted practice in the industry for shipowners to rent their ships to operators and to make a profit when they resell them.

(198) On this point, the third indent of point 3.2 of the Commission's position on public authorities' holdings is relevant:

'Nor is State aid involved where fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions. This can be taken to apply … where the public holding in a company is to be increased, provided the capital injected is proportionate to the number of shares held by the authorities and goes together with the injection of capital by a private shareholder; the private investor's holding must have real economic significance.'

(199) It should be pointed out here that until 1995 all decisions to increase capital were linked to new investments, with BAI subscribing to the capital increases in proportion to its holding in the SPCs ([83]). As required by the criteria set out above, BAI's holding as a private investor does indeed have real economic significance, involving a major holding for BAI and the SPCs (between 44,8 % and 49,98 % up until 1996).

(200) Investment and reinvestment have significantly enhanced the value of the Brittany Ferries group, including increased value of assets acquired as operations expanded, the building-up of a market and a clientele (which had not previously existed as such) and the acquisition of maritime transport know-how, all of which has also earned the company an excellent market image (clearly identified by Dynamar and NERA). Moreover, since the restructuring the group's value is underpinned by the prospect of long-term viability and by the sustainability of the operations it has built up and has now been operating for over 20 years ([84]).

([83]) See letter from the French authorities dated 25 June 1999.

([84]) This means that if the group were to be sold, its public and private shareholders would obtain a return from the value of the group as a whole, including not only its assets, but also other elements of value such as the market and clientele which have been built up and the group's excellent image, which is recognised on the market.

(201) Given that the Brittany Ferries group's operation enables the SPCs to balance their budgets using the rental income from BAI and, upon the sale of ships, earned the group capital gains of around 7 % to 8 % a year per ship ([85]) before the difficulties which led to its restructuring, the said operation may be considered appropriate and in line with market practice in the sector in question.

(202) The Commission concludes that the profits made by the group have enabled it to increase its value significantly, so that its return may be said to be normal in terms of dividends or capital gains ([86]).

(203) The Commission therefore considers that the public capital increases (prior to 1996) were carried out in accordance with market principles and that there are no elements of State aid in the way the Brittany Ferries (BAI-SPC) group's ships were financed prior to 1996.

(204) In view of the foregoing, the Commission has decided not to cast doubt on the financing mechanism described above, which has been analysed in order to supplement the analysis of the Brittany Ferries group's (BAI-SPCs) restructuring.

5.3.2. *Guarantees*

(205) With regard to the guarantees provided to the SPCs in 1983 and 1987, the Commission notes that the measures taken prior to 1989 were not covered by the initiation or the extension of the procedure or by requests for information sent to the French authorities before April 1999. As indicated in the initiation of proceedings C 31/98, the first letters the Commission sent to the French authorities before that date (in 1996 and 1997) dealt not with the question of guarantees provided to the SPCs, but with 'the intention of the French authorities to grant financial support to Brittany Ferries'. Accordingly, as from 16 April 1999, the date on which Regulation (EC) No 659/1999 entered into force, the limitation period laid down in Article 15 of the Regulation has expired, in the absence of any action to interrupt that period. It follows that the aid sums relating to the guarantees of 1983 and 1987 are to be deemed 'existing aid'.

(206) Regarding the FRF 10 million guarantee provided in 1992, and in view of the fact that in 1992 the group was not yet in difficulties, the Commission considers that the fact that, as the recipient admits, there was no

([85]) See Tables 1 and 2.

([86]) See the aforementioned Commission position on public authorities' holdings.

proper return on the guarantee in line with market rates constitutes State aid according to the Commission notice of 11 March 2000 ([87]) on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ([88]).

(207) It should be mentioned that, according to BAI's argument ([89]), the element of subsidy deriving from this last guarantee should be deemed regional aid under the guidelines on State aid for regional purposes, this being an 'initial investment'. BAI also refers to the Community guidelines on State aid to maritime transport ([90]), which it says allow investment aid in favour of shipping companies within the framework of regional aid.

(208) In this respect, the Commission refers nonetheless to the text of the guidelines, section 5 of which indicates that the Commission has never been favourable to this type of aid and that 'regional aid for maritime companies in disadvantaged regions, which often takes the form of investment aid to companies investing in the regions, may only be permitted where it is clear that the benefits will accrue to the region over a reasonable time period. This would, for example, be the case if the investment related to the construction of dedicated warehouses or purchase of fixed transhipment equipment …'. Such aid must also comply with the regional aid rules. Moreover, there is no guarantee that investments financed in this way will comply with the Community shipbuilding rules, as the text also requires.

(209) The Commission concludes from the text that only fixed investments are acceptable under the rules on regional aid in the form of investment aid to shipping companies. Mobile investments such as ships may not be subsidised in this way.

(210) Accordingly, the aid element deriving from the guarantee provided in 1992 is deemed incompatible with the Treaty and must therefore be recovered in accordance with Article 14 of Regulation (EC) No 659/1999.

([87]) OJ C 71, 11.3.2000.

([88]) With regard to this, Crédit Agricole has indicated, by way of illustration, that in view of BAI's financial situation in 1992, a FRF 10 million bank guarantee should normally have carried an interest rate of 1 % per year.

([89]) Document registered at the Commission on 30.1.2001 under number A/51686.

([90]) OJ C 205, 5.7.1997.

(211) In order to establish the exact amount of this aid element in the FRF 10 million guarantee granted in 1992, the Commission invites France to quantify it with reference to the market rate in the light of the Commission communication of 11 March 2000 ([91]).

5.4. **Existence of restructuring aid**

5.4.1. *The amounts of FRF 70 and 80 million*

(212) The French authorities notified the amounts of FRF 70 and 80 million in restructuring aid as part of the BAI restructuring plan.

5.4.2. *Injection of public capital (FRF 246 million)*

(213) In 1996, as part of the restructuring of Brittany Ferries and to that same end, the SPC shareholders provided a capital increase of FRF 250 million (mainly public money). However, this capital increase is quite distinct from those predating 1996, as it was carried out essentially be the public authorities using public funds totalling around FRF 246 million and was not matched by a concomitant increase from private funds, as had been the case prior to 1996.

(214) The said capital increase thus constitutes a unilateral injection of public capital into the Brittany Ferries group. Contrary to practice prior to 1996, the increase was not an across-the-board subscription as it did not involve the private shareholder BAI. The result was that the public holding reached a significantly higher level than originally, even though in 1996 the group was in financial difficulty. The Commission notes that the conditions laid down in the third indent of point 3.2 of its position on public authorities' holdings are not met and that the group's situation is in fact that described in the fifth indent of point 3.3 of the said position:

'There is State aid … where the injection of capital into companies whose capital is divided between public and private shareholders makes the public holding reach a significantly higher level than originally and the relative disengagement of private shareholders is largely due to the companies' poor profit outlook …'.

(215) In view of the foregoing, the Commission concludes, on this point, that the unilateral capital increase of around

([91]) With regard to this, Crédit Agricole has indicated, by way of illustration, that in view of BAI's financial situation in 1992, a FRF 10 million bank guarantee should normally have carried an interest rate of 1 % per year.

FRF 246 million by the SPCs' public shareholders in 1996 constitutes State aid.

(216) Accordingly, and given that the injection of public capital was made as part of a restructuring programme, the Commission considers that the said injection must be deemed restructuring aid to a firm in difficulty.

(217) The question of the proportionality and compatibility of the aid is examined below.

5.4.3. *Redundancy programme*

(218) Given that the parallel measures by the French authorities have either already been approved or fall into the category of general measures applicable in France, and since the Commission regards the social costs of restructuring in a favourable light, it would appear that, aside from the parallel aid already approved, no State aid is to be identified within the meaning of Article 87(1) of the Treaty under this item.

5.4.4. *Reduction of port charges*

(219) It should be recalled that the question the Commission initially raised with the French authorities was whether the measure relating to the inter-port solidarity fund was to be introduced. When the French authorities indicated that it had not been introduced, the Commission asked for 'more information on the ports concerned, the reasons for these reductions and the beneficiaries'. The French authorities' reply is summarised in section 4 above.

(220) Regarding the ports, it should be remembered that the Commission wanted to know whether an 'inter-port solidarity plan' had been introduced. When France said it had not, the Commission asked for additional information on the operation of those ports. On the basis of the information in its possession, the Commission has no reason to suppose that Brittany Ferries is not paying market rates.

(221) It may therefore be concluded that, as regards this aspect of the current dossier, Brittany Ferries has not received State aid within the meaning of Article 87(1) of the Treaty.

5.5. **Existence of aid in another form**

(222) The various aid paid to the Brittany Ferries group has been placed in two categories: restructuring aid (in which restructuring aid proper and parallel aid paid during the restructuring period have been cumulated) and aid paid before the restructuring period, which cannot be treated as restructuring aid (see Tables 4 and 5 in section 2).

(223) The investment aid granted for the acquisition of certain ships is set out in Tables 4 (section 2) and 6 (section 4).

(224) The other aid involves Brittany Ferries' application of schemes approved by the Commission. Since ACOMO, the investment aid up to and including 1997, the reimbursement of business tax and the ECA have all been approved by the Commission, there is no need to pronounce on them, even though these sums of parallel aid are duly taken into account for the proportionality of the restructuring aid. It should also be noted that the ACOMO scheme was discontinued at the beginning of 1998.

(225) The Commission has no comments to make regarding the aid the French authorities indicate they paid to BAI in 1987 in accordance with the Commission's 'shipbuilding' decision (letter SG(88) D/01376 dated 5 February 1988), given that the aid was paid in compliance with the aforementioned decision.

(226) As for the investment aid the French authorities indicate they granted in 1986, given that such aid was not prohibited at the time and that favourable decisions were taken on similar schemes during the 1990s, and in view of the time which has since elapsed, the Commission considers that the beneficiary was able to have legitimate confidence in the aid ([92]).

5.6. **Compatibility — restructuring plan and return to viability**

(227) In this context, the external factors (pound sterling/French franc parity, market development) and internal factors relating to the group's restructuring are analysed below.

5.6.1. *Parity between the pound sterling and the French franc*

(228) According to M & G's April 1998 diagnosis ([93]), a fall of FRF 0,50 in the value of the pound automatically reduces BAI's results by at least FRF […], quite aside from any impact on forecast traffic and passenger yield. In March 1999, around one year later, NERA noted that franc/sterling parity should remain at around 9 FRF for one pound sterling for the next few years at least. NERA based this on OECD and United Kingdom Treasury forecasts.

(229) On the basis of this information, the Commission notes, firstly, that NERA based its findings on exchange rate

([92]) Judgment of the Court of Justice, RSV, Case 223/85, ECR 1987, p. 4617.

([93]) See M & G report, especially pp. 5 and 12 of the summary.

forecasts by recognised, reliable institutions. Secondly, given that a strong pound helps Brittany Ferries, the Commission recognises that a stronger exchange rate should help both BAI and the Brittany Ferries (economic) group return to viability.

5.6.2. *Market development*

(230) As various experts have estimated that Brittany Ferries' market in the Channel does not have structural overcapacity, as confirmed notably by a rise in prices at the beginning of 2000, and moreover that some growth potential seems realistic both on that market and on the other routes Brittany Ferries operates, the Commission accepts the argument that Brittany Ferries' relevant market does not have structural overcapacity.

(231) The Commission also finds that the growth potential offered by this market should be an external factor conducive to the development of both the company and the Brittany Ferries (economic) group.

5.6.3. *General costs*

(232) As described in section 2, the non-allocated costs are, firstly, clearly covered by the group's various revenue and, secondly, explained in part by BAI's excellent image ([94]), which Dynamar ([95]) and NERA both recommend it should maintain.

(233) In addition, NERA considers that a company ought in principle to hold onto the asset of a strong brand which brings market benefits. In view of the satisfactory analytical findings regarding the group's profitability (see below), NERA concludes here that the Brittany Ferries group passes this market test.

(234) In addition, general costs have been reduced (by effectively reducing non-allocated costs and through reallocation to profit centres), as advocated by Dynamar, for instance ([96]).

(235) Now that they have been reduced, reallocated and explained, and represent an acceptable proportion, the Commission considers the central costs to be justifiable and not liable to threaten the viability of individual routes.

5.6.4. *Analysis by profit centre*

(236) Dynamar noted that one necessary element of the restructuring analysis would be an analysis of the company's profit centres. NERA considered this point and analysed the Brittany Ferries group from that angle (its profit centres basically being the routes it operates).

(237) To this end, NERA compared costs and revenue ([97]) by route for passenger and freight traffic, and found that, individually, all the routes made a positive net contribution to the group's profits. In addition, to examine the various routes' profitability in closer detail, NERA reallocated the port charges among the various routes BAI operates and found the positive net result to be maintained on all routes ([98]).

(238) On the basis of this detailed analysis, and given the proportionality of the non-allocated costs, the Commission recognises the profitability of the various routes BAI operates. The viability (positive net contribution) of those routes explains the group's overall profit. However, the analysis of the group's profit development goes beyond the viability of the various routes, as can be seen from Table 7.

(239) Aside from the individual viability of each route, Brittany Ferries and NERA ([99]) maintain that the routes as a whole constitute the core of Brittany Ferries for a number of reasons: regarding the Irish and Spanish routes, closure of a route would result in all BAI's traffic to those destinations being lost.

(240) Compared with the other routes, the Plymouth/Roscoff route serves a relatively distinct market. While some traffic might divert to the central Channel routes, especially Cherbourg/Poole, a reduction in the

([94]) In its business strategy analysis, Dynamar defines Brittany Ferries as being the 'strongest brand'.

([95]) Dynamar report, p. 10.

([96]) See letter from the French authorities dated 12 May 1999, which included NERA's comments. Regarding Dynamar's comments on this point referring to a comparison between BAI and a reference company, NERA stresses three factors in particular:
— Brittany Ferries has to carry out all its management operations by itself, while the reference company may enjoy certain (synergetic) advantages by having a management which, at least in part, fits into that of a larger group,
— Brittany Ferries is responsible for operations in a larger number of ports than the reference company,
— Brittany Ferries has a larger turnover than the reference company.

([97]) Revenue: Ticket sales, revenue from restaurants, bars, duty-free and other sales, and entertainment activities (films, videos, etc.).
Costs: Travel agency commissions, port taxes, insurance, costs of preparing cabins, cleaning, food, drinks and other purchases, staff working in restaurants, bars and shops, loading of lorries, cost of fuel and oil, pilotage, seamen's wages, accommodating and feeding the crew, ships' rent, maintenance and amortisation of on-board equipment. See NERA, pp. 28—30.

([98]) The routes are: Roscoff/Plymouth, St. Malo/Portsmouth, Caen/Portsmouth, Cherbourg/Poole, Plymouth/Santander and Roscoff/Cork, NERA, p. 33.

([99]) Particularly section 5, pp. 27—41.

Plymouth/Roscoff route would result in users of that service choosing other travel destinations or travelling by air if the route were no longer operated.

(241) NERA considers that Brittany Ferries' central Channel routes do not necessarily provide good substitute alternatives for one another, as they serve distinct geographical markets. If one of these routes were to close, passengers and freight would therefore divert to Brittany Ferries' main competitor, day trip and excursionist traffic would be lost and the reduction of one or more routes would prevent Brittany Ferries from increasing its high-season revenue on its other routes. This would mean the loss of high-yield sales at peak times.

(242) In conclusion, in view of what has just been explained and the proportionality of the central costs (see above), the Commission can accept the argument that the profitability of the various individual routes BAI operates is assured and that these routes constitute a profitable ensemble for the group (see Table 7).

5.6.5. *Replacement of a ship*

(243) As indicated in section 2, the investment in the *Normandie 2* is necessary in order to balance out the service on the Caen/Portsmouth route, on which capacity is uneven from day to day. With the new ship in service it will be possible to substitute the *Duc de Normandie* for the *Quiberon* and so optimise the operation of the Roscoff/Plymouth route. Moreover, as indicated in section 2, even after the acquisition of the *Normandie 2*, Brittany Ferries' capacity will remain below what it was before restructuring. BAI has indicated that the acquisition of the ship will be 20 % self-financed by the Brittany Ferries group.

(244) On this point, the Commission concludes that the investment in this ship is justified by the need to balance and homogenise the fleet, and since another ship will be withdrawn at the same time BAI's capacity will remain at around 5 % below its capacity at the start of restructuring in 1995 and 1996.

(245) The Court of First Instance of the European Communities has recognised the legitimacy of such investment ([100]).

(246) In view of the above, the Commission can accept this investment as part of the restructuring.

5.6.6. *The financial forecast — viability*

(247) The group's financial evolution includes the sums of FRF 70, 80 and 250 million. The return to viability forecast in the table below has been confirmed up to the end of 2000 by the French authorities' announcement ([101]) that BAI has indeed returned to 'better fortunes' and is starting to pay back (internally within the group) the sum of FRF 250 million to the SPCs in maximum tranches of FRF 50 million a year for the three SPCs, while continuing to pay them rent as normal.

(248) With most of the restructuring measures already in place, the restructuring may be considered complete once the *Normandie 2* has been acquired and the ships reassigned ([102]).

([100]) Judgment of 25 June 1998, Air France, Joint Cases T-371/94 and T-394/94, point 102.
([101]) Letter from the French authorities dated 4 December 2000.
([102]) The *Normandie 2* is due to be acquired in 2002.

(249) Regarding the Brittany Ferries (BAI-SPC) group's economic and financial evolution up to 2006, NERA ([103]) forecast the following data up to 2006 ([104]):

Table 7

(in FRF million)

BAI-SPC group									
Year	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total balance	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Turnover	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating profit	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Retained profit for the year	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Cumulated profit (with inflation)	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Net cash position	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
EBIT/interest cover ratio	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Debt/equity ratio	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Return on equity	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]
Operating return on capital employed	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]	[…]

(250) According to NERA's forecast, the group's operating profit continue to improve significantly, varying between FRF […] in 1998 and FRF […] in 2006, though the planned replacement of ships will offset the trend temporarily in 2002.

(251) The progression of retained profit for the year will take it to a level of FRF […] in 2006. The relatively modest impact may also be seen of the investments planned around 2002; this will be rapidly overcome.

(252) The net cash position goes from FRF […] in 1998 to FRF […] in 2006. As the NERA study allows for external financing amounting to 80 % of investment costs, it may be considered that the impact of acquiring new ships will remain modest in 2002.

(253) The study establishes an EBIT/interest cover ratio which starts off low ([…]) in 1998 but then rises to rates deemed reasonable (between 2 and 4) between 2000 and 2004, and from 2005 improves further to rates deemed ample (above 4,0).

(254) The debt/equity ratio is initially high ([…] %), but then falls to levels of 40 % to 60 %, deemed acceptable, as the ship-related debts are repaid (even though those debts represent 80 % of the investment costs). The ratio rises by around 20 percentage points between 2001 and 2002, but stabilises immediately before resuming a downward trend. According to NERA, this ratio will be similar in other ferry companies.

(255) As for the firm's profitability, the operating return on capital employed develops positively to reach […] % and is therefore commercially respectable.

(256) Still regarding the firm's profitability, the company's return on equity is, at between […] % and […] %, also considered to be commercially respectable.

(257) On the strength of this analysis NERA concludes that the Brittany Ferries group will be viable in the long term.

([103]) As indicated above, and further to M & G's work, NERA produced a financial model which pointed to the group's long-term financial viability. The positive development from the short-term viability suggested by M & G in April 1998 to the long-term viability suggested by NERA in March 1999 is due, *inter alia*, to the rise and stabilisation of French franc/pound sterling parity at over 9 francs to the pound in 1998 and 1999, NERA's analysis of the economic group as a whole and the different perspective offered by the passage of time. While M & G's analysis focused mainly on the period 1996-98, NERA produced a complementary study analysing the group's requirements and future options for the period 1998 to 2006, which led it to conclude that the group would be viable in the long term.

([104]) Regarding the item 'return on equity': The 1998 figure includes a provision of FRF 150 million for possible repayment of aid. The figure would otherwise be 14,7 %. The provision is cancelled in 1999.

(258) To check the validity of NERA's forecasts for 1998 onwards, the Commission obtained confirmation from the French authorities that BAI has indeed returned to 'better fortunes' and is starting to pay back (internally within the group) the sum of FRF 250 million to the SPCs in maximum tranches of FRF 50 million a year for the three SPCs, while continuing to pay its normal rent.

(259) With the restructuring measures now essentially in place, and Sabemen's operation to be aligned with that of the other two SPCs so as to assist the group's viability, and taking account of the whole of the Brittany Ferries (economic) group, its capacity to finance ships in the years ahead and the likelihood of external factors developing positively (e.g. the evolution of Brittany Ferries' market and of macro-economic factors), the Commission can accept that the above forecasts up to 2006, as confirmed by Brittany Ferries' actual economic performance up to the end of 2000, have been produced realistically and may be considered reliable.

(260) The Commission therefore concludes that the long-term viability of the Brittany Ferries (economic) group appears to be realistic.

(261) In order that the Commission may monitor the application of the last remaining elements of restructuring, it wishes to be kept informed of the alignment of Sabemen's operation on that of Senacal and Senamanche in respect of the agreement linking it to BAI, and of the internal repayment of FRF 250 million between BAI and the SPCs, the acquisition of the *Normandie 2* and the subsequent reorganisation of ships, as planned.

5.6.7. *Viability in the light of the readjustments to be made*

(262) The Commission believes the group's long-term viability would also be assured even if the aid of FRF 80 million could not be paid.

(263) Given that in 2002 to 2003 the group's net result will be positive at FRF […] (FRF […] cumulated since 1998) and FRF […] (FRF […] cumulated) and that the forecast net cash position will be FRF […] and […] respectively for those two years, the absence of FRF 80 million in aid would not seem likely to cause the group insuperable difficulties. It should be noted here that these results also reflect the investment in the *Coutances* and the *Duc de Normandie*. The 20 % self-financing of these ships comes to around FRF […]. Even without compensation of FRF 80 million, it should be possible to absorb that sum in 2002 to 2003 given the abovementioned results, and even more so from 2004 to 2005 onwards, given the entirely satisfactory results expected in those years: net results of FRF […] (FRF […] cumulated) and FRF […] (FRF […] cumulated) with a net cash position of FRF […] and […] respectively in those two years.

(264) In view of the above, it may be considered that the group's long-term viability would not be affected if the FRF 80 million tranche of additional aid could not be paid.

(265) This view has been confirmed both by the French authorities ([105]), which confirm BAI's return to 'better fortunes', and by BAI at the beginning of 2001, referring to its viability (without the sum of FRF 80 million) in the light of the more positive course taken by external factors (exchange rate between the pound sterling and the French franc) compared with the forecasts of the restructuring plan.

5.7. **Compatibility — prevention of undue distortion of competition**

(266) Under the abovementioned Community guidelines on State aid for rescuing and restructuring firms in difficulty, another condition placed on restructuring aid is that measures (e.g. reducing the business's capacity) be taken to mitigate as far as possible the adverse consequences for competitors. Otherwise, the aid is 'contrary to the common interest' and cannot qualify for a derogation under Article 87(3)(c) of the Treaty. To determine both the extent to which the common interest is complied with and whether the undertaking needs to reduce its capacity, the Community guidelines require examination of three aspects: the capacity of the market, the risk of a monopoly and assisted areas.

5.7.1. *Market situation*

(267) It should first of all be recalled that, as shown in the descriptive section above, BAI has already shed capacity (two out of nine ships, two out of eight routes, reduced frequencies, sale of assets, etc.). To know whether the

([105]) Letter from the French authorities dated 4 December 2000.

Commission needs to ask BAI to reduce its capacity further, the issues need to be examined of any excess capacity in the market, the risk of monopoly and the regional development aspect ([106]).

(268) Firstly, it must be noted that, according to Dynamar, the Channel market ([107]) shows no substantial structural overcapacity ([108]). This view is shared by NERA ([109]), which states that cross-Channel passenger traffic (western/central Channel and strait) rose by 78 % between 1991 and 1998. This trend is confirmed, *inter alia*, by the start-up of Condor Ferries' operations in 1998 and by the opening of a fast link between Cherbourg and Portsmouth ([110]).

(269) It should be recalled that, even if there were overcapacity in the central/western Channel sector (which is not the case), that situation would have minimal impact on prices in the strait, given the one-way substitutability explained in the descriptive section.

(270) As for freight, Brittany Ferries indicates that this is a growth market: between 1995 and 1998, the total amount of freight carried across the Channel rose by almost 33 % ([111]). NERA confirms this trend, stating that between 1991 and 1999 the number of lorries carried rose by 112 %.

(271) Secondly, according to NERA, in the peak season Brittany Ferries operates at almost full capacity in the central and western Channel market.

(272) The apparent upward trend in priced on the cross-Channel market was identified, *inter alia*, by Dynamar in December 1998 ([112]), which predicted an imminent price rise of 10 % in the central and western Channel and of 25 % in the strait.

(273) According to the Commission's information, ticket prices for cross-Channel maritime traffic indeed appear to have risen by around 20 % in late 1999 and early 2000. While this price rise is seen mainly in the strait, some impact on the central and western Channel sector also seems plausible given the indications of growth on the central and western Channel routes (see above).

(274) In short, both NERA and Dynamar confirm that the passenger and freight markets are growing ([113]) and also that there is no sign of substantial structural overcapacity in the western/central Channel and strait transport market.

(275) As it may be concluded that the cross-Channel market, and particularly the central and western Channel sector, is not suffering structural overcapacity (see above), it should be concluded that the Commission cannot require any further capacity reduction.

5.7.2. *Reduced capacity of the Brittany Ferries Group*

(276) It should again be recalled at this point that Brittany Ferries has already shed capacity. As shown above, between the financial years 1995 and 1998, the company's passenger capacity was reduced by 12 % (− 1 375 passengers), its berth capacity by 9 % (− 539 berths) and its garage capacity by 17 % (− 1 480 lane metres). Between the financial years 1995 and 2003, once the *Quiberon* is replaced by the *Normandie 2* on the Caen/Portsmouth route in mid-2002, Brittany Ferries' overall capacity will remain below its pre-restructuring capacity, i.e. a reduction of 5 % in passenger capacity (− 554 passengers), 9 % in berth capacity (−523 berths) and 4 % in garage capacity (− 367 lane metres) ([114]).

(277) In view of these measures, the Brittany Ferries indicates that the service it supplies, measured in terms of sailings and rotations, will remain constant in 2001 compared with 1998, and well below what it was in 1995 before restructuring, without the company being able to increase the number of sailings, enter new routes or assign additional ships to existing routes.

(278) This reminder strengthens the argument that no further capacity reduction can be asked of BAI.

([106]) The guidelines state that 'where on an objective assessment of the demand and supply situation there is a structural excess of production capacity in a relevant market in the European Community served by the recipient, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry serving the relevant market in the European Community by irreversibly reducing or closing capacity …'.
Where, on the other hand, there is no structural excess of production in the relevant market, the Commission will not normally require a reduction in capacity in return for the aid. However, it must be satisfied that the aid will be used only for the purpose of restoring the firm's viability and that it will not allow production capacity to be expanded, except in so far as is essential for restoring viability, without thereby unduly distorting competition.
To ensure that the aid does not distort competition to an extent contrary to the common interest, the Commission may impose any conditions and obligations as may be necessary.

([107]) That is, the western/central Channel and the strait, but not including the North Sea sector, which has no bearing on this dossier.

([108]) Dynamar, p. 13.

([109]) NERA, p. 15.

([110]) According to the 'Comments from Brittany Ferries' dated 31 March 1999, p. 12, this rapid ferry can carry 900 passengers and 175 cars.

([111]) 'Comments from Brittany Ferries' dated 31 March 1999, p. 14.

([112]) Dynamar, pp. 11—12.

([113]) NERA, pp. 22—23.

([114]) See correspondence from BAI dated 9.7.1999, p. 2.

5.7.3. *Risk of monopoly*

(279) Moreover, according to the Community guidelines on State aid for rescuing and restructuring firms in difficulty, even where there is structural overcapacity on the market, a relaxation of the principle of requiring a proportionate capacity reduction may be allowed if such a reduction is likely to cause a manifest deterioration in the structure of the market, for example by creating a monopoly or a tight oligopoly situation.

(280) Brittany Ferries competes chiefly with P & O on the routes it operates in the western and central Channel and on its route to Spain ([115]). On the connections with Ireland, it competes with Irish Ferries.

(281) Given the small number of competitors in the various sectors of BAI's market, it should be borne in mind that the disappearance of Brittany Ferries could lead to a tight oligopoly situation, or even monopoly, in those sectors. For the central and western Channel and for the Spanish market it would be P & O which would be left as virtually the only operator on those markets, while on the Irish routes it is Irish Ferries which would be handed the entire market. This risk of monopoly, too, argues against asking BAI to reduce its capacity any further, especially as the market has no structural overcapacity, as shown above.

5.7.4. *Assisted areas*

(282) The Community guidelines on State aid for rescuing and restructuring firms in difficulty allow the Commission to show more flexibility in assisted areas with regard to the requirement for a reduction in capacity in the case of markets in structural overcapacity. If regional development needs so justify, it will require a smaller capacity reduction than in non-assisted areas.

(283) Given that, under the 1999 classification of eligibility for State aid, the regions of Brittany (Côtes-d'Armor, Finistère, Ille-et-Villaine and Morbihan) and Lower Normandy (Calvados, La Manche and Orne) are eligible for State aid under Article 87(3)(c), the Commission can show more flexibility with regard to the requirement for a reduction in capacity in the case of a market in overcapacity.

(284) In view of the conclusions reached in the two previous points (market situation, market structure), the Commission believes the regional argument confirms that no capacity reduction other than that already carried out by BAI may be required of the group as part of its restructuring.

5.7.5. *Conclusions on the prevention of undue distortion of competition*

(285) Given that the market in question shows no structural overcapacity, that the disappearance of BAI would be liable to lead to a monopoly situation in the market and that the Brittany Ferries group has already reduced its capacity significantly, it may be considered that no further reduction in its capacity is required. Account may also be taken here of the fact that the group is located in an assisted area.

5.8. **Compatibility — proportionality of the aid**

(286) The cumulated measures taken during the restructuring phase will have cost the Brittany Ferries group FRF 1 392 million.

The total cumulated aid received during this period is FRF 581 million.

The intensity of the aid cumulated during restructuring is 42 %.

The intensity of the restructuring aid is 30 %.

(287) In view of the fact that the public aid was paid and used in order to finance practical and necessary restructuring measures, that these measures were implemented as part of a restructuring plan which has already returned the group to short-term financial viability and that the financial forecasts indicate a return to long-term viability, the Commission can approve the restructuring aid of FRF 70 million and around FRF 246 million.

(288) The restructuring aid of FRF 80 million is not deemed necessary for the restructuring of Brittany Ferries, on the one hand because the group's economic progress has been relatively rapid (sustained in particular by the positive trend in external factors) ([116]) and on the other because the group could use the sum to bring forward investments not considered to be part of the restructuring concept.

(289) The aid element of the final guarantee paid in 1992 (see above) does not fit into the restructuring framework. The Commission must therefore ask France to determine, with the help of the Commission

([115]) According to Dynamar, Condor Ferries, which also operates in the Channel via the Channel Islands, does not affect this balance in any substantial manner, given that operator's capacity and frequency.

([116]) BAI's lawyers have also indicated (letter dated … that the sum of FRF 80 million was no longer necessary for the return to viability (see descriptive section above).

communication of 11 March 2000, the amount of aid relating to the FRF 10 million guarantee paid in 1992, which is not compatible with the Treaty.

(290) The Commission concludes that, subtracting the non-payable aid sums, the restructuring aid element cumulated with the parallel aid granted during the restructuring period and approved in advance by the Commission reveal an aid intensity of 42 % during the restructuring period, which is considered acceptable. The more so as the 30 % intensity of the restructuring aid proper is justified by a restructuring leading to the group's long-term viability ([117]).

5.9. **Compatibility — full implementation of the restructuring plan, monitoring and annual report**

(291) The Commission considers that, overall, the documents submitted to it relating to the restructuring and to Brittany Ferries' prospects for long-term viability constitute a coherent restructuring concept compatible with the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

(292) According to the Commission's information, the bulk of the restructuring measures have already been put in place ([118]). Nonetheless, the Commission needs to be informed of the course of future events, including the internal reimbursement of funds between BAI and the SPCs and the reorganisation of ships on the various routes following the introduction of the *Normandie 2* and the withdrawal from service of the *Quiberon*.

5.10. **Conclusions and conditions**

(293) In conclusion, the Commission considers the sum of FRF 80 million in restructuring aid to be incompatible with Article 87 of the Treaty.

(294) The Commission invites France, with the help of the Commission communication of 11 March 2000, to determine the amount of aid relating to the FRF 10 million guarantee paid in 1992.

(295) All the other aid granted by the French Government to support the BAI-SPC restructuring plan meets the criteria set by the Community guidelines on State aid for rescuing and restructuring firms in difficulty and by the Community guidelines on State aid to maritime transport. The Commission would point out, in this context, the principle that restructuring aid may be granted only once during a given period. The subsidies granted prior to 1988 are deemed to be existing aid.

(296) In analysing the restructuring, the Commission had to examine the group's financing system, including its practice before restructuring began in 1995, and has voiced no doubts on this point.

(297) The Commission is taking account of the fact that the disappearance of BAI would be liable to lead to a monopoly situation in the various market segments in which it currently operates,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid of FRF 70 million implemented by France at central administration level and the public capital increase of around FRF 246 million carried out by French regional and local authorities in favour of the Bretagne Angleterre Irlande company ('BAI' or 'Brittany Ferries') were granted in violation of Article 88(3) of the EC Treaty. However, these aids are compatible under Article 87(3)(c) of the Treaty.

2. The notified restructuring aid of FRF 80 million constitutes restructuring aid incompatible with the Treaty.

3. The guarantee provided by the Conseil général de la Manche in 1992 was provided in violation of Article 88(3) of the EC Treaty. The aid element to be quantified with the French authorities with reference to the market rate constitutes State aid incompatible with the Treaty.

This aid element must be recovered with interest calculated on the basis of the reference rate applying at the time of the grant in accordance with the procedures of national law. This interest shall be calculated from the date on which the aid was made available to the beneficiary until that of its recovery.

France is nonetheless invited to quantify, with the help of the Commission communication of 11 March 2000 on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guaranties ([119]) and on the basis of objective criteria, the amount of aid relating to this guarantee.

4. The capital increases carried out prior to 1996 in the semi-public companies (SPCs) Sabemen, Senacal and Senamanche and the funds allocated to Brittany Ferries by Crédit Agricole Caisse Régionale du Finistère as from the

([117]) Nor does this intensity seem in any way disproportionate in the light of other cases in which the Commission approved aid of far higher intensity (notably 81 % in Case C 70/97).

([118]) See in particular the '1999 to 2003 plan', p. 3.

([119]) OJ C 71, 11.3.2000.

privatisation of Crédit Agricole in 1988 do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

5. The aid granted under the ACOMO scheme and schemes for the reimbursement of business tax, early cessation of activities (ESA) and the reimbursement of employers' contributions, and the investment aid measures up to and including 1997 have been approved separately by the Commission.

6. Aid granted up to 16 April 1989, i.e. ten years before Regulation (EC) No 659/1999 entered into force, is deemed to be existing aid in accordance with Article 15(3) of that Regulation.

Article 2

1. France shall ensure that Sabemen's operation is aligned on that of Senacal and Senamanche in respect of the agreement linking it to BAI and shall inform the Commission of the measures taken in this respect.

2. France shall inform the Commission each year regarding the internal reimbursement of the FRF 250 million between BAI and the SPCs, the acquisition of the *Normandie 2* and the ensuing reorganisation of ships, as provided for in the restructuring concept.

Article 3

France shall inform the Commission, within two months from the date of notification of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 8 May 2001.

For the Commission

Loyola DE PALACIO

Vice-President

ANNEX

BAI'S MARKET

