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COMMISSION DECISION

of 9 July 2003

on aid which France intends to grant for the restructuring of the Société Nationale Maritime Corse-Méditerranée (SNCM)

(notified under document number C(2003) 2153)

(Only the French text is authentic)

(Text with EEA relevance)

(2004/166/EC)

(OJ L 61, 27.2.2004, p. 13)

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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 invited the interested parties to submit their comments in accordance with the said Articles [1], and having regard to those comments,

Whereas:

1. PROCEDURE

1.1. Procedural overview

(1) By letter of 18 February 2002, the French Government notified a plan to grant aid for the restructuring of the Société Nationale Maritime Corse-Méditerranée (SNCM). This case was registered as N 118/2002. The notification was supplemented by letters from the French authorities dated 3 July 2002 [2].

(2) On 19 August 2002, the Commission decided to initiate the formal investigation procedure provided for in Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the Treaty [3]; the case was registered as C 58/2002.

(3) By fax of 11 September 2002, the French authorities asked for the correction of a number of factual errors in the decision of 19 August 2002.

(4) By letter of 11 September 2002, registered as TREN A/65862, the French authorities asked for extra time to submit their comments to the decision of 19 August 2002. By letter of 17 September 2002, the Commission granted France an additional month to prepare its reply.

(5) By letter of 8 October 2002, sent on 15 October with annexes and registered as SG(2002) A/10050, the French authorities submitted to the Commission observations on the decision of 19 August 2002 opening the procedure, stressing the need for progress in implementing the restructuring plan.

(6) By letter of 15 October 2002, registered as SG(2002) A/10252, the French authorities emphasised that it was a matter of urgency that the decision opening the formal investigation procedure be published in the *Official Journal of the European Communities*.

(7) By fax of 19 November 2002, the French authorities transmitted a copy of cash advance agreements between SNCM and the Compagnie Générale Maritime et Financière (CGMF) and proof

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(1) OJ C 308, 11.12.2002, p. 29.
(2) Registered as TREN A/61846.
(3) OJ L 83, 27.3.1999, p. 1.

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of refunds of the advance by CGMF to SNCM through two bank transfers of 13 May and 14 June 2002.

(8) On 27 November 2002, the Commission adopted a decision amending the decision of 19 August 2002, which it transmitted to the Permanent Representation of France to the European Union by letter of 29 November 2002. Following this, the Commission's decision to initiate the formal investigation procedure in this case could be published on 11 December 2002 in the *Official Journal of the European Communities* ([4]). Interested parties were invited to submit their observations from that date on the plan to provide aid.

(9) The French authorities, at their request, held a first working meeting with the Commission on 24 October 2002, followed by a second one on 3 December 2002.

(10) The Commission has received observations from two companies, Corsica Ferries and the Stef-TFE group, and from various local authorities. By letters of 13 and 16 January and 5 and 21 February 2003, it transmitted its observations to France, asking it for any comments it might have.

(11) By letter of 16 January 2003, the Commission sent a request for additional information in accordance with the provisions of Article 5 of Regulation (EC) No 659/1999.

(12) By letter of 10 February 2003 ([5]), the French authorities transmitted to the Commission arguments intended to show that the plan to provide aid fully complied with the Community guidelines on State aid for rescuing and restructuring firms ([6]) (hereinafter referred to as 'the guidelines') and a description of new commitments regarding the number of staff and level of wages, control of intermediate consumption, and SNCM's fares policy.

(13) By letter of 13 February 2003 ([7]), the French authorities transmitted to the Commission comments on the observations submitted by Corsica Ferries and Stef-TFE.

(14) By letter of 21 February 2003, the French authorities replied to the additional questions contained in the Commission's letter of 10 February 2003.

(15) By fax of 25 February 2003 ([8]), the French authorities transmitted a copy of the shareholders' agreement linking SNCM and the Stef-TFE group, as requested by the Commission.

(16) On 25 February 2003, at the request of the French authorities, a working meeting was held between the Commission and representatives of the French administration.

(17) By electronic mail of 14 May 2003 ([9]), the French authorities transmitted to the Commission the provisional version of SNCM's report of activities for 2002.

(18) By fax of 27 May 2003 ([10]), the French authorities transmitted to the Commission their comments on the documents which Corsica Ferries had submitted to the Commission on 4 February 2003 and which the Commission had forwarded to the French authorities by letter of 21 February 2003.

1.2. **Title of the aid**

(19) The aid in question is entitled 'Aid for the restructuring of SNCM', registered as C 58/2002 (ex-N 118/2002), following the

([4]) OJ C 308, 11.12.2002, p. 29.
([5]) Registered by the Commission as SG(2003) A/1546.
([6]) OJ C 288, 9.10.1999, p. 2.
([7]) Registered by the Commission as SG(2003) A/1691.
([8]) Registered by the Commission as TREN A/21701.
([9]) Registered by the Commission as TREN A/20745.
([10]) Registered by the Commission as TREN A/21531.

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Commission's decision of 19 August 2002 to initiate the formal investigation procedure with regard to the planned aid.

1.3. **Recipient of the aid**

(20) The recipient of the aid is the Société Nationale Maritime Corse-Méditerranée (SNCM) which comprises several subsidiaries in the maritime sector.

1.4. **Purpose of the aid**

(21) The main purpose of the restructuring aid is to enable SNCM to complete its restructuring process so as to ensure the group's long-term viability.

2. **DETAILED DESCRIPTION OF AID**

(22) The compatibility of the aid can be judged only with some knowledge about the beneficiary of the aid, its background, the competitive context in which it has developed, the causes of its financial difficulties and the details of the restructuring plan.

2.1. **SNCM and its main subsidiaries**

2.1.1. *SNCM*

(23) SNCM is a shipping company operating regular services to Corsica from Nice, Toulon ([11]) and Marseilles and to the Maghreb (Tunisia and Algeria) from France ([12]) and seasonal services to Sardinia, from April to September.

(24) SNCM came into being in 1969 with the merger of the Compagnie Générale Transatlantique and the Compagnie de Navigation Mixte, both established in 1850. At the time called Compagnie Générale Transméditerranéenne, it was renamed Société Nationale Maritime Corse-Méditerranée in 1976, after the Société Nationale des Chemins de Fer (SNCF) had acquired a share in its capital. The company had been chosen by the French Government to implement the principle of territorial continuity with Corsica, bringing maritime transport fares in line with SNCF fares for rail transport on the basis of an agreement concluded on 31 March 1976 for a period of 25 years. The French Government had already assigned responsibility to the Compagnie Générale Transatlantique for operating services to Corsica through an earlier agreement of 23 December 1948.

(25) In addition to operating public services, SNCM also operates regular crossings to Algeria and Tunisia and seasonally, from April to September, to Sardinia. Between 1990 and 2002, SNCM, through its subsidiary Corsica Marittima, also provided passenger transport services between Corsica and Italy.

2.1.1.1. SNCM's shareholders

(26) Currently 80 % of SNCM's shares are held by CGMF, which took over the shares of the Compagnie Générale Transatlantique, and 20 % by SNCF. The French State has a direct 100 % share in CGMF. SNCM became a subsidiary of CGMF in 1992, taking over from the Compagnie Générale Maritime (CGM) which was subsequently restructured ([13]), recapitalised ([14]) and privatised ([15]).

(27) When it was established in 1977, the wording of CGMF's objective was such as to authorise all operations of maritime transport, outfitting and chartering of ships and the acquisition of shares and all commercial or industrial operations directly or

([11]) Services from Toulon are now sporadic.
([12]) A service between Spain and the Maghreb is currently run on a trial basis.
([13]) The restructuring plan was adopted by the company in December 2002.
([14]) The first instalment of aid to CGM was paid in 1993.
([15]) It was privatised in 1996.

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indirectly connected with this objective. Today CGMF mainly plays the following roles on behalf of the State:

— it holds an 80 % share in SNCM (the remaining 20 % being owned by SNCF, held by the French State),

— it is the guarantor of social security obligations (including pensions and health insurance funds) for the personnel of its former subsidiary CGM ([16]),

— it has assumed responsibility for a leasing agreement to finance a building which at the time was concluded by CGM.

2.1.1.2. Activities of SNCM

(28) SNCM carries passengers, cars and lorries on the following links:

— between Marseilles and various ports on Corsica: Bastia and Ajaccio (daily, both ways), Porto-Vecchio, Balagna and Propriano (three times a week, including CMN's round trips) with additional crossings during the peak period,

— between Nice and Bastia: SNCM runs continuous services during the low season (two or three return trips each week), with more frequent services from the end of March to October,

— between Marseilles and Sardinia (Porto Torres),

— between Bastia and Sardinia (Porto Torres) with one of its own ships and a ship of the Compagnie Maritime de Navigation (CMN),

— between Marseilles and Tunis: at least one round trip a week with one of its ships,

— between Marseilles and Algiers: several times a week in the high season with the *Île de Beauté*.

2.1.1.3. The fleet

(29) The SNCM fleet for Corsica currently comprises the following ships:

(a) five car ferries:

— the *Napoléon Bonaparte* (capacity 2 150 passengers and 708 cars, power 43 MW, speed 23,8 knots), large luxury car ferry,

— the new *Danielle Casanova*, delivered in May 2002 (capacity 2 204 passengers and 700 cars, power 37,8 MW, speed 23,8 knots), also a large luxury car ferry,

— the *Île de Beauté* (capacity 1 554 passengers and 520 cars, power 37,8 MW, speed 21,5 knots), taken into service in 1979 and rebuilt in 1989/1990,

— the *Méditerranée* (capacity 2 254 passengers and 800 cars, power 35,8 MW, speed 24,0 knots),

— the *Corse* (capacity 2 150 passengers and 600 cars, power 27,56 MW, speed 23,5 knots);

(b) four passenger cargo vessels (freight and passengers):

— the *Paglia Orba* (capacity 500 passengers, 2 000 linear metres for freight and 120 cars, power 19,7 MW, speed 19 knots),

([16]) For instance, in 1996, CGMF, which at the time had a 94 % share in CGM, took over responsibility for the measures ensuing from the social plans set up by CGM when it was privatised. See also Commission Decision 97/14/EC of 17 July 1996 on aid granted to the Compagnie Générale Maritime in the context of a restructuring plan (OJ L 5, 9.1.1997, p. 40).

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— the *Monte d'Oro* (capacity 508 passengers, 1 615 metres for freight and 130 cars, power 14,8 MW, speed 19,5 knots),

— the *Monte Cinto* (capacity 111 passengers, 1 200 metres for freight, power 8,8 MW, speed 18,0 knots),

— since May 2003, the *Pascal Paoli* (capacity 594 passengers, 2 300 metres for freight and 130 cars, power 37,8 MW, speed 23 knots);

(c) two high-speed vessels operating mainly from Nice:

— the *Liamone* (capacity 1 116 passengers and 250 cars, power 65,0 MW, speed 42 knots) which also operates crossings from Toulon,

— the *Aliso* (capacity 530 passengers and 148 cars, power 26,0 MW, speed 37 knots).

(30) In 2002 the fleet serving the Maghreb consisted of the car ferry *Méditerranée*, since 24 June 2002, which will be used between Marseilles and Tunis. The entry into service of this vessel marks a qualitative and quantitative improvement of shipping services for the Tunisian capital. This comfortable and fast ship has a total capacity of 2 250 passengers and 760 cars (compared with 1 600 passengers and 500 cars on the car ferry *Liberté*). It represents a significant increase in the number of places available for passengers while at the same time offering space for freight transport, a market which is likewise growing considerably.

2.1.2. *The public service delegation contract*

(31) Regular shipping services between the ports of mainland France and Corsica have since 1948 been operated as a public service ([17]). The SNCM and CMN were the concessionaires of the service between 1976 and the end of 2001 under a framework agreement initially concluded for 25 years ([18]). The French Act of 30 July 1982 transferred the management of territorial continuity to Corsica's Assembly in a contractual framework with the French State. Subsequently, Act 91-428 of 13 May 1991 on the status of the Corsica territorial collectivity ([19]) granted full responsibility to the Assembly for services to the island. Since 1991, the Corsica territorial collectivity has replaced the French State in granting concessions for public service obligations ([20]).

(32) Community legislation on maritime cabotage makes it incumbent on Member States to open up their national cabotage markets. With regard to public service, this imposes an obligation on Member States to comply with the priniciple of non-discrimination among all Community shipping companies. However, a transitional period is provided for in respect of existing public service contracts which can be maintained in force until they expire ([21]). In accordance with the Community rules in force, the territorial collectivity of Corsica issued a European tender in order to select the operator which from 1 January 2002 should, under a five-year contract, implement the public service obligations for crossings to and from the island in return for financial compensation. The collectivity has taken the view that, given the development of competition from Toulon and Nice,

([17]) Shipping links between Italy and Corsica have always been exempt from all public service obligations or contracts.
([18]) See recital 24.
([19]) *Official Journal of the French Republic* 111 of 14 May 1991.
([20]) Under the abovementioned French Act of 13 May 1991.
([21]) See Article 4(3) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

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only services operated from Marseilles should be subject to strict public service obligations.

(33) SNCM and CMN were jointly awarded this contract for the period from 2002 to 2006 after Corsica Ferries eventually decided not to put in a bid. Moreover, obligations with regard to the frequency of services have been imposed on all operators of services to the island from Toulon and Nice for the benefit of particular categories of passengers receiving social welfare ([22]).

(34) From 1997 to 2001, the grant allocated to SNCM for 'territorial continuity' rose from EUR 80,1 million to EUR 86 million. At the time, it covered all links from the three ports of mainland France (Nice, Toulon and Marseilles).

(35) The current contract provides for an obligation to run services at predetermined frequencies, obligatory service quality, maximum fares according to season, and mandatory reductions for particular categories of passengers. The contract lays down financial compensation, referred to as reference compensation, for every year from 2002 to 2006, in the case of SNCM decreasing from EUR 69,1 million to EUR 61,4 million. This compensation is adjusted by up to 4 % in line with the difference between actual revenue and the reference revenue also laid down in the contract. The reference compensation/reference revenue ratio should decrease from 88 % in 2002 to 75 % in 2006.

(36) In 2002, the first year of the public service delegation contract, financial compensation amounted to EUR 72,1 million, a decrease compared with previous years, account being taken of the fact that only services from Marseilles to Corsica now benefit from this grant. By comparison, the grant in 2001 for the Marseilles-Corsica line amounted to EUR 64,79 million with a net revenue of EUR 73,17 million in 2001, about EUR 41 million of which for passengers (733 400) and catering and EUR 32 million for freight and cars (762 000 linear metres).

2.1.3. *SNCM's main subsidiaries*

2.1.3.1. Compagnie Méridionale de Navigation

(37) The SNCM has a non-majority share in CMN, which operates three passenger cargo ships between Corsica and Marseilles, namely the *Girolata*, the *Kalliste* and the *Scandola*, under a public service delegation contract. It also serves Sardinia (Porto Torres) from Marseilles and Propriano.

(38) CMN, set up in 1931, remained a family shipping line until the end of the 1970s when the Compagnie Générale Transatlantique acquired a 49 % share to enable a branch of the founding family to withdraw. In the meantime, CGM has taken over this share. Neither of these two large companies has intervened in the management of CMN which has remained fully in the hands of the Rousset and Rastit families.

(39) Since 1956, CMN has through an agreement been linked with the Compagnie Générale Transatlantique, SNCM's predecessor for services to Corsica. In 1976, CMN was granted a concession for services to Corsica only for freight while SNCM obtained a concession for the carriage of freight and passengers to Corsica. From 1980, CMN has, through delegation from SNCM, also carried passengers after purchasing passenger cargo ships. As a quid pro quo, SNCM was CMN's general agent for passenger transport.

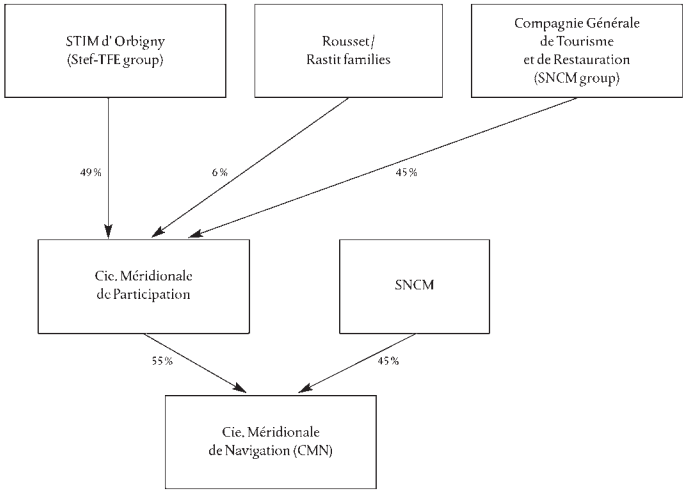
(40) In 1992, CGM, faced with substantial cashflow difficulties, tried unsuccessfully to sell its share in CMN to a third party. As its attempt was not successful, CGM asked SNCM, which was its

([22]) See recital 155 of this Decision.

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subsidiary until 1992, to take over the share it held in CMN. Two-tier shareholding was created in order to shift the majority interest to SNCM while enabling private shareholders to retain effective control of CMN through two holdings. The Rousset and Rastit families seized this opportunity to reduce their share for the benefit of the Société de Travaux Industriels et Maritimes d'Orbigny (STIM d'Orbigny) which was subsequently incorporated in the Stef-TFE group. The merger between CGM and SNCM could have been contemplated at the time because of the very strong links between the two companies, but the retention of private investors among CMN's shareholders and their wish to retain control of this company no doubt put a brake on moves towards a merger between the two companies.

(41) Effective control of CMN has thus since 1992 been in the hands of the Stef-TFE group which owns 49 % of the Compagnie Méridionale de Participations (CMP) and acts in concert with the Rousset and Rastit families who hold 6 % of shares in CMP.



2.1.3.2. Compagnie Générale de Tourisme et d'Hôtellerie

(42) The Compagnie Générale de Tourisme et d'Hôtellerie (CGTH) is a holding company fully owned by SNCM which has the following subsidiaries and holdings:

— 45 % in CMP, the main shareholder (55 %) in CMN,

— 100 % in Comptoirs du Sud, which runs shops on board SNCM's ships,

— 50 % in Société civile immobilière Schuman (non-movable assets sold off or being sold off),

— 100 % in Société Méditerranéenne d'Investissements et de Participations (SMIP), whose only asset is the ship *Southern Trader* which operates under time charter.

2.1.3.3. Sud-Cargos

(43) Sud-Cargos is a French goods transport shipping company which is based in Marseilles and specialises in running services to the Maghreb. It is an equal subsidiary of two large transport groups, SNCM and Delmas. In 2001 it operated eight roll-on roll-off cargo vessels and container ships and had a EUR 67,3 million turnover, carrying 90 000 tonnes, 38 000 TEU and 18 000 trailers. Together with its subsidiaries, it has about 100 employees.

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(44) Sud-Cargos has built up its development strategy on the five following principles:

— proximity to customers by having their own facilities in the main ports of the Mediterranean,

— versatility, with a fleet of diversified ships carrying all types of goods,

— a global network with containers available in all commercial areas worldwide,

— overland transport and transhipment facilities to transport, overland or by sea, containers from anywhere in the world to the main French (Marseilles), Italian (Genoa) and Spanish (Valencia and Barcelona) loading ports,

— up-to-date cargo information.

2.1.3.4. SARA

(45) The Société Aubagnaise de Restauration et d'Approvisionnement (SARA) supplies SNCM's ships. In 2002, its turnover was EUR 8,58 million, entirely with SNCM, making a EUR 0,19 million profit.

2.1.3.5. Ferrytour

(46) The Ferrytour partnership is a tour operator that is 100 %-owned by SNCM. Its turnover in 2002 was EUR 11,2 million making a very modest profit of EUR 0,21 million. It organises trips by sea to Corsica, Sardinia and Tunisia but also flights to many destinations. In addition to its main line of business, it also organises mini-cruises and offers business travel services.

2.1.3.6. Comptoirs du Sud

(47) Comptoirs du Sud, a subsidiary set up in 1996 which is 100 %-owned by SNCM, manages all shops onboard its ships. The company has a turnover which fluctuates between EUR 2 and 4 million, with a net business result of between EUR 0,08 and 0,12 million. Over 72 % of sales are made on Maghreb routes.

2.1.3.7. Sotramat

(48) Société Transmondiale Mer Air Terre Voyages (Sotramat), a 100 % subsidiary of SNCM, are travel agents managing 17 agencies throughout France. In 2001 they sold a total of EUR 42,53 million in services, of which 40 % in SNCM tickets, representing 8,5 % of SNCM's sales. Sotramat made a EUR 0,58 million profit, with EUR 3,80 million in commission.

2.2. **Relevant markets**

(49) SNCM mainly operates on two clearly different markets, in terms of both passenger transport and goods transport: services to Corsica and services to Maghreb, from France and subsidiarily from Italy and Spain.

2.2.1. *Services to Corsica*

(50) SNCM mainly operates services to Corsica and Maghreb from mainland France. On the basis of the market research study provided by the French authorities (hereafter referred to as ‘market survey’), a quite accurate description can be given of the different markets in question.

2.2.1.1. Market characteristics

(51) Air travel makes up 43 % of overall passenger transport in 2001 (with about 2,4 million out of 6 million crossings in each direction). Transport by sea has in recent years shown an

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upward trend thanks to the improved supply of maritime transport services.

(52) Passenger transport by sea between mainland Europe and Corsica has the following features:

— highly seasonal traffic: the months of July and August have traditionally accounted for 50 % of annual traffic. There are also strong fluctuations during school holiday periods and particular weekends. The seasonal variation is accentuated by asymmetry of traffic during peak periods between crossings in both directions at the beginning and the end of the week,

— a supply which for structural reasons has to exceed demand (occupancy which in terms of monthly average fluctuates from 20 % in winter — with 5 to 10 % in slack periods — but peaks of 100 % in summer and particular holiday weekends),

— SNCM's decline on the sea transport services market between Corsica and mainland Europe: 46 % market share in terms of number of passengers in 2001, decreasing in relation to its main competitor, Corsica Ferries, which has a 44 % share, the rest of the market being shared between Moby Lines (5 %), CMN (3 %) and Happy Lines (2 %),

— a slight 2,4 % increase a year, but sea links are becoming steadily more important compared with air traffic,

— structurally low occupancy averaged over a year: about 40 % for SNCM, 33 % for Corsica Ferries, but 66 % for CMN which in the period 1999-2001 only operated passenger cargo ships which by definition have a higher occupancy rate for passengers. The average occupancy rate of ships has apparently always been low on account of the characteristic features of this market, even before Corsica Ferries started operating services between Corsica and mainland France, as shown in table 1.

TABLE 1

Trend in average occupancy rate of SNCM ships

(in %)

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Average occupancy of ships	38,1	40,1	35,2	34,9	38,2	41,5	41,8	n.a.	n.a.	43,4

(53) The traffic trend between Marseilles and Corsica is the weakest of the three links to Corsica from mainland France, as shown in table 2.

TABLE 2

Trend between the ports of mainland France and Corsica

(in thousands)

Passengers	2000	2001	2002	% 1/2000	% 2/2001
Nice/Corsica	791	786	904	− 0,6 %	15,0 %
Toulon/Corsica	122	403	460	230,3 %	14,1 %
Marseilles/Corsica	827	840	914	1,6 %	8,8 %
Total	1 740	2 029	2 278	16,6 %	12,3 %

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2.2.1.2. SNCM's competitors

(54) SNCM had to face a competitor for the first time in 1996 on services to Corsica from mainland France when Corsica Ferries started sailings between Nice and Bastia and Calvi in the high season ([23]). Since 18 March 1999 these services have been run as weekly round trips. Since 1 April 2000 SNCM has had to face competition on services from Toulon to Bastia and Ajaccio.

(55) SNCM's main competitor in passenger transport to Corsica is Corsica Ferries, which operates links to Corsica from Toulon and Nice in France and from Savona and Livorno in Italy. Its market share has steadily risen, reaching 44 % in 2001, a considerable increase compared with 2000 when it was still only 36 %. This increase was connected with the fact that two high-speed ferries entered service on the Toulon-Corsica lines in 2001, increasing traffic from mainland France without any reduction in transport services run by this company from Italy.

(56) In 2002 Corsica Ferries became the market leader in links to Corsica ([24]) and its activities are now more or less equally divided between Corsica and Sardinia: it carries 800 000 passengers a year between the French mainland and Corsica, 800 000 between Italy and Corsica and 800 000 between Sardinia and the Italian mainland. The company has about 1 000 seamen sailing under the Italian flag. The company's head office is in Bastia and it has an office in Savona. It has 11 ships and a 12th is on order.

(57) SNCM's other competitors on sailings to Corsica are as follows:

— CMN, which is a competitor but also a partner associated with SNCM under the public service concession. CMN operates links only from Marseilles. Its market share is 3 %,

— Moby Lines operates from Genoa, Livorno and Piombino. Its market share in sailings to Corsica dropped from 8 % in 2000 to 5 % in 2001 due to its ageing fleet,

— Happy Lines operates a car ferry with 1 100 places from Genoa, La Spezia and Livorno. Its market share is 2 %,

— TRIS, with two car ferries with 800 and 1 300 places, and Linee Lauro, with a car ferry with 670 places, focus on crossings to Sardinia and operate occasional links to Corsica. Their market shares are negligible.

(58) CMN, for freight transport, and its Italian competitors, to optimise their services, operate triangular links between the European mainland, Corsica and Sardinia. However, the number of passengers carried on these sailings is very marginal between Corsica and Sardinia.

(59) SNCM and CMN have a de facto monopoly for general cargo transport (unaccompanied). Under the public service delegation contract, the two firms operate frequent sailings from Marseilles to all Corsican ports.

(60) For accompanied trailers ([25]) loaded onto ferries, accounting for 24 % overall general cargo transport measured in linear metres ([26]), there is competition among all the passenger transport operators. SNCM and CMN also have the main share of the market in this accompanied transport. The other operators,

([23]) The market was de facto open to operators flying the French flag.

([24]) From Italy and the French mainland. SNCM remains the market leader on services between the French mainland and Corsica.

([25]) The driver accompanies the vehicle combination on the crossing. In some cases, a driver loads the vehicle before departure and another driver unloads it upon arrival. This is entered as accompanied transport as against roll-on roll-off transport operations in which the trailer travels without a tractor.

([26]) This unit corresponds to operators' billing.

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in particular Corsica Ferries, have a 10 % share, i.e. 2 % of the overall market.

2.2.1.3. Market trends

(61) With regard to the demand for passenger transport by sea to Corsica, the market survey estimates that the growth will be sustained: […] (*) million passengers are expected in 2006 compared with 3,4 million in 2001. The increase in shipping at the expense of aviation will lead to a […] % share for shipping. On the supply side, there should be continued qualitative improvement of supply by the main actors, with possible marginalisation of particular Italian operators because of their ageing fleet, except for Moby Lines which is beginning to renew its fleet.

(62) SNCM's market share in passenger transport to Corsica was 46 % in 2001 as against 52 % in 2000. This market share steadily diminished in the 1990s to the benefit of Corsica Ferries, thanks to the entry into service of two mega-express ships of Corsica Ferries.

(63) According to the market survey, no operator other than SNCM and CMN is capable, with regard to the carriage of unaccompanied general cargo, to meet the public service constraints and operate profitably outside the concession already allocated. The market survey considers that the SNCM-CMN partnership should therefore be continued in SNCM's long-term interest.

(64) According to the market survey, continuation of the public service contract will enable SNCM and CMN, with regard to general cargo transport from Marseilles to Corsica, to capture most of the growth in traffic: […] linear metres in 2006 as against 1 490 000 in 2000. Profitability of this activity will be ensured through efficient management of a range of ferries and passenger cargo ships operated by the two companies, with overall optimisation of passenger and freight transport. There is no price competition as prices are controlled in the framework of the public service concession.

(65) The market survey estimates that, depending on the strength of Moby Lines' commercial policy on links between Italy and Corsica, Italy's share in overall transport will drop from […] % in 2001 to […] % in 2006 if Moby Lines is very active or from […] % to […] % if it makes no investment. SNCM will be in the top range with more frequent crossings and more varied destinations (secondary Corsican ports) than Corsica Ferries. SNCM should set itself an objective of retaining its market share of at least […] %. Balance between supply and demand will improve for SNCM, with one ferry withdrawn in 2002, a new passenger cargo ship and modernisation of two others. For Corsica Ferries, the balance between supply and demand will be brought about by achieving ambitious forecasts of growth in activity in double figures which, according to the market survey, will a posteriori justify current supply. In price terms, the continuation of fierce competition from Corsica Ferries will oblige SNCM to improve its productivity.

2.2.2. *Services to the Maghreb*

(66) The Maghreb comprises three micro-niche markets relatively closed off from one another on which, according to the market survey, SNCM appears to be the challenger.

2.2.2.1. Services to Algeria

(67) The market survey indicates that air transport accounts for 92 % of overall passenger transport between the EU and Algeria.

(*) Business secret.

▼B

Unlike for Corsica, there is no specific growth in maritime passenger transport to Algeria.

(68) In maritime shipping, SNCM's sole competitor is the Entreprise Nationale de Transport Maritime de Voyageurs (ENTMV), an Algerian public undertaking with a virtual monopoly, with 89 % of the market. SNCM's market share in passenger transport to Algeria is 11 %, considerably reduced since 1990 when it was still 35 %. SNCM's position can be explained from the cessation of SNCM's services in 1995 ([27]), administrative constraints since that year and the absence of a political will to reinstate this link.

(69) It is not likely that any new competitors will arrive on the market in the short term. Even though SNCM continues to be a general agent for ENTMV in its country of origin and vice versa, ENTMV has developed its own network in France (and in other European countries) while SNCM is developing its network in Algeria. […]

(70) In the light of economic and political trends in Algeria, this market should expand considerably: in 2006 maritime passenger transport should be between […] and […] passengers. However, according to the market survey ENTMV's fleet is old and not certain to be renewed. According to the authors of the market survey, the order of two new ships by ENTMV seems to have run into financial difficulties.

(71) In sailings to the Maghreb, SNCM strengthened its position with the entry into service in 2002 of the ferry *Île de Beauté*, withdrawn from the link with Corsica, which will do well in competition with ENTMV's ageing fleet. According to the market survey, the success of this link will be ensured by controlling operating costs which should enable SNCM to offer attractive fares to recover a part of the market. The market survey stresses the importance for SNCM of getting involved in operating services to Oran, a market segment in which it does not currently play a role. According to the survey, SNCM should be able to recover its initial market share of 35 % by 2006.

2.2.2.2. Services to Morocco

(72) The overall market share of aviation is 77 %. This share, distinctly lower than that for Algeria, is connected with the importance of short-haul sea transport, virtually road transport, across the Strait of Gibraltar via southern Spain.

(73) This market is much more competitive, highly fragmented, with a 5 % growth rate a year for services between Morocco and Europe (95 % to Spain) with the following main market shares: Comarit 23 %, Transmediterranea 22 %, Comanav 20 %, Euroferrys 18 % and Ferrimaroc 17 %. Many Moroccan and Spanish companies are involved in this short-distance shipping link: Comanav, Comarit, Euroferrys, Ferry Maroc, Limadet and Transméditeranea. None of them have a market share of more than 23 %. Competition is fierce, in particular in terms of fares, with old ships already amortised.

(74) The only long-distance service is operated by Comanav, from Sète to Tangiers or Nador. Accordingly, it has 100 % of the market on these links, which however represent only 5 % of maritime transport overall.

([27]) Following the taking of hostages on the Algiers-Paris flight in December 1994.

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(75) As emphasised in the market survey, SNCM is currently not involved in maritime passenger transport to Morocco. It seems important for SNCM to gain a foothold in the long-distance traffic market between France and Morocco. By seeking to capture a small part of this virtual road transport (which currently passes through southern Spain) rather than taking passengers away from Comanav, SNCM could help to double passenger transport by sea from France, which would nevertheless remain marginal compared with sailings across the Strait of Gibraltar.

2.2.2.3. Services to Tunisia

(76) Aviation retains a dominant position, with 96 % of the passenger transport market. The relative importance of tourist traffic to Tunisia explains this share which is even higher than for Algeria as tourists almost exclusively go there by plane.

(77) Only two Member States run shipping services to Tunisia: France, from Marseilles and Toulon, with 47 %, and Italy from Livorno and Genoa with 39 % and from Sicily with 14 %.

(78) The principal actor on this market which is growing by 7 % a year is the Compagnie Tunisienne de Navigation (CTN) with a 58 % market share, followed by SNCM with 21 %. CTN has a relatively modern fleet and makes optimal use of it on links from France and Italy. The other competitors are: Linee Lauro, Tirrenia and Ustica Lines, the last two operating sailings from Sicily only.

(79) Competition on the sea links varies according to Member State. CTN's fares from Italy are 30 % lower than from France, although crossing time is the same. However, CTN and SNCM have identical fares from France.

(80) SNCM had a 21 % market share in 2000 in passenger transport by sea to Tunisia. This share has gone down, with the transport increase catered for by CTN. On links between France and Tunisia alone, SNCM's market share is 50 %. The best way for SNCM to increase its overall market share is to start running services to Tunisia from Italy, provided that its fares are competitive.

(81) According to the market survey, sea transport to Tunisia will continue to grow, reaching over […] passengers in 2006. SNCM's services from Italy will enable it to also increase its market share: the market survey considers a […] % market share a realistic target for SNCM for 2006.

2.2.3. *Balancing supply and demand*

(82) A quick look at the gross figures for supply and demand could lead one to conclude that there is excess capacity on all the links studied. According to the market survey, however, things are not as simple as they seem.

(83) It is not possible to fine-tune maritime transport supply to demand. To Corsica, the minimum unit is a passenger cargo ship with between 200 and 500 places for passengers. On the Maghreb link, there are virtually no more ferries with less than 1 500 to 2 000 places. The supply benchmark for a regular service is therefore between 1 500 and 2 000 places a week.

▼B

(84) The substantial seasonal variation ([28]), with monthly or daily ([29]) peak volumes that can reach 10 times those of the lowest off-peak months, oblige operators to run a fleet of sufficient capacity to absorb peak traffic. Half the turnover is in general achieved in July and August alone. Moreover, there is an imbalance according to travel direction, even during peak periods. For instance, early July crossings from the mainland to Corsica reach a peak and return sailings to the mainland run virtually empty, with the phenomenon reversing at the end of August. At some weekends in summer and at particular holiday weekends, the combined fleet of all shipping companies operating services to Corsica is insufficient to absorb peak passenger traffic.

(85) For services to Corsica, in particular to Corsica's secondary ports necessitated by the island's weak transport infrastructure, the public service constraints in fact create an excessive supply of places in relation to demand during the low season. Moreover, all operators practise 'exclusive' ([30]) sales for cabin places, which strongly reduces the apparent occupancy coefficients of ships.

(86) In 2001, moreover, Corsica Ferries embarked upon an aggressive policy to conquer a larger share of the market. Under this strategy, it offered overcapacity for one or two years to attract new customers.

(87) The market survey concludes that there is no structural excess capacity on links between mainland Europe and Corsica or to the Maghreb and that the apparent surplus of places is intrinsically linked with the nature and characteristics peculiar to this business.

2.3. **The restructuring plan**

(88) The restructuring plan has, on the one hand, an operational component covering the sale of four ships, the closure of two subsidiaries, staff cuts, reduction of services to Corsica and increase of services to the Maghreb and, on the other hand, a financial component covering the refund, through recapitalisation, of a part of the debts borne by SNCM. Apart from the initial notification, SNCM's restructuring plan ([31]) presented by the French authorities consists of a set of documents referred to in section 1.1 which were transmitted to the Commission both before and after the opening of the procedure. The content of this set of documents is described in more detail in the present section.

(89) Following the observations made by the Commission in its decision of 19 August 2002, the French authorities, in their letter of 31 January 2003, provided a description of improvements made to the restructuring plan on the following points:

— commitments and details concerning wage policy,

([28]) On this subject, see recital 52.
([29]) There are also substantial weekly variations in demand for sea transport (end-of-week peaks).
([30]) Possibility for one to three persons to occupy a cabin intended for four.
([31]) This plan is referred to as the 'industrial project' by the company's management. It was adopted on 17 December 2001 by the SNCM management board.

▼B

— a plan for reducing costs in intermediate purchases,

— a commitment that SNCM will not initiate a fares war with its competitors operating services to Corsica.

2.3.1. *Analysis of factors that have led to the company's financial difficulties*

(90) The French authorities have mentioned four factors to explain the company's financial difficulties.

— Since 1996, SNCM has faced competition between Corsica and the French mainland, which is something the public company never had to face in the past and which has led to chronic operating deficits as a result of the rigidity of the public service agreements of the period.

— SNCM, constrained by its public service obligations between 1976 and 2001, has also had to cope with two external shocks: suspension of sealinks with Algeria in 1995 and the strong drop in services to Corsica in 1995 and 1996.

— SNCM has had to 'face heavy social demands and conflicts harming it economically and slowing down its growth'.

— Its growth has reportedly been disrupted by complicated proceedings before the French administrative courts in connection with the allocation of the public service delegation contract.

(91) The Commission notes that the French authorities have been unable to quantify the extent to which these factors have contributed to the company's operating losses, nor have they investigated through cost analysis whether there were any other causes explaining the main sources of the company's losses.

(92) In response to the argument adduced in the decision of 19 August 2002 that the ship acquisition policy may have had an impact on SNCM's accounts and have led to difficulties ([32]), the French State transmitted the following observations to the Commission in its letter of 8 October 2002.

(93) According to the French authorities, by taking these steps to renew its fleet SNCM was only acting in line with a general trend towards modernisation of the Mediterranean fleet, thus ensuring that it could continue to operate its links on these markets without excessive risk of being marginalised. The French authorities emphasise that the fleets of other major Mediterranean shipping companies have improved in quality: Corsica Ferries, Grimaldi, Tirrenia, Moby Lines, Trasmed and CTN in particular have acquired and continue to acquire medium- or high-capacity fast ships and car ferries that are increasingly well equipped.

(94) The French authorities argue that by renewing several of its ships SNCM has merely pursued the clear strategic objective required to offer a high-quality service from Marseilles in accordance with the distinctive features of this link and with the expectations of Corsica, the authority allocating the public service and a high-speed shuttle service from Nice.

(95) According to the French authorities, the commercial results obtained by these ships have been convincing. At Nice, SNCM's high-speed ships have, together with the 'Corsica Express' of Corsica Ferries, significantly increased traffic on the Nice-Corsica link: from 304 000 passengers in 1995 to 780 000 — of whom 550 000 on high-speed ships — in 2001. As for the *Napoléon Bonaparte*, its occupancy rates in summer bear out its

([32]) From the decision of 19 August 2002: the Commission's doubts are strengthened by the SNCM's ambitious programme for the purchase of ships to renew its fleet while the group's operating results remained relatively weak during the period 1997-2001.

▼B

excess, even after the arrival of Corsica Ferries at Toulon in 2002 ([33]). The quality level offered by this ship has in fact enabled SNCM to consolidate and indeed improve its passenger revenue in this segment of an extremely competitive market marked by a downward trend in prices.

(96) According to the French authorities, it was therefore the 'increase in competition and concomitant fleet renewal' that brought SNCM into financial difficulties, without the company having any alternative options.

2.3.2. *Reduction of capacity*

(97) In its restructuring plan, SNCM makes provision for laying up and selling four of its vessels in 2002:

— the *Napoléon* ([34]),

— the *Liberté*,

— the *Monte Rotondo*,

— ►M1 either the high-speed ship Asco or its sister ship, the high-speed ship *Aliso* ◄.

(98) All these ships have now been sold, except for the *Asco*. To these disposals should be added the disposal, currently in progress, of the *Southern Trader*, a ship leased by SMIP, one of SNCM's subsidiaries, under a time charter.

(99) The expected proceeds from these disposals were EUR 40 million, representing a cash injection (net proceeds of disposal) of EUR 21 million, taking account of residual refunds. The *Monte Rotondo* and *Napoléon* were disposed of in 2002 for EUR […] million net proceeds and EUR […] million appreciation. The *Liberté* and *Southern Trader* ([35]) have been or will be disposed of in 2003 for net proceeds and appreciation of EUR […] million. The total net proceeds of the disposal of these four vessels was EUR 1,2 million in excess of the sum expected. The high-speed ship *Asco*, expected to yield EUR […] million in net proceeds and EUR […] million appreciation has not yet been disposed of.

(100) These disposals have been partly offset by the entry into service in June 2002 of the car ferry *Danielle Casanova*, with lease financing, the passenger cargo vessel *Paglia Orba*, converted for its new duties in 2002 and delivered in 2003, and the passenger cargo vessel *Pascal Paoli*, ordered in January 2001, likewise lease-financed and delivered in May 2003.

(101) At the same time, the company had in its restructuring plan intended to dispose of the movable assets present in its subsidi-

([33]) For instance, the following passenger and car occupancy rates (in percentages) were recorded in 2002:

(in %)

Weekend	Passengers	Cars
From 28.6 to 30.6	78,7	72,2
From 26.7 to 28.7	84,6	82,0
From 2.8 to 4.8	102,8	96,7
From 30.8 to 2.9	100,1	94,8

([34]) Not to be confused with the *Napoléon Bonaparte* which is another vessel of the SNCM fleet.

([35]) The *Southern Trader* is currently subject to an offer to sell.

▼B

aries (Marseilles offices). These were disposed of for EUR 12 million in 2003, with EUR 5,1 million appreciation.

2.3.3. *Reorganisation of services*

(102) The reduction, with effect from 2002, of the public service activity and the increase in competition have led SNCM to substantially limit the services it supplies.

(103) The restructuring plan provides for a reduction in the number of crossings from 4 138 in 2001 (3 835 by SNCM and 303 by Corsica Marittima) to 3 410 in 2003, i.e. an overall decrease of 18 %, with the following changes to its services:

— adaptation of services operated between Marseilles and Corsica to the requirements of the new specifications laid down in the public service contract,

— withdrawal of the Toulon-Corsica ([36]) link, which can still be run with occasional crossings depending on the availability of the *Napoléon Bonaparte* and the *Danielle Casanova* during the transition period to deal with delays on rotations between Marseilles and Corsica,

— reduction of services between Nice and Corsica ([37]),

— closure of the Livorno-Bastia line with dedicated equipment ([38]),

— expansion of services to Algeria and Tunisia with the *Méditerranée*, the *Ile de Beauté* and the *Corse*,

— suspension of services between Genoa and Tunis.

(104) Overall, as shown in table 3, the restructuring plan seeks to reduce the number of crossings by 18 % and places by 28 % through:

— 20 % and 37 % reductions, respectively, on services to Corsica,

— 23 % and 43 % increases, respectively, on services to the Maghreb.

TABLE 3

Trend in SNCM services

	Number of crossings		Places available		Linear metres available	
	2001	> 2003	2001	> 2003	2001	> 2003
Marseilles-Corsica	1 881	[…]	1 723 050	[…]	1 469 000	[…]
Toulon-Corsica	187	[…]	303 650	[…]	0	[…]
Gulf of Genoa	1 768	[…]	1 708 700	[…]	0	[…]
Subtotal Europe	3 836	3 067	3 735 400	2 357 500	1 469 000	2 154 000
Maghreb	302	372	444 000	635 000	0	0

([36]) There were reportedly 83 crossings in 2002 compared with 187 in 2001.

([37]) There were reportedly 1 157 crossings in 2002 compared with 1 345 in 2001.

([38]) Reportedly there were only 54 crossings with 9 400 passengers in 2002 compared with 290 with 64 000 passengers in 2001 under Corsica Marittima's flag.

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	Number of crossings		Places available		Linear metres available	
	2001	> 2003	2001	> 2003	2001	> 2003
Total	4 138	3 439	4 179 400	2 992 500	1 469 000	2 154 000

(105) The redeployment of services to the Maghreb will generate EUR 9 million additional costs for the company, of which EUR 6 million for technical adaptations on the *Danielle Casanova* and the *Île de Beauté* and EUR 3 million for the costs of promoting the new services.

2.3.4. *Closure of subsidiaries*

(106) Under its restructuring plan, SNCM intended to close two of its subsidiaries in January 2002 which had become redundant following the reorganisation of its services: the Compagnie Maritime Toulonnaise, which operated overland services to Toulon, and the Corsica Marittima company, which operated links between Corsica and Italy. The limited range of remaining activities of these companies are run by SNCM itself.

2.3.5. *Reduction of staff costs*

(107) The restructuring plan seeks to reduce staff from 2 430 to 2 130 in 2003 on the basis of the following measures:

— reduction in size of the fleet (cutting […] full-time jobs),

— increase in crew productivity (cutting […] jobs),

— effects of changing over to 35-hour week (increase by […] jobs),

— developing new 'tourist' activities (increase by […] jobs),

— reduction of onshore personnel through natural wastage or early retirement and mobility leave (reduction by […] jobs).

(108) Staff is reduced through natural wastage and early retirement on the basis of age criteria (early cessation of work), mobility leave and non-replacement of temporary contracts. However, for SNCM they entail an estimated cost of EUR 20,4 million.

(109) The figures supplied by the French authorities show the following expected trend in productivity:

TABLE 4

Expected trend in productivity of SNCM

	2001		2004	
Passengers Corsica	1 376 000		[…]	[…]
Passengers Maghreb (coefficient 3) ([39])	495 000	(165 000 × 3)	[…]	[…]
Freight (coefficient 0,5)	408 000	(816 000 × 0,5)	[…]	[…]
Total TU	2 279 000		2 353 000	
Staff FTP	2 430		2 130	

([39]) Traffic units (TU) have been determined on the basis of their per capita contribution in terms of net revenue. The passenger (including his vehicle) on the Corsica line serves as the reference (1) for these traffic units. The unit revenue for Maghreb is three times that for Corsica (twice as far and without financial compensation) and the relative weight of time units is increased automatically.

▼B

	2001	2004
Productivity (TU/FTP)	938	1 105
Productivity increase		+ 17,8 %

(110) Accordingly, staff productivity appears to be up by 17,8 % while the company has to remedy the adverse effects of an initial drop in activity in 2002 and 2003 and consequently weaker coverage of the fixed costs generated.

(111) Following the decision of 19 August 2002, the French authorities provided, by letter of 10 February 2003, additional details on management of staff expenditure:

— there has been no general increase in onboard personnel since 1999, with average wages having risen only between 0,8 and 1 % a year since 2000, and the average wage of onboard personnel of SNCM, i.e. EUR 33 345 a year, is also within the average of earnings recorded for three other French shipping companies,

— for onshore personnel, average earnings have increased from 1,7 to 2 % a year since 2000, basically as a result of progression in seniority and technical qualifications ([40]), as general increases have been limited to 0,06 %, 0,75 % and 0,77 % for 2000, 2001 and 2003 respectively.

(112) Overall, staff costs have dropped from EUR 116,9 million in 2001 to EUR 114,4 million in 2002. Staff numbers have followed the same trend, dropping from 2 423 to 2 392 full-time equivalents. The measures referred to in recitals 107 and 108 should make it possible to reduce costs from EUR 61,8 million in 2001 to EUR […] million on average from 2003 to 2006. Onshore staff costs would move from EUR 50,3 million in 2001 to EUR […] million over the same period.

2.3.6. *Reduction in purchase cost of intermediate consumption*

(113) In their letter of 10 February 2003, the French authorities enhanced the restructuring plan by making firmer commitments with regard to managing intermediate consumption. In this framework, SNCM has undertaken upon specific action with the help of specialised consultants.

— The first action, called ‘Buy better’, is intended to manage purchase costs through better control of the purchase operations, training for the staff involved, redefining needs and renegotiating with suppliers. The gain expected for the whole of 2003 is EUR 3 million over a total of EUR 73 million in purchases in 2001. At the end of September 2002 the gain for the whole year was EUR 1,6 million.

— The second action, called ‘Consume less’, is intended to limit consumption, in particular on board ships, with other factors (purchase performance, activity) remaining constant. It includes ships' crews performing particular maintenance duties previously outsourced and monitoring of seventeen expenditure headings by consumption reduction monitoring committees involving the staff concerned. The gain expected for the whole year is EUR 2 million. It has been noted that at the end of September 2002 a gain of EUR 340 000 was attained through EUR 158 000 investment (return on investment in less than six months).

([40]) These salary increases result from the automatic effect of staff seniority progression or additional qualifications acquired by members of staff for which automatic salary increases are granted in accordance with industrial or company agreements.

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(114) These actions, combined with fleet reduction, have already led to a reduction of maintenance expenditure from EUR 26,9 to 23 million between 2001 and 2002.

2.3.7. *Fares policy*

(115) In their letter of 10 February 2003, the French authorities gave a formal commitment ([41]), in accordance with the Commission's expectations indicated in its decision of 19 August 2002, that SNCM would not initiate a fares war, in other terms that it would not become a price leader to Corsica. The French authorities have made the following comments on this commitment.

(116) The French authorities state that 'SNCM makes this commitment without reservations as it considers that a fares war would not be in line with:

— its strategic positioning,

— its interest, as it would lead to a drop in revenue,

— its usual practice and its savoir faire'.

(117) According to the French authorities, the nautical resources which SNCM has built up reflect a policy of offering high-quality services, moving upmarket. These choices, largely dictated by the requirements of successive specifications of maritime public services between Corsica and mainland France and by the expectations of customers from the island, are not compatible with a low-fares policy.

(118) Consequently, SNCM will continue to implement a business policy mainly focused on socio-professional categories of an above-average level and operating prices in line with the quality of its services. It would be inconsistent for SNCM to compete on the low-fares market, given the expenditure required by the high quality of its services. Customer surveys have confirmed the importance of fares as a criterion in the customer's intermodal and intramodal choices. According to these surveys, 90 % of Corsica Ferries' customers chose this company because of its fares. SNCM has always been aware of the relative importance of this criterion and endeavoured to highlight other criteria involved in choosing a shipping company such as comfort, ease of access and availability.

(119) According to the French authorities, SNCM's attitude in recent years has always been to try to respond to Corsica Ferries' fares attacks in order to safeguard its market share. SNCM's fares for the 2002 season transmitted to the Commission show that the average fare charged by SNCM is higher than that of Corsica Ferries.

(120) According to the French authorities, the chronological sequence of decisions shows clearly that SNCM's fares policy has been confined to responding to the services offered by Corsica Ferries: launch of Corsica Ferries price offer on 15 January 2002 followed by the announcement of SNCM's price offer on 5 February 2002.

(121) With regard to freight charges, the levels are, apart from a number of details, those required by the public service delegation specifications and apply equally to SNCM and its partner CMN.

(122) According to the French authorities, price leadership status can be judged in the light of average unit revenue. When SNCM responded in 2002 to Corsica Ferries' fares attack by introducing special fares determined in accordance with the abovementioned method, its average unit revenue per passenger to Marseilles and

([41]) On this subject, see also the comments of the French authorities on the observations of Corsica Ferries, in section 4.1.

▼B

Toulon increased from EUR 73,69 in 2001 to EUR 74,26 in 2002.

(123) There is frontal competition between SNCM and Corsica Ferries in Nice, covering very similar products with high-speed vessels supplemented by day or night ferries. According to the French authorities, SNCM had no other choice in 2002 than to approximate its fares and charges to its competitor's and highlight the specific attractive services it could offer.

2.3.8. *Determining the amount of recapitalisation*

(124) The French authorities intend to inject EUR 76 million into SNCM by raising the capital to be subscribed by CGMF, a company in which the French State has a 100 % share and which itself has an 80 % share in SNCM. This cash injection is intended to fund the operational restructuring measures and reduce the excessively high level of debt which the company could not settle with its own resources, even if account is taken of future financial compensation provided for in the public service delegation contract.

(125) The French authorities have presented three methods to calculate SNCM's cash requirement and have adopted the lowest figure determined through these three methods.

2.3.8.1. Method based on costs borne by SNCM

(126) This first method consists of aggregating the costs of all restructuring measures. It leads to a EUR 90,9 million financing requirement based on the following:

— accumulated debts from 1991 to 2001, totalling EUR 41,7 million ([42]),

— a drop in resources through exceptional depreciation in the same period, totalling EUR 24 million ([43]),

— appreciation of disposal generated during restructuring, namely EUR 21 million, deducted from the financing requirement,

— the cumulative effect of restructuring costs, totalling EUR 46,2 million, broken down as follows:

  — the social plan of the restructuring programme: EUR 20,4 million,

  — laying-up costs of vessels being sold off: EUR 1,8 million,

  — costs of redeploying activities towards the Maghreb: EUR 9 million,

  — depreciation of the high-speed vessel *Liamone*: EUR 15 million.

2.3.8.2. Method based on capital required to finance the existing fleet

(127) The second method consists of determining which would be the amount of capital required by the banks for the entire fleet, given that for financing of the purchase of a ship the banks in general require capital corresponding to 20 to 25 % of the ship's value.

([42]) Namely: − EUR 29 million (FRF 190 million) from 1991 to 1999, a figure validated by the Commission in its Decision 2002/149/EC of 30 October 2001 on State aid paid by France to the Société nationale maritime Corse-Méditerranée (OJ L 50, 21.2.2002, p. 66), - EUR 6,1 million for 2000 and - EUR 6,6 million, before restructuring expenses, for 2001.

([43]) This item drops from EUR 86 to 62 million on the balance sheet for the period, reflecting the lengthening of the amortisation period from 12 to 20 years, the reduced use made of this resource and the use of leasing for the latest units delivered.

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On the basis of the total sum of EUR 843 million representing the past cost of ships acquired for the fleet, the French authorities have calculated a capital requirement of between EUR 157 and 196 million. After deducting existing capital at the end of 2001, this method leads to a recapitalisation requirement of EUR 101 to 140 million.

2.3.8.3. Method based on a comparison with the level of capitalisation of other, similar shipping companies

(128) This last method consists of calculating the financing requirement on the basis of the average capital/debt ratio recorded in 2000 for five European shipping companies. Even though the balance sheets of these companies show substantial disparities, the average adopted by the French authorities is 79 %. The French authorities maintain that the financial model leads to an average of 77 % for the period 2002 to 2007, before dividend, with capital reaching EUR 169 million in 2007. The French authorities point out that it is in fact such a level of capital that should be attained through this EUR 76 million recapitalisation in 2002 and, of course, the success of the measures provided for in the restructuring plan.

(129) In their letter of 3 July 2002, the French authorities added two new firms to the panel of shipping companies, as a result of which the average capital/debt ratio was 83 % instead of 79 %.

(130) Since the figure of EUR 76 million is the lowest produced by the three methods, it was adopted by the French authorities in determining the amount of recapitalisation.

2.4. **Results expected from the restructuring aid**

(131) The French authorities have examined not only the results expected from the restructuring plan according to various scenarios but also the consequences which a reduction of public service obligations would have beyond 2007.

2.4.1. *Expected results of the restructuring plan*

(132) The French authorities have studied the likely trends in SNCM's financial position according to three different scenarios summed up in table 5: a best-case, worse-case and intermediate scenario corresponding to the restructuring plan adopted.

2.4.1.1. Best-case scenario

(133) For services to Corsica, this scenario assumes an improvement of the island's attraction through investment and communication policies. In this way, Corsica would remain a favourite tourist destination. The shipping component increases compared with air transport (longer stay of families with car) and French sea transport benefits from the frequency and variety of services on offer.

(134) The result is very good price and traffic volume performance generating higher net revenue than expected. However, the increase on the Nice-Corsica link is limited by the reduction of capacity undertaken by SNCM.

▼B

(135) For services to the Maghreb, this scenario envisages no major disruptions of the growth trend in Maghreb markets. The qualitative and quantitative improvement of supply combined with a more expanding market enables SNCM to expect higher net revenue than forecast in the restructuring plan, mainly during the high season. Here, too, the capacity on offer during peak periods limits possibilities for growth.

(136) In its restructuring plan, SNCM envisages the sale of half of its capacities on offer. In this case, SNCM could market two-thirds of all possible links thanks to its growing reputation on the key markets for mini-cruises and business travel and the beneficial effects of the entry into service of a new ship and a sizeable capacity enabling SNCM to reach targets previously beyond its reach. The best-case scenario would improve:

— the current result which on average rises from EUR […] million to EUR […] million,

— the company's capital at the end of the period in question, rising from EUR […] million to EUR […] million.

2.4.1.2. Worst-case scenario

(137) This scenario assumes a downturn in the economic and social situation in France. Trade with Corsica and the Maghreb stagnates. Traffic is lower than expected.

(138) In such a scenario, SNCM could market only one-third of all possible links. On top of this negative trend in traffic, there would from 2003 be a 9 % increase in the price of fuel. This scenario would lead to a deterioration:

— in the current results, on average dropping from EUR […] million to EUR […] million,

— in the company's capital at the end of the financial year, dropping from EUR […] million to EUR […] million. In this scenario, SNCM replaces the *Ile de Beauté* by a second-hand vessel and does not replace the *Corse*, lengthening the period in which it remains in service.

2.4.1.3. Examination of the different scenarios

(139) The best-case and worst-case scenarios may appear very similar, but the following points should be stressed:

— on the one hand, the assumptions regarding traffic make it possible to meet the objectives of the restructuring plan without altering either the programme of services or the fleet used. A greater decrease or increase in traffic would exceed these limits and necessitate other combinations of services and consequently a different composition of the fleet. If this led, in particular, to economic disruption of the public service delegation, the safeguard clause laid down in the public service delegation contract might be activated, leading to a redefinition of the corresponding service;

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— on the other hand, services to Corsica and to the Maghreb follow different criteria. Their trends may be convergent or divergent. For instance, the Corsican market may depend on the situation on the island. Serious disturbances there may immediately impact on the growth of trade with Algeria. The Tunisian market seems to be more stable but competition there is fierce. Overall, it is not very likely that all these markets will show a trend in the same direction. Accordingly, the assumptions on the whole seem to present a situation that is quite representative of possible developments.

(140) The profit budgets of the best- and worst-case scenarios have been drawn up with supply remaining constant in order to highlight clearly the effects of economic trends. Of course, staying within the general framework adopted, i.e. 11 ships and maintenance of the links operated, the company will fine-tune its supply to demand in order to retain its balance. This could be the case in particular in the worst-case scenario on the Nice/Corsica and Maghreb lines. A number of possible measures are given below by way of example:

— increased use in June and September of the small high-speed vessel replacing the *Liamone*: improvement of result by EUR […] million,

— reduction in the number of vessels operated during particular weeks in winter: improvement of result by EUR […] million,

— on crossings to Algeria, reduction of the number of trips during the low season (one every two weeks): improvement of result by EUR […] million.

TABLE 5

Hypotheses in the scenarios

		Worst-case scenario	Scenario of restructuring plan	Best-case scenario
Shipping market from France	Corsica	[…]	[…]	[…]
	Algeria	[…]	[…]	[…]
	Tunisia	[…]	[…]	[…]
SNCM passenger traffic	Marseilles/ Corsica	[…]	[…]	[…]
	Toulon/Corsica	[…]	[…]	[…]
	Gulf of Genoa	[…]	[…]	[…]
	Maghreb	[…]	[…]	[…]
Average net revenue of SNCM in 2003/2006 (in million EUR)	Marseilles/ Corsica	[…]	[…]	[…]
	Toulon/Corsica	[…]	[…]	[…]
	Gulf of Genoa	[…]	[…]	[…]
	Algeria	[…]	[…]	[…]
	Tunisia	[…]	[…]	[…]
	Tourism	[…]	[…]	[…]

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(141) The different scenarios lead to the following simulations which the French authorities have transmitted to the Commission. These simulations show that SNCM should become profitable again in each of the three scenarios.

TABLE 6

Trend of the main financial indicators of SNCM

		Worst-case scenario	Scenario of restructuring plan	Best-case scenario
Average 2003/2006	Passengers	[…]	[…]	[…]
	Cars	[…]	[…]	[…]
	Freight (ml)	[…]	[…]	[…]
	Gross operating margin (in thousand EUR)	[…]	[…]	[…]
	Financial compensation (in thousand EUR)	[…]	[…]	[…]
	Current result (in thousand EUR)	[…]	[…]	[…]
2007 (in million EUR)	Company capital	[…]	[…]	[…]
	Overall debt	[…]	[…]	[…]
	Capital [a]/(cash loans + leasing) ratio	[…]	[…]	[…]

[a] This ratio takes account of lease purchasing of particular vessels.

2.4.1.4. Expected trend in SNCM's financial situation in the scenario adopted

(142) In their restructuring plan, the French authorities have included a more detailed financial model for the period 2002 to 2007 based on the intermediate scenario adopted, with the following relatively conservative assumptions: forecast growth of gross internal product 1,5 %, borrowing rate 5,5 %, rate of investment income 4,5 % and rate of short-term debts 5 %. This model, presented in table 7, presents forecasts for the profit and loss accounts and balance sheets for the next six years between 2002 and 2007. It shows a return to profitability from 2003.

TABLE 7

Financial model for 2002 to 2007

(in million EUR)

	2000 Realised	2001 Realised	2002 Plan	2002 Realised	2003 Plan	2004 Plan	2005 Plan	2006 Plan	2007 Plan
Turnover	204,9	204,1	178	205,8	[…]	[…]	[…]	[…]	[…]

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(in million EUR)

	2000 Realised	2001 Realised	2002 Plan	2002 Realised	2003 Plan	2004 Plan	2005 Plan	2006 Plan	2007 Plan
Operating subsidies	85,4	86,7	74,5	77,7	[…]	[…]	[…]	[…]	[…]
Current result	−14,7	−5,1	1,2	−5,8	[…]	[…]	[…]	[…]	[…]
Net result	−6,2	−40,4	23	4,2	[…]	[…]	[…]	[…]	[…]
Capital	67,5	29,7	119	33,8	[…]	[…]	[…]	[…]	[…]
Net financial debt (excl. leasing)	135,8	134,5	67,7	144,8	[…]	[…]	[…]	[…]	[…]
Financial ratios									
Current results/ turnover + subsidies	−5 %	−2 %	0 %	−2 %	[…]	[…]	[…]	[…]	[…]
Capital/debt on balance sheet	50 %	22 %	176 %	23 %	[…]	[…]	[…]	[…]	[…]

Figures for 2000 and 2001 taken from SNCM's annual report 2001.

2002 results taken from provisional accounts transmitted by SNCM on 15 May 2003.

(143) In this scenario, turnover relating to activities to the Maghreb would rise from about EUR […] million in 2001 to EUR […] million from 2003 ([44]). The current result of this network should be maintained at a level of EUR […] to […] million over the period 2002-2005.

(144) The turnover for the Nice-Corsica network, where competition is strongest, is around EUR […] million, to which must be added about EUR 5 million in public compensation from social assistance. Because of its high quality level and consequently the proportionately high purchase price of the main vessel used on this service, the high-speed vessel *Liamone*, proceeds from operating this link would not cover all the amortisation costs of the vessel (included in lease paid) and would produce a current result of EUR […] to […] million. The exceptional EUR 14,8 million depreciation on the vessel, included in the restructuring plan and in the 2001 annual accounts, will adjust its use value for the company and offset the future lease annuities by EUR 1,8 million, more or less balancing the Nice-Corsica services ([45]). The company has indicated that the alternative solution to disposing of the *Liamone* would not, on closer examination, be favourable because of the market situation and losses associated with early termination of the lease.

(145) For the company's traditional activity on the line between Marseilles (and, for the record, Toulon) and Corsica, expected turnover was EUR 84 million in 2002 and should vary between EUR […] and […] million during the following years. It should be noted that the overall turnover of services to Corsica is expected to drop by EUR 9 million, i.e. 8 %, in 2002 compared with 2001. The 2002 accounts confirm this expected drop (EUR 10 million less in passenger revenue). As a result, SNCM's market share diminishes by 4 percentage points (from 25,9 % to

([44]) This trend was confirmed from 2002 with an increase of over EUR 9 million in passenger revenue in this area. In spite of the stability of fares, unit revenue improved, showing a better spread of the different fares.

([45]) Note: rentals, included in the current result, will remain at their previous level but there will be an annual carryover of amortisation of EUR 1,8 million at the level of the exceptional result in order to obtain this effect in net result.

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21,8 %) from 2001 to 2002 to the benefit of its competitors (5,6 point increase to 16,8 %).

(146) For services from Marseilles, which is now the only one covered by the public service delegation, the expected subsidy should have been limited to about EUR 69 million in 2002, dropping to EUR 61-63 million during the period covered by the plan, representing a notable decrease compared with the EUR 87 million obtained in 2001. However, the current result of the network dedicated to public service, which was negative in 2001 and 2002, should rise to EUR […] million in 2003, then to about EUR […] million in 2004 to 2005 and finally EUR […] million in 2006.

(147) In 2002, the current result attained by the company would reportedly be − EUR 5,8 million, in line with that of 2001 but lower than the figure indicated in the restructuring plan. Apart from variations in some headings of the profit and loss account, this current result could be explained from the absence of a refund of the maritime professional tax (EUR 2,4 million), for which there will be an abatement at source in 2003, and the partial refund of employers' Assedic contributions (unemployment insurance contributions) and family allowances, i.e. a EUR 3,5 million shortfall.

(148) According to the French authorities, the EUR 76 million cash injection and the turnaround to profitability, expected from 2003, should make it possible to raise the company's capital from its current level of about EUR 30 million to EUR 120 million in the short term (2003) and then to EUR […] million at the end of the period covered by the plan (2006 to 2007). This will lead to a reduction of indebtedness from its current level (EUR 145 million) to levels of EUR […] million from 2003 to 2005. In the last years of the plan, an increase in indebtedness is forecast by the company because of the renewal (fully owned) of one or two vessels.

2.4.2. *Scenarios beyond the restructuring plan*

(149) It is important to know what will be the company's competitive position in 2006 at the end of the current public service delegation contract and how viable the company will be. The fact is, however, that it is difficult today to foresee the content of the future public service delegation contract after 2006.

(150) For SNCM, compared with the current situation in which it operates four cargo passenger ships and two car ferries, a situation in which, for instance, a […] would no longer be needed would generate revenue losses of EUR […] million (and EUR […] million in subsidy). Reducing labour costs, other operating costs and capital costs (amortisations and financial charges) would make it possible to limit the drop in results to about EUR […] million, i.e. […] of the profit planned for the end of the period. From a financial viewpoint, the costs of restructuring, which are estimated at EUR 20 million for 260 employees, would be more than compensated by the sale of the vessel concerned, e.g. the […] whose disposal would generate EUR […] million in cash and EUR […] million depreciation before tax.

(151) The French authorities have also devised a more extreme scenario with only […] cargo passenger ships, i.e. […] of resources currently used on the Marseilles-Corsica line, which would continue to be covered by the public service delegation contract, plus one car ferry operated on a competitive basis with social assistance ([46]). In this case, expected revenue losses would be EUR […] million (and EUR […] million in subsidy), i.e. […] %

([46]) See recital 155.

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of total revenue for the Marseilles-Corsica service. The reduction in labour costs, other operating costs and capital costs (amortisations and financial charges), however, would be insufficient to guarantee a positive result: with about EUR […] million less than the plan, SNCM would suffer a limited loss of about EUR […] million. Restructuring costs, estimated at EUR 34 million for 450 employees, however, would be compensated for by the sale of two vessels, e.g. the […] and the […] whose disposal would generate EUR […] million in cash and EUR […] million depreciation before tax.

(152) The French authorities did not want to study more austere scenarios, considering that any scenario leading to a reduction of more than 50 % of SNCM's activity would call into question the object of the company. However, the French authorities have stressed that this plan should make it possible to prevent an extreme situation by swiftly making the company competitive and thus enable it to acquire at least a part of a future public service obligation contract.

2.5. **Other aid for SNCM**

(153) SNCM has in the past received the following individual aid:

— operating grants to compensate for its public service obligations amounting to EUR 787 million for the period 1991 to 2001. This aid was approved by the Commission on 30 October 2001 for this period ([47]),

— rescue aid in the form of a refundable advance of EUR 22,5 million which was approved by the Commission on 17 July 2002 ([48]) and has in the meantime been fully refunded by SNCM.

(154) SNCM currently receives financial compensation for performing its public service obligation on lines between Marseilles and Corsica for the period 2002 to 2006 under its contract ([49]), with a total sum which may reach up to EUR 321,5 million for the entire period.

(155) It has in the past received, and should in the future receive, funds under the following aid schemes which are open to all shipping companies:

— indirect aid under the individual social assistance scheme for shipping services to Corsica intended for particular categories of passengers, a scheme which was approved by the Commission in 2002 ([50]);

— the business tax refund scheme for shipping companies ([51]).

2.6. **Grounds for initiating the procedure**

2.6.1. *Doubts on the relevance of the restructuring plan*

(156) In its decision of 19 August 2002, the Commission expressed doubts on the restructuring plan as it provided no analysis of the causes of the company's losses. In particular, the Commission raised questions concerning the following points:

— the connection between the company's losses and its public service obligation,

([47]) Abovementioned Decision 2002/149/EC.
([48]) Commission decision of 17 July 2002, case NN 27/2002, ex-N 849/2001, rescue aid for SNCM (not yet published in the Official Journal).
([49]) On this subject, see section 2.1.2. See also Decision 2002/149/EC.
([50]) Commission decision of 2 July 2002, case N 781/2001, on the scheme for individual social assistance for shipping services to Corsica.
([51]) Commission decision of 7 December 2000, case N 593/2000, on the refund of the maritime component of business tax. This scheme has been amended twice.

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— the impact of SNCM's policy of ship purchases on its profit and loss account,

— the measures planned to enhance the company's productivity.

(157) The Commission also pointed to certain gaps in the restructuring plan:

— the absence of specific measures to reduce the amount of intermediate consumption,

— the absence of any indications concerning SNCM's future fares policy.

2.6.2. *Doubt about the relevance of the calculation of the amount of aid*

(158) The Commission also wondered not only about the relevance of the calculation method adopted by the French authorities to determine the amount of recapitalisation but also about particular hypotheses adopted for financial simulations. The method adopted by the French authorities to justify the amount of EUR 76 million for capitalisation is based on a financial simulation which does not clearly bring out all the underlying hypotheses and does not show how the capital/long-term indebtedness ratio leads on average to the reference ratio of 79 %.

3. **COMMENTS FROM INTERESTED PARTIES**

3.1. **Comments from Corsica Ferries**

3.1.1. *First letter with comments*

(159) By letter of 8 January 2003 ([52]), the law firm Scapel, Scapel-Grail and Bonnaud sent their observations to its client, Corsica Ferries.

(160) First, Corsica Ferries disputes that SNCM is a firm in difficulty within the meaning of the guidelines. It points out that the public service delegation contract allocates a public grant to the company of EUR 64,3 million on average a year, making a total of EUR 321,5 million over five years. It argues that Article 5 of the public service delegation contract guarantees for SNCM a EUR 72,8 million cashflow. Moreover, Corsica Ferries stresses that of the EUR 40,6 million losses recorded by SNCM in 2001, EUR 15 million relate to the depreciation of the high-speed vessel *Liamone*.

(161) Second, Corsica Ferries questions SNCM's capacity to become profitable on its non-subsidised lines. Moreover, Corsica Ferries notes that, contrary to what is announced in the restructuring plan ([53]), services to Livorno are still operational. About the services from Nice and Toulon, Corsica Ferries expresses doubts on SNCM's capacity to make these lines profitable. With regard to services to the Maghreb, it notes that SNCM will have to face fierce competition from CTN and ENTV. On the subject of cost reduction, Corsica Ferries regrets that it does not have access to particular components of the restructuring plan. However, it asks the Commission to see that the questions which the latter raised in its decision of 19 August 2002 receive convincing answers from the French authorities.

(162) Third, Corsica Ferries stresses the need to ensure that the planned aid does not lead to undue distortion of competition. In its opinion, the aid should not serve to facilitate the struggle against competitors by allowing a more aggressive supply of services. Corsica Ferries considers the 79 % capital/debt ratio adopted by

([52]) Registered by the Commission on 15 January 2003 as DG TREN A/10962.

([53]) The decision to initiate the procedure indicated that one of the measures laid down in the restructuring plan was ‘the closure of the Bastia-Livorno line with dedicated equipment’.

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the French authorities ([54]) as exaggerated in relation to the ratios which it recorded itself on a panel of 10 shipping companies. These ratios vary from 23,69 % (for Moby Lines) via 49,7 % for CMN to 55,09 % (for Grimaldi).

(163) According to Corsica Ferries, the calculation leading to the amount of EUR 76 million is purely fictitious. It argues that EUR 76 million corresponds to the FRF 500 million which the company would lose from its territorial continuity grant for the new period 2002 to 2006.

(164) According to Corsica Ferries, SNCM could itself have had such an amount at its disposal by using its latent appreciation on the fleet or by selling off some of its shares.

(165) With regard to SNCM shares, Corsica Ferries notes that some of the subsidiaries are of no use to the shipping company's activities, mentioning the following specifically:

— the 50 % share in the Sud-Cargos shipping company,

— the 13 % share in Amadeus, a firm specialised in air transport booking systems,

— the 59,25 % share in CMN,

— CGTH's real estate holdings.

(166) Corsica Ferries concludes that the plan to grant aid circumvents the cabotage regulation and renders the invitation to tender for Marseilles to Corsica services meaningless. It suggests that restructuring aid should not be granted until 2007 and only if SNCM loses the next tender in 2006, which would be the only scenario that would genuinely put the public shipping company in difficulty.

(167) A considerable number of documents (copies) ([55]) were enclosed with the letter of 8 January 2003.

3.1.2. *Second series of comments*

(168) By electronic mail of 16 January 2003, the Director-General of Corsica Ferries sent the Commission a copy of a press release from Agence France Presse and a press file concerning the press conference held by the SNCM chairman on 14 January 2003 on SNCM's new scale of fares for 2003.

([54]) See recital 128 of this Decision.

([55]) An article in the *Le Marin* newspaper of 7 June 2002 entitled 'SNCM: a record deficit in 2001' (item 2), timetables of the passenger cargo ship at Bastia for 2003 to 2006 (item 3), a list of SNCM subsidiaries compiled by Cofacerating (item 4), an article from the *La Tribune* daily of 21 December 2001 entitled 'State grants EUR 76 million to SNCM' (item 5), an article from the *La Provence* newspaper of 7 February 2002 entitled 'Faced with competition in its waters, SNCM goes international' (item 6), report of activities of the port of Nice of November 2002 (item 7), statistics on the 2002 season from the Corsica regional transport monitoring authority (item 8), an article entitled 'SNCM obliged to cut all fares' (item 9), an undated article entitled 'SNCM discusses its industrial plan' (item 10), a Fazi report of 16 September 2002 on SNCM's restructuring plan, an article from the *Le Marin* newspaper of 7 June 2002 entitled 'SNCM: record deficit in 2001' (item 11), an article from the *la Provence* daily of 7 December 2002 entitled 'SNCM agrees to talk on Corsica [with STC]' (item 12), an article from the *L'antenne* newspaper of 11 December 2002 entitled 'Details of SNCM/STC agreement' (item 13), an undated article from an unidentified newspaper entitled 'SNCM to receive EUR 76,2 million in exceptional State aid' (item 14), a story from *AOL Mail* of 21 December 2001 entitled 'SNCM social plan without layoffs' (item 15), a summary table showing the capital/debt ratio for 10 shipping companies (item 16), report with final comments from the Chambre Régionale des Comptes of May 2002 on the management of the Office des Transports de Corse (item 17), an article from the *La Provence* daily of Saturday 4 December 2002 entitled 'Head of Corsica Ferries attacks SNCM' (item 18), an article from the *La Provence* daily of Saturday 4 January 2003 entitled 'SNCM chairman goes on the attack on Corsica Ferries' (item 19).

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3.1.3. *Meeting of Corsica Ferries and the Commission*

(169) At a meeting held on 4 February 2003 between the Commission and representatives of Corsica Ferries convened at the latter's request, Corsica Ferries transmitted transparencies showing graphs of SNCM's potential appreciations. By letter of 21 February 2003, these documents were sent to the French authorities for comment.

(170) The representatives of Corsica Ferries stated orally that the market of sailings between mainland France and Corsica was doing well, with a 17 % increase between 2000 and 2001 and 13 % increase between 2001 and 2002. They indicated that their company did not attack Decision 2002/149/EC on compensation for public service obligations, stressing that there was no need to go back on the past but that it would give close attention to the conditions which the Commission will impose in the present case.

(171) The representatives of Corsica Ferries welcomed the Commission's efforts to liberalise the cabotage market. According to them, the cabotage regulation has made it possible to put an end to agreements which benefitted the traditional operators. It has cleared the way for competition which has led the traditional operator to raise substantially the quality of its services to Corsica. According to the representatives, the inhabitants of Corsica had suffered for too long from poor quality service onboard SNCM's ships when they were the only firm operating crossings to Corsica.

(172) The representatives of Corsica Ferries expressed their concern that SNCM would use the aid to reduce its fares between Toulon/Nice and Corsica. They stated orally that while on paper SNCM's fares and those of Corsica Ferries were more or less the same, SNCM had nevertheless greatly increased the number of days of the low-fares period.

(173) At this meeting, the representatives of Corsica Ferries highlighted the three main structural causes why, in their opinion, SNCM had to bear higher costs than Corsica Ferries:

— purchase of vessels from a shipyard with price levels above market prices,

— more costly crews because they are better paid than required by French industrial agreements,

— excessive numbers of onshore personnel: at equal traffic levels, Corsica Ferries allegedly has three times fewer employees onshore than SNCM; it argues that many of SNCM's onshore activities should be outsourced in the same way as Corsica Ferries does.

(174) At the meeting, the representatives of Corsica Ferries further criticised the restructuring plan on three points:

— the plan does not envisage any real reduction in staff numbers: staff cuts are too cautious as most of the 300 posts cut correspond to natural wastage,

— SNCM shareholdings have not been included in the restructuring endeavour: large numbers of shares in various companies are dormant in SNCM's accounts, with a market value well above the book value recorded on SNCM's balance sheet,

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— appreciations on vessels have not been taken into account. Because of speeded-up amortisation of vessels, the book value of vessels in the assets of shipping companies is often lower than their market value, thus distorting the picture which the balance sheet may present. Corsica Ferries evaluates SNCM's latent appreciations on old ships at EUR 148 million. The real value of the vessels has allegedly enabled SNCM to obtain mortgage loans or lease-back contracts for sums exceeding the EUR 76 million restructuring aid.

3.2. **Comments from the Stef-TFE chairman**

(175) By letter of 7 January 2003 ([56]), the chairman of the Stef-TFE group, a company specialised in cooling logistics, transmitted his comments on SNCM's restructuring plan to the Commission. He emphasises that his group was the main shareholder in CMN as it controlled the company's board. He explains that the capital links between SNCM and CMN result from a redistribution of CGMF's shares in 1992 ([57]). According to Stef-TFE, SNCM's shares in CMN should be analysed as purely financial assets.

(176) Moreover, the letter with comments stresses that the two companies, CMN and SNCM, are independent and in competition with each other on the links other than those from Marseilles, even though both are co-contractors under the public service delegation contract. According to Stef-TFE, co-contracting has been necessary because of the structure of the tender specifications which obliged the two companies to submit a joint bid as neither of them could meet all the requirements on their own.

(177) The letter indicates that the Stef-TFE group would undertake ‘to buy back all or part, and preferably the whole, of SNCM's shares in CMN’, whose value it estimates at EUR 15 to 17 million, if the Commission were to take the view, under conditions it could impose in its final decision, that ‘such a transfer is necessary to ensure that the restructuring plan is properly balanced’.

(178) An overview of the past development of CMN's shareholding and the Stef-TFE group's annual report for 2001 are appended to the letter.

3.3. **Comments from representatives of local authorities**

(179) By letter of 18 December 2002 ([58]), the mayor of the City of Marseilles stressed the economic importance of SNCM for the regional economy, explaining that each year the company injects EUR 160 million into the economy and that it employs 1 800 workers in the Provence-Alpes-Côte d'Azur region.

(180) By letter of 9 January 2003 ([59]), the chairman of the general council of Bouches-du-Rhône emphasised the economic importance which the SNCM has for the regional economy, expressing the wish that the Commission would approve the planned aid and thus allow SNCM to successfully complete its restructuring. Also on 9 January 2003, a general councillor of Bouches-du-Rhône was received by the Commission at his request. At this meeting, he spoke on behalf of his authority and its chairman. He highlighted SNCM's economic weight in the economy of Marseilles. He argued that only SNCM was able to run reliable services to Corsica. He acknowledged that SNCM had perhaps not been properly managed in the past but that recently it had made considerable progress towards modernisation under the guidance of its chairman, even though he felt that further progress still had to be made. On behalf of the whole

([56]) Registered by the Commission on 8 January 2003 as DG TREN A/10304.
([57]) On this subject, see section 2.1.1.1.
([58]) Registered by the Commission on 3 January 2003 as DG TREN A/10021.
([59]) Registered by the Commission on 10 January 2003 as DG TREN A/10567.

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political staff of the Marseilles region, he expressed the wish that the Commission would give SNCM a last chance to adapt itself to a relatively new competitive framework. He also said that SNCM, like all French companies operating passenger transport services by sea, was weighed down by the existence of more favourable social and tax schemes in other Member States, in particular Italy ([60]) whose flag is flown by the vessels of Corsica Ferries, its main competitor.

(181) By letter of 9 January 2003 ([61]), the chairman of the Provence-Alpes-Côte d'Azur regional council emphasised that the procedure initiated by the Commission was designed to ascertain that the proposed restructuring plan would eventually guarantee the viability of a company which was in difficulty today. He recalled the measures provided for in the restructuring plan. He considered that the conditions for this plan to guarantee the viability of the company were met. According to this regional council, only SNCM is able to provide sufficient services to ensure territorial continuity with Corsica. Moreover, the chairman points out that SNCM's activity gives work to 2 000 people in the Provence-Alpes-Côte d'Azur region and that the continuation of this company is vital for the regional economy.

(182) By letter of 9 January 2003 ([62]), the chairman of the executive council of the Assembly of Corsica transmitted the proceedings of a debate in the Assembly of 18 December 2002. In this debate, the Assembly had delivered ‘a favourable opinion’ on the plan for the recapitalisation of SNCM.

3.4. **Comments from the Corsica transport office**

(183) By letter of 10 January 2003 ([63]), the Director-General of the Corsica transport office (OTC) emphasised, on behalf of its chairman, that the tender issued for the public service delegation contract had led to only one bid being submitted, namely that of the CMN and SNCM group. The OTC is, together with the territorial collectivity of Corsica, the awarding authority of the public service delegation contract.

(184) First of all, the OTC notes that the disappearance of SNCM ‘would immediately lead to a major reduction in services’ as it is currently the only company capable of meeting the requirements of the contract with regard to passenger transport.

(185) It is recalled in the letter that Corsica has long suffered from inadequate shipping services and that it was only in 1976, with the implementation of the principle of ‘territorial continuity’, that services were offered that were geared to actual needs. Wishing to maintain a reliable high-quality service, the territorial collectivity of Corsica has in its contract included financial mechanisms for compensation or correction linked with the efficiency and reliability of services.

(186) Moreover, it is noted in the letter that the territorial collectivity of Corsica has taken account of the trend since 1996 in the supply of services from ports in mainland France to limit the public service obligations to services operated from Marseilles.

(187) Finally, the letter highlights SNCM's importance for the economy of Corsica, emphasising that it is the shipping company established in Corsica ‘which employs the largest number of Corsican residents (600 sailors and 170 onshore personnel) and with most purchases in Corsica (according to the company's information between EUR 25 and 30 million annually)’. It adds that ‘the Commission's rejection of the restructuring plan

([60]) On this subject, see section 5.3.1.
([61]) Registered by the Commission as DG TREN A/11872.
([62]) Registered by the Commission on 16 January 2003 as TREN A/11084.
([63]) Registered by the Commission on 16 January 2003 as TREN A/11085.

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proposed by the French state would therefore have very grave consequences for the island's socioeconomic equilibrium'.

(188) In a second letter dated 10 February 2003 ([64]), the OTC pointed to the two areas in which it expected progress from SNCM as the authority awarding the public service delegation contract. First, the OTC expected an improvement of the internal social dialogue, pointing to an 'abnormally high' number of industrial conflicts which have affected shipping services to Corsica, even though the situation has improved in recent years. In this regard, the OTC has laid down explicit provisions in the public service delegation contract for financial penalties to be imposed if the company fails to carry out particular services as a result of a cause coming under its responsibility. OTC's second concern is improving customer information during periods of disruption. The OTC adds, however, that with regard to passenger information SNCM does not show worse performance than transport companies in general, although SNCM ought to continue its efforts in this area.

4. COMMENTS FROM FRANCE

(189) The Commission has sent the following documents to the French authorities for their comments in accordance with Article 6(2) of Regulation (EC) No 659/1999:

— comments from Corsica Ferries (letters of 13 and 16 January 2003),

— comments from Stef-TFE (letter of 16 January 2003),

— comments from the Provence-Alpes-Côte d'Azur region (letter of 5 February 2003),

— comments from the territorial collectivity of Corsica (letter of 16 January 2003),

— comments from the general council of Bouches-du-Rhône (letter of 16 January 2003),

— comments from the City of Marseilles (letter of 16 January 2003),

— comments from the OTC (letters of 16 January and 21 February 2003).

4.1. Comments from France on the comments from Corsica Ferries

(190) The French authorities have indicated that some of the data submitted by Corsica Ferries concerning SNCM's services were inaccurate.

4.1.1. *SNCM's fares policy*

(191) By fax of 27 May 2003, the French authorities sent the Commission details to refute Corsica Ferries' allegations about SNCM's fares policy.

(192) SNCM's services on the Nice-Corsica link show the following trend:

TABLE 8

Trend of services supplied by SNCM between 2002 and 2003

(in %)

SNCM services	2003/2002 over 12 months
Crossings	− 3,7

([64]) Registered by the Commission on 11 February 2003 as TREN A/12979.

▼B

(in %)

SNCM services	2003/2002 over 12 months
Passenger places available	− 1,8
Vehicle places available	+ 0,3

(193) The French authorities also point out that SNCM's fares on the Nice-Corsica link have risen slightly compared with 2002. As part of the company's business policy, the length of periods in which fares remain valid has been adjusted to reduce divergence with fares offered by Corsica Ferries. According to the French authorities, the trend in SNCM fares reported by Corsica Ferries (from − 14 % to − 24 %) bears no relation to reality and, contrary to what has been alleged, Corsica Ferries' fares are well below SNCM's.

(194) According to the French authorities, Corsica Ferries tries to show that SNCM has initiated an aggressive fares policy by fixing fares below its own. The French authorities argue that the conclusions from this analysis, which are based on very incomplete data, are wrong.

4.1.1.1. Concerning promotional fares

(195) Corsica Ferries' basic promotional fare is called the 'Jackpot', which is a fixed price for two passengers and one vehicle ([65]). The French authorities emphasise that this fare does not appear in the documents submitted by Corsica Ferries even though it represents a significant part of its sales. This fare may cover one to four passengers travelling in the same vehicle. The supplement charged to them is that of the basic fare to which these passengers are entitled. If the additional passengers are children or young people, which is often the case in vehicles with four or five persons, the supplement paid on top of the basic fare is EUR 2,5 in each direction during the 'orange' period ([66]). If these passengers fall in a 'social' category ([67]), the supplement is EUR 5.

(196) This fares configuration, which is quite different from SNCM's, produces the following disparities:

TABLE 9

Comparison between SNCM's and Corsica Ferries' scales of fares in 2003

(in EUR ([a]))

		Blue	Green	White	Red
SNCM	2 passengers ([b]) + 1 vehicle	100	135	170	215
	3 passengers ([b]) + 1 vehicle	130	165	190	270
	4 passengers ([b]) + 1 vehicle	150	180	200	330

([65]) SNCM's equivalent promotional offer is called 'Plein Soleil'.
([66]) See table 10 for details of fares periods.
([67]) See recital 155 of this Decision.

▼B

(in EUR (a))

		Blue	Green	White	Red
Corsica Ferries	2 passengers + 1 vehicle	99	135	145	199
	3 passengers + 1 vehicle (of which 1 social) (c)	109	151	163	233
	4 passengers + 1 vehicle (of which 2 social) (c)	119	167	181	267
	3 passengers + 1 vehicle (of which 1 child) (d)	104	143	154	216
	4 passengers + 1 vehicle (of which 2 children) (d)	109	151	163	233

(a) Prices excluding tax.
(b) All passenger types.
(c) Senior citizens, young persons (aged 12 to 25), residents, students, parents with children.
(d) Children aged 4 to 12.

(197) The promotional fares of SNCM and Corsica Ferries vary according to the yield management method. Because of the relative lack of transparency of fares charging by computerised booking systems, the French authorities cannot provide the Commission with the number of places benefiting from Corsica Ferries' special fares. Finally, the French authorities wish to draw attention to the fact that SNCM does not offer the 'Plein Soleil' formula on all its crossings whereas Corsica Ferries does offer this type of product on all its sailings.

4.1.1.2. Concerning the scale of fares

(198) The French authorities note that SNCM's scale of fares for Nice-Corsica is systematically higher than or equal to that of Corsica Ferries.

(199) As regards the 'colours' of fares (see table 10), it is correct that SNCM has lengthened the blue period between April and September, partly in order to close the fares gap separating SNCM from Corsica Ferries. However, it applies only to sailings in the less busy direction.

(200) The French authorities have supplied the following table 10, comparing the distribution of voyages per fares level between the two companies on the Nice/Corsica service in April to September 2003.

TABLE 10

Comparison between the lengths of fares periods between SNCM and Corsica Ferries in 2003

(in %)

	SNCM			Corsica Ferries (a)		
		200-3	Overall		200-3	Overall
Very expensive	Red	18	1-00	(Blue)	10	100
Expensive	White	19	84	(Green)	17	90
Average	Green	33	65	(Yellow)	24	73

▼B

(in %)

	SNCM			Corsica Ferries [a]		
		200-3	Overall		200-3	Overall
Not expensive	Blue	32	32	(Orange)	49	49

[a] The colours used by Corsica Ferries differ from those used by SNCM, but the principle remains the same.

(201) The public service delegation contract includes a safeguard clause to attenuate the possible effects of an inaccurate estimate of the additional costs of carrying out public service tasks. According to the French authorities, the contract does not remove all risks for SNCM and CMN, as Corsica Ferries has alleged, for the following reasons:

— fluctuation of revenue within a range of 2 % above or below the basic data do not give rise to any adjustment of compensation,

— adjustment of compensation for fluctuations in revenue outside this range is only partial,

— overall, adjustments are restricted to 1,66 % of financial compensation for the whole term of the contract.

(202) The French authorities note that the public service contract in no way guarantees operating profits; on the contrary, the contract provides for a maximum level of capital yield. The sole objective of the public service grant is in fact to offset the costs resulting from executing the public service task. Consequently, the grant cannot be construed as a 'cashflow guarantee'.

(203) In their comments, the French authorities question the well-foundedness of Corsica Ferries' statement that CMN is among Europe's most profitable shipping companies. They argue that there is no justification for this claim today: the average net result of this company during the five financial years 1997/2001 is EUR 1,27 million for an average turnover prior to compensation of EUR 36,4 million. Moreover, the company's performance is largely linked with the Marseilles/Corsica public service delegation contract in which, as co-contractor of the public service delegation, it complements SNCM's main contribution with three vessels.

4.1.2. *Services to Corsica from Nice and Toulon*

(204) The French authorities have drawn attention to the following:

— SNCM has discontinued regular services between Corsica and Toulon; sporadic recourse to the port of Toulon is due to technical considerations connected with the services between Marseilles and Corsica (number of Toulon-Corsica sailings: 187 in 2001; 83 in 2002; nine in the first two months of 2003),

— SNCM's Nice-Corsica sailings have been greatly reduced, in particular during the low season, which combined with SNCM's general management savings justifies expectations that the accounts for the Nice-Corsica sector will be balanced, as indicated in the financial models.

(205) According to the French authorities, the complete abolition of SNCM's services from Nice to Corsica would have the following consequences:

— disruption of the complementary relationship between Nice and Marseilles and accordingly an imbalance in SNCM's services, whereas Corsica Ferries sails to Corsica from four continental ports (Toulon, Nice, Savona and Livorno),

▼B

— disruption of the necessary complementary nature of night services (from Marseilles) and day services (from Nice) whereas Corsica Ferries supplies both of these services,

— establishment of a virtual monopoly of Corsica Ferries from Toulon to Livorno,

— simultaneous sale, difficult to implement under acceptable conditions, of three high-speed vessels.

4.1.3. *Services to the Maghreb*

(206) With regard to SNCM's activities in north Africa, the French authorities regard as unacceptable Corsica Ferries' unfounded, and also sometimes inaccurate, comments regarding the 'indifference' of SNCM in the face of its shrinking market share or SNCM's lack of consideration for its Algerian customers.

(207) France points out that the drop in SNCM's services to Algeria basically results from decisions taken by the State which, after completely suspending maritime relations between France and Algeria at the beginning of 1995 (following the hijacking of Air France's Airbus in Marseilles), has allowed only a gradual recovery accompanied by security measures which though indispensable have placed an extra burden on this line.

(208) Finally, it has noted that the level of activity to the Maghreb which SNCM indicates in its restructuring plan is particularly cautious and consistent with the conclusions of the market survey commissioned by SNCM.

4.1.4. *Cost reduction programme*

(209) The French authorities note that a part of the cost reduction programme has already been implemented:

— the number of vessels has been reduced and the programme for the disposal of assets is going ahead according to plan,

— services have been redeployed,

— the action plan to reduce intermediate consumption is beginning to bear fruit,

— the employment component of the industrial plan is steadily being implemented.

(210) In 2001, SNCM earmarked EUR 21,3 million to finance restructuring measures, in particular the scheme to safeguard jobs:

— establishment and operation of a monitoring mechanism, training assistance of EUR […] million,

— introduction of new technologies and changes to work areas to enhance the company's economic efficiency and enable job cuts of EUR […] million,

— implementation of measures for people leaving the company (about 90 employees), mobility leave (about 30) and switching to part-time working (about 25) amounting to EUR […] million,

— conducting procedures and negotiations and provision for litigation expenses, amounting to EUR […] million.

(211) In conclusion, the French state is of the opinion that, contrary to the allegations of Corsica Ferries, the restructuring plan has been devised in such a way as to turn around SNCM as soon as possible and create the right conditions to ensure its medium- and long-term viability.

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4.1.5. *Calculation method to determine the amount of recapitalisation*

(212) With regard to determining the amount of aid, the French authorities have presented two comments in response to Corsica Ferries' observations.

(213) First of all, they confirm that a 0,79 capital/debt ratio is quite typical for the balance sheets of most shipping companies, except in special situations. As an indication, the French authorities specify that this ratio is (in 2001):

— 0,847 for Lota Maritime consolidated,

— 0,835 for Corsica Ferries France SA.

(214) The 0,497 ratio announced by Corsica Ferries for CMN in 2001 is incorrect because it fails to take account of liquid assets on the balance sheet. With the appropriate correction, CMN's ratio is 0,557 […].

4.2. **Comments from France on Stef-TFE's observations**

4.2.1. *Comments from France on Stef-TFE's letter of*

7 January 2003

(215) In their letter of 13 February 2003, the French authorities presented various comments on Stef-TFE's observations.

4.2.1.1. Partnership to carry out the public service delegation contract

(216) According to the French authorities, the decision of SNCM and CMN to enter into a joint venture in which they are jointly and not severally responsible has in no way 'been rendered obligatory by the overall character of the consultation', contrary to Stef-TFE's observations. According to the French authorities, the tender issued by the territorial collectivity of Corsica fully permitted bids per shipping line or groups of lines. It was therefore legitimate for SNCM, and for CMN, to submit a bid for parts of this tender, if necessary by looking for appropriate partnerships.

(217) The decision to set up a joint SNCM-CMN venture is the result of an analysis made by the two companies which showed that bidding in this form, in this traditional and natural partnership, gave them the best chances, in particular in terms of competitiveness, to win the tender in view of the fact that Corsica Ferries had for months made it clear that it would submit a bid and in view of the possibility of other European operators doing so too.

(218) CMN's entry into this joint venture therefore resulted from a well-considered decision on its part based on an evaluation of its own interest and not on an obligation arising out of the tender as such.

(219) The French authorities explain that, contrary to Stef-TFE's observations, the two companies, SNCM and CMN, are neither independent nor in direct competition. Such a situation would be in conflict with the very principle of the single public service delegation contract to which they are co-signatories.

(220) The French authorities indicate that this is not simply a question of 'coordinating timetables' but that there is a single timetable jointly committing the two companies on services to Ajaccio and Bastia throughout the year and in particular periods also on services to secondary ports. For instance, the 'basic' service to Bastia is alternately operated every two days by each of the two companies.

(221) Similarly, it is not simply 'coordination of the general scale of fares'; there is in fact a single scale of fares. The partnership agreement lays down the procedures to arrive at this identical

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scale and strictly demarcates the margin left to the companies in this respect. The agreement adheres to this spirit, witness the fares decision taken for 2002. With the procedure for working out the fares now completed, the situation is as follows:

— SNCM has gone along with CMN's proposal to fix, within the limits permitted by the public service contract, the level of freight charges,

— CMN has gone along with SNCM's proposal to fix, within the limits permitted by the public service contract, the level of passenger fares.

(222) This procedure has led to the establishment of a single scale of fares for the two companies. The special fares, offering reductions on basic passenger fares ranging from 20 to 50 %, are likewise jointly managed. For this purpose, CMN uses SNCM's 'package' products and its computerised booking system. Finally, CMN uses SNCM's embarkation checking system for passenger handling in Corsican ports and in Marseilles.

(223) On the subject of pooling resources, the French authorities emphasise that the two companies frequently pool their efforts in their relations with suppliers. For instance, work on enlarging and modernising two vessels, SNCM's *Paglia Orba* and the CMN's *Kalliste*, was carried out in 2002 by the same shipyard, producing significant savings for both companies. These vessels had been built according to a single design but because of different timetables and workloads the companies had commissioned the vessels to two different shipyards.

(224) As noted by Stef-TFE, CMN's share of the passenger market increased substantially in 2002. Without disputing the quality of the services provided and efforts made by CMN, the French authorities consider that this increase occurred purely as a result of the contents of the new public service contract and not of any commercial conquest made by CMN on other operators. The increased use of cargo passenger ships with a capacity of 500 passengers and the reduced use of car ferries, both resulting from the public service obligations, have led to a redistribution of the places offered, which has been favourable to CMN. These data have obviously been incorporated in the joint bid submitted by the two companies.

(225) The French authorities maintain that SNCM's share in CMN's capital cannot be construed as a purely financial asset, as Stef-TFE appears to allege, on the following grounds:

— SNCM's cash position in 2002 in no way enabled it to contribute to covering CMN's cash needs ([68]),

— SNCM already shared in the financing of specific cash needs of CMN in 1999, at the time covering 66 % of its needs, alongside Stef-TFE,

— SNCM did not receive from CMN a request for a counter-guarantee for the security paid under the tender,

— SNCM did not object to CMN's plan to offer 5 % of its shares to its employees. At CMN's extraordinary general meeting on 27 June 2000, SNCM first of all gave its backing to a joint fund for worker participation to receive shares for employees as a new shareholder in CMN (even though the percentage of voting rights it held would have enabled it to oppose these plans). In a note to its Board, CMN's management subsequently proposed to transfer 2,25 % of the shares it held in SNCM for the benefit of CMN's employees. The French

([68]) In this connection, the French authorities have provided the Commission with a copy of the letter from SNCM's chairman to CMN's chairman dated 23 May 2002.

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authorities indicate that they decided to postpone this operation when they heard that Stef-TFE was preparing to contact the Commission on this subject as part of the formal investigation procedure.

(226) The French authorities conclude that the description which Stef-TFE has given of relations between SNCM and CMN in executing the public service contract is not consistent with reality.

4.2.1.2. Proposal for a transfer of SNCM's shares in CMN

(227) The French authorities state that the idea of a disinvolvement between the two companies lacks all industrial logic. The companies pursue the same activity, with identical tools, under the terms of a single public service contract. Moreover, the potential gain from closer cooperation between the two companies may be estimated to be within a range from EUR […] to EUR […] million per year.

(228) The question of relations between SNCM and CMN should also be examined from a strategic angle. The Commission has considered SNCM's position after 2006 when the current public service contract comes to an end. SNCM's position will depend partly on the level of Corsica-Marseilles public service for which it may then be responsible.

(229) The French authorities consider that the maintenance of a strong partnership between SNCM and CMN give them the best chances for success in being allocated public service activities from 2007. Such a partnership is an important factor for SNCM's viability and its maintenance seems essential.

(230) The uniqueness ([69]) and size of the fleet of the two companies are two major assets, enabling them to offer high-quality services to all Corsican ports. CMN's three ships enable SNCM/CMN as a whole to cross a critical supply threshold, which in the eyes of the French authorities is decisive in ensuring competitiveness in the years to come.

(231) For a competitor these three vessels could be an extra asset enabling it to compete effectively on all or part of the links between Corsica and the mainland. The adoption of measures to 'enhance the economic and financial independence of the operators' and pointing in a direction 'conducive to the pursuit of sound and well though-out competition' ([70]) would undoubtedly create the conditions for a disruption of the partnership between the two companies, greatly reducing SNCM's chances to compete effectively for a new tender for services to Corsica.

(232) An examination of the accounts of the Stef-TFE group (in which CMN is consolidated under the equity method, given the 49 % share of Stef-TFE in CMP) shows that a […] hypothesis cannot be excluded.

(233) In the recomposition of CMN's capital, SNCM made the main financial effort. The original approach was intended to establish an industrially effective SNCM-CMN configuration. By taking up the majority share, SNCM decided to occupy a position as a solid partner of CMN. For reasons of public image connected with the political context at the time, the SNCM majority shareholding was redistributed into two minority shareholdings (twice 45 %) at two levels of the adopted structure.

(234) To this end, SNCM not only subscribed to CMP's capital and that of the Compagnie Méridionale Financière (CMF), set up to take

([69]) In particular the cargo passenger ships for 500 passengers and 2 300 linear metres for freight.

([70]) The terms quoted are taken (in translation) from Stef-TFE's letter of 7 January 2003.

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full control of CMN, but also gave a 100 % guarantee for the bank loan which CMF had had to take up to complete the financing of the purchase.

(235) SNCM's lack of effective control of CMN (apart from the minority blocking vote at two levels of the structure) was then compensated by permanent commitments by the shareholders with regard, in particular, to the conclusion of partnership agreements binding the companies ([71]).

(236) SNCM has always taken an interest in CMN's development and has always been involved in it, even to increase passenger capacity on CMN's passenger cargo vessels to the detriment of SNCM's own market share with a view to enhancing the quality of the overall service supplied by the two companies.

(237) CMN's interesting position today, with regard to passengers and freight, has been largely established with the aid of SNCM's financial, strategic, legal (establishment of the joint venture) and functional (providing a sales network) resources. On the other hand, Stef-TFE, with an initial minimum capital input involving little risk, now controls the management of a company that is well established in its sector.

(238) The French authorities have pointed out that SNCM's personnel is well informed about these matters and are fully aware of what is at stake. This convergence of views on a issue that is of strategic importance to SNCM will enhance the quality of social dialogue within the company and thereby strengthen its viability.

(239) An examination of the financial aspects should not be confined to evaluating the cash injection resulting from the transfer but should also take into account the revenue which SNCM is likely to derive from its share in CMN.

(240) CMN is a company with homogeneous and regular activities. It benefits from a public service compensation which gives it a good return on investment. SNCM's share in CMN should start having a positive impact on its social accounts. As a result of the clear improvement of CMN's financial position, SNCM could draw dividends from CMN from 2003, which could rapidly become substantial from the 2004 financial year and exceed EUR […] million, even if account is taken of a weak distribution ratio of 30 %.

(241) Subsidiarily, it should be noted that a discontinuation of the partnership would deprive SNCM of its activity as CMN's general agent (7,5 % of revenue and an average cash effect amounting to EUR 2 million).

([71]) The French authorities enclosed a copy of the latest agreement with their letter of 13 February 2003.

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(242) In conclusion, France's position is that SNCM's participation in CMN is strongly strategic in nature. In its opinion, the transfer of these shares would not only make no sense industrially but would also be tantamount to a major strategic error.

4.2.2. *France's response concerning the nature of links between CMN and SNCM*

4.2.2.1. Existence of a shareholders' pact

(243) On the basis of information supplied by Stef-TFE, the Commission suspected that there existed a shareholders' pact between Stef-TFE and SNCM for the control of CMN. Accordingly, by letter of 16 January 2003 the Commission asked the French authorities if there existed such a pact for CMP's shares, the control holding of CMN, and also, if the answer was in the affirmative, whether this shareholders' pact could be transmitted to it. In their fax dated 25 February 2003, the French authorities confirmed that such a document existed and transmitted a copy to the Commission, emphasising its confidential nature. This shareholders' pact, concluded on 7 March 1992 between the chairman of SNCM and the chairman of the Compagnie de Navigation d'Orbigny (CNO) as part of the implementation in 1992 of its shareholding structure, covers mutual commitments between SNCM and CMN and industrial cooperation between the two groups.

(244) At a more fundamental level, with a view to strengthening a complex configuration whose details did not reflect the reality of the strategic choices made, it was decided between the partners that 'shareholding … [had] been conceived in a spirit of cooperation …' […] ([72]).

(245) The French authorities also point out that CNO, which has become Société de Travaux Industriels et Maritimes d'Orbigny (STIM d'Orbigny), has no means of acquiring SNCM's shares in CMN without the latter's explicit agreement, […].

(246) With regard to Stef-TFE chairman's suggestion to buy from SNCM the shares it holds in CMN, the French authorities have stated that he had tried to benefit from SNCM's current situation in order to obtain a transfer of SNCM's shares in CMN, which is in no case provided for in the provisions of the shareholders' pact.

4.2.2.2. Structure of SNCM's shareholding in CMN

(247) The French authorities have recalled that it is through CGTH, a holding company which is 100 % owned, that SNCM holds shares in CMN. CGTH owns 45 % of CMP, which is the main shareholder (55 %) in CMN.

4.2.2.3. Control of CMN

(248) The French authorities have confirmed that through action supported by the founding families ([73]), the Stef-TFE group ([74]) exercises effective control over CMP and consequently over CMN. However, they have stressed that SNCM has a minority blocking vote at two levels of the shareholding structure and rights derived from the shareholders' pact but that it does not intervene in the management of CMN, whose management comes under the Stef-TFE group.

([72]) […].
([73]) Who own 6 % of CMP's capital.
([74]) Which owns 49 % of CMP's capital.

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(249) The French authorities have specified the exact composition of CMN's current board of management, whose composition is based on a two-thirds/one-third distribution of the number of managers, and this has been the case since the redistribution of CMN's shares in 1992. The board consists of five managers from Stef-TFE, one representative of the Rastit family, the chairman of CGMF, the chairman of SNCM and a retired officer of CMN. The management board is chaired by one of the managers from Stef-TFE.

4.2.2.4. CMN's share offer

(250) In their reply of 25 February 2003, the French authorities indicated that SNCM had voluntarily cooperated in offering CMN's shares to its employees and also that it had wished to postpone the implementation of its proposals as soon as it had learned about the Stef-TFE group's intervention in the investigation procedure initiated against it as this intervention violated the basic principles of the shareholders' pact of 7 March 1992.

(251) On this point, the French authorities replied that the upgrading of CMN was being studied by SNCM as part of the decision to offer CMN's shares to its employees.

(252) The French authorities have drawn the Commission's attention to the fact that in his proposal to the Commission the chairman of Stef-TFE had given an estimate of the share held by SNCM whereas at the meeting of CMP's board on 3 February 2003 the chairman of CMP, who is also chairman of CMN, informed the managers of his decision to transfer 5 % of CMN's shares to a common investment fund reserved to employees at a price upgrading CMN to EUR 24 million.

4.3. **Comments from France on the observations submitted by the Provence-Alpes-Côte d'Azur region**

(253) While the French State on the whole agrees with the contents of the letter of 9 January 2003 from the chairman of the Provence-Alpes-Côte d'Azur region, it made the two following comments in its letter of 13 February 2003:

— contrary to what is alleged in point 2 of the said letter ([75]), the supply of services between mainland France and Corsica is not ‘in excess of demand’,

— SNCM's fares policy is consistent with the commitment it has given of not initiating a fares war and not being a ‘price leader’.

5. **ASSESSMENT OF THE AID**

5.1. **Nature of the measure and the status of public service compensation of a part of the proposed financial injection**

(254) The injection of EUR 76 million into SNCM constitutes State aid within the meaning of Article 87 of the Treaty. Recapitalisation of a company which is in such a precarious financial position and which after all has very limited prospects of becoming profitable cannot be treated on a par with the action of a well-informed private investor in a market economy. Incidentally, the Commission notes that the capital increase is not subscribed by SNCF, the second largest shareholder in SNCM.

([75]) In its letter of 9 January 2003, the regional council of Provence-Alpes-Côte d'Azur quoted from the market survey which had been transmitted to the Commission as part of the notification and of which it clearly had a copy, stressing the following finding: ‘The supply [of services between Corsica and mainland France] is in excess of demand. The rate of occupancy of vessels varies on average from 20 % in winter to 50 % in summer.’

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(255) Since 1 January 1999, the cabotage market has been completely open within the Community. Moreover, there is competition among Community operators on sea links between the Community and the Maghreb. Consequently, the aid for restructuring SNCM is therefore likely to create distortion of competition affecting trade between Member States.

(256) It should be noted first of all that SNCM suffered substantial deficits between 1991 and 2001 on all services to Corsica that are subject to public service obligation. The Commission takes the view that the possible deficit in 2002 on the Marseilles-Corsica link could not be recognised as since 1 January 2002 the operating fares for services to Corsica from Marseilles and the amounts of financial compensation have been agreed between the public authorities and SNCM on a contractual basis, contrary to the practice followed for the 1991 and 1996 agreements.

— With regard to the period from 1991 to 1999, the Commission's approach is to include in its calculation the result before tax for 1991 to 1999 for services to Corsica, as determined in the expert report drawn up for the Commission ([76]) for services to Corsica, deducting the appreciation on disposal of vessels. This figure is − FRF 217,0 million, corresponding to − EUR 33,08 million ([77]).

— For 2000 and 2001, which were the last two years of the 1996 agreement, the expert report at the time, because of a lack of available data, could not calculate the result obtained in respect of the Corsica services through analytical accounting. The Commission has nevertheless adopted the same approach as the abovementioned expert report and has recalculated, on the basis of the analytical profit-and-loss account supplied, the result before tax, removing provisions for restructuring already included in the restructuring costs as notified. Moreover, the Commission has been able to verify that according to the company's annual accounts there was no disposal of vessels during the two years in question.

(257) In this way, following the same approach and criteria as Decision 2002/149/EC, the Commission arrives at the following table 11:

TABLE 11

Analytical profit-and-loss account for 1991 to 2001

(in million)

Corsica network	2001		2000		1991 to 1999 ([78])		Total 1991 to 2001	
	FRF	EUR	FRF	EUR	FRF	EUR	FRF	EUR
Result before tax	−302,575	−46,127	−40,256	−6,137	−399,080	−60,839	−741,911	−113,104
Allocation to provision/depreciation *Liamone*	96,895	14,771	0,000	0,000	0,000	0,000	96,895	14,771
Allocation to provision/Social plan	112,110	17,091	0,000	0,000	0,000	0,000	112,110	17,091
Correction appreciation on vessels	0,000	0,000	0,000	0,000	182,100	27,761	182,100	27,761

([76]) The report referred to was compiled by BDO Consultants in July 2001 at the Commission's request for its preparation of Decision 2002/149/EC. The table included in section 104 of that decision was taken over from the report.
([77]) See the abovementioned Decision 2002/149/EC.
([78]) Data taken from Decision 2002/149/EC.

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(in million)

Corsica network	2001		2000		1991 to 1999 ([79])		Total 1991 to 2001	
	FRF	EUR	FRF	EUR	FRF	EUR	FRF	EUR
Result before tax and excluding appreciation and excluding restructuring	−93,571	−14,265	−40,256	−6,137	−216,980	−33,078	−350,807	−53,480

(258) In total, the aggregated corrected results of appreciations on vessels sold in this period and restructuring costs is EUR 53,48 million for the whole of the period 1991 to 2001 (1991 and 1996 agreements).

(259) Independently of the need to analyse the cash injection in the form of restructuring aid, this part of the cash injection is therefore justified as public service compensation under Article 86(2) of the Treaty and is therefore compatible with the common market in this regard.

(260) The French authorities have notified a plan for cash injection at a higher amount (EUR 76 million) as restructuring aid, and this is the reason why the procedure under Article 88(2) of the Treaty has been initiated. Accordingly, the cash injection should be investigated in its entirety.

5.2. **Legal basis of the assessment**

(261) Under Article 87(1) of the Treaty, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. However, under Article 87(2) and (3) of the Treaty, particular forms of State aid are compatible or may be considered to be compatible with the common market.

(262) The Community guidelines on State aid to maritime transport ([80]), which give an interpretation of Article 87 of the Treaty with regard to maritime transport, refer to the guidelines on State aid for rescuing and restructuring firms in difficulty for an evaluation of restructuring aid for maritime companies. Under point 19 of these guidelines, 'the only basis whereby aid for rescuing or restructuring firms in difficulty can be deemed compatible is Article 87(3)(c). Under this provision, the Commission has the power to 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."' This compatibility is assessed on the basis of five main criteria, namely analysis of the presence of restructuring aid, restoration of viability through a restructuring plan, avoidance of distortions of competition, proportionality of aid, and implementation of the restructuring plan.

5.3. **Analysis of the causes of SNCM's financial difficulties**

(263) The restructuring plan should normally describe the circumstances that led to the company's difficulties so as to enable an evaluation whether the proposed measures are appropriate. In this section, the Commission tries to establish the causes of SNCM's financial difficulties.

(264) One difficulty in this exercise is that SNCM had analytical accounting not per sea link but per vessel.

([79]) Data taken from Decision 2002/149/EC.
([80]) OJ C 205, 5.7.1997, p. 5.

▼B

5.3.1. *Level of aid under the French flag compared with that under the Italian flag*

(265) Because since 1999 the Cabotage Regulation has permitted the free choice of flag from among the flags of the Member States, SNCM which operates under the French flag faces competition from vessels flying the Italian flag. The main reason why Corsica Ferries, an undertaking under French law, opted for the Italian flag in 1999 was convenience of management ([81]) for its fleet as a whole since two thirds of its traffic is with Italy.

(266) As for the question whether SNCM has a lower level of aid than that which its competitors sailing under the Italian flag could benefit from, the Commission wishes to emphasise the following points concerning the different aid schemes:

— with regard to social charges, shipping firms under the French flag benefit from more substantial reductions in social charges in France ([82]) than their counterparts in Italy and the Italian scheme is also exclusively applicable to cabotage companies ([83]),

— with regard to company taxes, France, unlike Italy, has since the beginning of this year 2003 had a scheme of standard tax rates for shipping companies ([84]).

(267) Even though it is very difficult to make comparisons between the social and tax burden in each case, the Commission refutes the argument propounded by the representative of the general council of Bouches-du-Rhône ([85]), according to which the registration of Corsica Ferries under the Italian flag enabled it to benefit from a higher level of aid. The Commission has considered all aid schemes for shipping companies under the Italian flag as compatible with the common market. None of the relevant decisions have been contested before the Court of Justice of the European Communities. Furthermore, the Commission stresses that it has always exercised its control over derogating tax and social schemes benefiting Community shipping companies to bring these schemes closer together through the application of the Community guidelines on State aid for maritime transport.

(268) In conclusion, the Commission does not accept the argument that SNCM's main competitor receives more aid by flying another Community flag.

5.3.2. *Vessel purchase policy*

(269) On the subject of the possible impact of the renewal of an apparently significant number of vessels over a relatively short period on the company's results, the Commission notes that SNCM has purchased ([86]) several ships since 1996:

([81]) According to Corsica Ferries, the Italian flag is more flexible for taking on seamen from other Member States than the French flag.

([82]) Commission decision of 30 April 2001, Case N 88/2001: France — Refund to shipping companies of contributions for child benefit and Assedic.

([83]) Commission decision of 18 August 1999, Case N 396/99: Italy — Scheme for alleviating social charges in the maritime cabotage sector for the period 1999 to 2001 by 43 %. Scheme renewed twice for 2002 and 2003 with a reduction rate of 80 % and 25 % respectively (Commission decision of 6 September 2002, Case N 519/2002, and Commission decision of 11 March 2003, Case N 19/2003).

([84]) Commission decision of 14 May 2003, Case N 732/2002, France — Scheme imposing a lump sum on the basis of tonnage for the benefit of maritime transport companies.

([85]) See recital 180.

([86]) Fully owned or leased.

▼B

— the high-speed *Aliso* and the *Napoléon Bonaparte*, delivered in 1996,

— the high-speed *Liamone*, delivered in 2000,

— the *Danielle Casanova*, delivered in 2002,

— the *Pascal Paoli*, delivered in 2003.

(270) The Commission has wished to supplement the explanations provided by the French authorities concerning SNCM's vessel purchase policy to ascertain the rationality of the company's purchasing decisions. For this reason, the Commission has wished to quantify the extent to which the immobilisation of vessels has impacted on the company's consolidated balance sheets, also covering vessels purchased on a leasing basis, including current immobilisations which very largely comprise vessels ordered but not yet delivered.

TABLE 12

Net immobilisations of ships

(in million EUR)

Year	1996	1997	1998	1999	2000	2001	2002
Net immobilisations of ships (including leased)	342,809	307,840	274,520	238,921	267,396	218,536	326,414
Current immobilisations	0,331	0,734	7,249	51,781	19,986	108,437	1,440
Total	343,140	308,575	281,769	290,702	287,382	326,973	327,854

(271) Studying table 12, the Commission observes that recent acquisitions of ships have not resulted in a significant increase in mobilisations in the company's consolidated assets. In all cases, immobilisations have remained at levels below that recorded in 1996. The Commission therefore concludes that SNCM has not excessively invested in fleet renewal in recent years.

(272) The Commission notes that SNCM has financed four of its ships ([87]) on a lease basis in order to reduce its indebtedness on its social balance sheet and that three fully owned ships are still mortgaged ([88]). With regard to the remaining ships ([89]), SNCM has confirmed that the company has not found any bank prepared to accept them under mortgage guarantee. The level of the company's indebtedness and its weak cash flow, detailed below, which only just enables it to service its existing debt, are such that it is unlikely that any bank, acting as a private lender under market conditions, would be inclined to offer SNCM an additional loan. The risk that SNCM would not be able to pay back the instalments of the debt would be significant in view of the sums involved. Similar difficulties make it impossible for SNCM to have recourse to lease-back operations to reduce its indebtedness. The Commission's experience in effectively seizing ships or aircraft shows that it is difficult to enforce this in practice if such assets are used for services of national or regional interest.

([87]) The *Liamone*, the *Aliso*, the *Pascal Paoli* and the *Danielle Casanova*.
([88]) The *Méditerranée*, the *Paglia Orba*, the *Napoléon Bonaparte* and the *Asco* which is currently being sold off.
([89]) The *Île de Beauté*, the *Monté d'Oro*, the *Monte Cinto* and the *Corse*.

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(273) Finally, as regards the allegation that SNCM is obliged to purchase ships built in France, the Commission notes that the latest ships delivered new or renovated come from non-French shipyards.

5.3.3. *Chronically negative trading accounts*

(274) The Commission has investigated two aspects of the operating costs: wage bill and intermediate consumption.

TABLE 13

Results and operating margin

Year	1997	1998	1999	2000	2001	2002	Average
Operating results in million EUR	− 5,8	− 3,9	− 8,6	− 9,3	− 1,2	− 6,4	− 2,99
Operating margin operating results/(turnover + territorial continuity grant)	− 2,27 %	− 1,49 %	− 3,08 %	− 3,21 %	− 0,40 %	− 2,25 %	− 1,09 %

5.3.3.1. Wage bill

(275) First of all, the Commission notes that according to a study it has commissioned ([90]), the costs of passenger ship crews are higher under the French flag than under the Italian flag.

(276) The French authorities have indicated that staff expenditure remained stable between 1998 and 2002, going from EUR 111,1 million to EUR 114,4 million. However, they point out that about a third of this amount relates to wages for onshore personnel. This proportion corresponds to the staff ratio (between 764 and 824 onshore as against 1 519 to 1 599 onboard personnel for the years from 1999 to 2002).

(277) The Commission itself has calculated in table 14 certain ratios in connection with the trend in SNCM's wage bill.

TABLE 14

Trend in wage bill

Year	1997	1998	1999	2000	2001	2002
Wage bill (in million EUR)	73,681	77,027	77,751	81,014	83,489	83,536
Increase over previous year		4,54 %	0,94 %	4,20 %	3,06 %	0,06 %
Average staff FTE	2 344	2 377	2 283	2 386	2 423	2 392
Wage bill/staff (in EUR)	31 434	32 405	34 057	33 954	34 457	34 923
Increase over previous year		3,09 %	5,10 %	− 0,30 %	1,48 %	1,35 %
Turnover before tax (in million EUR)	175,4	180,9	195,0	204,9	204,1	205,8

([90]) See Annex 7 to the Commission's report on the implementation of the Cabotage Regulation, COM(2002) 203 final, available on internet at the following address: http://europa.eu.int/eur-lex/fr/com/rpt/2002/com2002_0203fr01.pdf.

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Year	1997	1998	1999	2000	2001	2002
Territorial continuity grant (in million EUR)	80,1	80,4	84,4	85,4	86,7	77,7
Revenue (turnover + grants) (in million EUR)	255,5	261,3	279,4	290,3	290,8	283,5
Wage bill/revenue	28,84 %	29,48 %	27,83 %	27,91 %	28,71 %	29,47 %

(278) The figures show that the wage bill has remained stable in recent years. However, the ratio of wages in relation to turnover seems significant, which is no doubt proof that the other shipping companies have outsourced more secondary activities than SNCM, reflecting a management choice connected with the company's traditional involvement in public services that the Commission does not feel is open to criticism as a matter of principle.

5.3.3.2. Intermediate purchases

(279) Reducing costs relating to intermediate consumption ([91]) is crucial for the success of the restructuring plan. The Commission notes that the benefits expected from the programme for purchase control entitled 'Achetons mieux' ('Buy better') will by themselves not suffice to rebalance the trading accounts. In the Commission's opinion, SNCM should continue its efforts and optimise its purchases during and beyond the restructuring period.

5.3.3.3. Commission's opinion on the trading account

(280) The Commission considers that it is imperative for SNCM to achieve sustainable positive operating results as soon as possible. This has not yet been the case in 2002 ([92]), contrary to the forecasts of the restructuring plan. The Commission notes that the efforts already made by SNCM to raise its productivity have not yet produced fully effective results. SNCM should not expect that their problems will be solved only through revenue from future appreciation on ships sold or from investment income.

5.3.4. *Public service constraints*

(281) The Commission notes that the financial compensation received under the five-year agreements of 1991 and 1996 have not enabled SNCM to completely make up its losses, as it has already highlighted in its Decision 2002/149/EC ([93]).

(282) In particular, the arrival on the scene of a competitor in 1996, after the five-year agreement of 1996 had been signed, has had negative effects on SNCM's results ([94]). SNCM lost passengers to its competitor from Nice and then also from Toulon, reducing its revenue. Account being taken of the fact that financial compensation for SNCM was relatively independent of revenue, the loss of a part of their custom to Corsica Ferries has automatically led to a deterioration of the public company's profits.

5.4. **Verification of compliance with the guidelines**

(283) In its analysis of this case, it has been the Commission's wish to find a balance between, on the one hand, the protection of competing interests in view of possible distortions of competition and, on the other hand, the risk of a monopoly emerging in services from mainland France to Corsica. The fact

([91]) See section 2.3.6.
([92]) SNCM had operating losses of EUR 6,3 million in 2002, the highest level in recent years apart from 2000.
([93]) On this subject, see Decision 2002/149/EC.
([94]) On this subject, see Decision 2002/149/EC.

▼B

is that the disappearance of SNCM would lead not only to serious financial difficulties for its suppliers and subcontractors ([95]) but also a factual monopoly of Corsica Ferries on this route ([96]).

(284) The Commission recalls that the guidelines stipulate that restructuring aid does not run counter to the Community interest if 'any distortions of competition will be offset by the benefits flowing from the firm's survival (in particular, where it is clear that … the firm's disappearance would result in a monopoly or tight oligopolistic situation).' ([97])

(285) In its analysis, moreover, the Commission has taken account of the following two points:

— on the one hand, SNCM has, over a relatively short period from 1996 to 2001, ad to cope with a severe disruption of its traditional market. From its original monopoly position, though controlled through agreements by the State and subsequently by the territorial collectivity of Corsica, it has ended up in a highly competitive environment. Finally, since the beginning of 2002 it has lost the operating grants for services from Toulon and Nice to Corsica,

— on the other hand, SNCM has inherited operating losses which were connected with the execution of the public service agreements of 1991 and 1996, as highlighted in Decision 2002/149/EC ([98]) in which the losses were indicated as amounting to FRF 217 million after inclusion of appreciation on particular vessels.

(286) It follows from these considerations that, given the context, the nature of the planned aid is not inherently contrary to the Community interest. However, a condition for granting the aid should be that it complies with the requirements of the guidelines and with all obligations which the Commission will see fit to impose to avert any potentially distorting effects of the aid.

(287) The Commission recalls that it has already authorised restructuring plans for shipping companies, specifically for Brittany Ferries, through Commission Decision 2002/15/EC ([99]), and CGM, of which SNCM has not been a subsidiary since 1976, through Commission Decision 97/14/EC ([100]).

5.4.1. *Status of firm in difficulty*

(288) In order to be eligible for restructuring aid, the firm must qualify as a firm in difficulty within the meaning of the guidelines ([101]).

([95]) As mentioned in section 3.3, the representatives of the territorial collectivities have pointed out in their observations to the Commission that SNCM had a major impact on the regional economy as a whole.
([96]) In this regard, the market survey provided by the French authorities emphasises that, 'maintaining the activities of two major operators on these links is imperative for sound economic reasons'.
([97]) See point 28 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.
([98]) See point 105 of Decision 2002/149/EC.
([99]) Commission Decision 2002/15/EC of 8 May 2001 concerning State aid implemented by France in favour of the Bretagne Angleterre Irlande company (BAI or Brittany Ferries) (OJ L 12, 15.1.2002, p. 33).
([100]) Decision 97/14/EC, mentioned in footnote 16.
([101]) See point 30 of the guidelines.

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(289) This criteria has been ascertained in the Commission's decision of 17 July 2002 ([102]) on rescue aid for SNCM and in its decision of 19 August 2002 initiating the formal investigation procedure against the recapitalisation plan on the basis of SNCM's annual accounts for 2001.

(290) It is necessary to examine whether SNCM still meets this condition, this time in the light of its most recent annual report, i.e. that of 2002. The Commission wishes to point out first of all, as required by the guidelines ([103]), that there is no Community definition of what constitutes a firm in difficulty. Nevertheless, the Commission has ascertained that SNCM meets the test provided for in point 5 of the guidelines under which it can be established beyond doubt that a firm is in difficulty. It has also verified that SNCM's position includes the signs commonly referred to to ascertain whether a firm is in difficulty, as listed in point 6 of the guidelines.

5.4.1.1. Disappearance of the company's registered capital

(291) SNCM has a capital, with appraisal increments, of EUR 17,7 million, to be compared with a balance brought forward in 2002 of − EUR 69,9 million, of which EUR 40,4 million for the net results of 2001 alone, and reserves of EUR 21,5 million. The company's capital excluding regulated provisions ([104]), still called net situation under French accounting terminology, still remains negative at − EUR 26,5 million in 2002, following − EUR 30,7 million in 2001. This level reflects the disappearance of more than half of the company's share capital, more than a quarter of which disappeared during the 12 last months following the notification, thus confirming the sufficient but non-obligatory condition described in point 5(a) of the guidelines ([105]), serving as proof that the company actually is in difficulty.

5.4.1.2. Other signs showing that SNCM is in difficulty

(292) In accordance with the guidelines, ‘the usual signs of a firm being in difficulty are increasing losses, diminishing turnover, growing inventories, declining cash flow, mounting debt, rising interest and falling or nil net asset value.’ ([106])

(293) In this regard, the Commission has established the following facts in SNCM's accounts, including its annual accounts for 2002, even though at the time they were transmitted to the Commission they had not yet been formally approved by SNCM's general meeting of shareholders and they can therefore not be considered final:

— losses increased by − EUR 6,2 million in 2000 to − EUR 40,4 million in 2001. Between 2001 and 2002, the current result rose from − EUR 5,1 million in 2001 to − EUR 5,8 million

([102]) Abovementioned decision.

([103]) See point 4 of the guidelines: ‘There is no Community definition of what constitutes “a firm in difficulty”. However, for the purposes of these guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.’

([104]) Regulated provisions are costs entered in the accounts pursuant to French tax rules, e.g. exceptional amortisation as defined in the footnote on page 109.

([105]) See point 5(a) of the guidelines:‘In particular, a firm is, in any event and irrespective of its size regarded as being in difficulty for the purposes of these guidelines:

(a) in the case of a limited company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months.’

([106]) See point 6 of the guidelines.

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in 2002, with net losses in 2002 reduced only through the sale of a number of ships,

— passenger turnover between 2000 and 2001 diminished by EUR 2,3 million while the passenger transport market between Corsica and mainland France rose by nearly 17 %,

— net financial debt, excluding leases, went from EUR 135,8 million in 2000 to EUR 144,8 million in 2002,

— financial charges (interest and similar charges) went from EUR 7,0 million in 2000 to EUR 9,268 million,

— capital diminished by EUR 36 million between 2000 and 2001.

(294) A large number of signs — which are not cumulative — provided in the guidelines have been positively verified. The Commission also notes worrying signs in SNCM's financial situation:

— the company's capital remains very weak in relation to the company's size and financing requirement. While it was EUR 29,7 million at the end of 2001, it would be EUR 33,8 million at the end of 2002. This apparent progression does not result from its operational activity as the current 2002 result remains negative as indicated above. Instead, it is connected with the first results of the restructuring plan and the transfers under the plan which have generated exceptional appreciations exceeding EUR 5 million, and with the first year of transfer of the provision allocated in 2001 for the *Liamone*. It should further be pointed out that of these net figures EUR 60 million originate from the application of exceptional fiscal depreciation ([107]). Accordingly, this part has in the past generated a fiscal advantage which will disappear in the future. It is therefore tantamount to a future tax debt ([108]) which, excluding reportedly deferred depreciation, amounts to EUR 20 million at the end of 2001 and still EUR 16,8 million at the end of 2002. Taking account of these data, net capital will be only about EUR 10 million at the end of 2001 and EUR 17 million at end 2002,

— the EUR 33,8 million capital at end 2002 should be compared with net fixed assets of EUR 285 million at end 2001 and EUR 283 million at end 2002, which means that virtually all of the company's long-term financing is ensured through debts. Financial debts, excluding leasing, accounted for EUR 134,5 million at the end of 2001 and EUR 144,8 million at end 2002. This very fragile financial position prevents the company from finding other resources on the market,

([107]) Exceptional depreciation is the difference between straight-line depreciation, deducted from assets on the balance sheet, and diminishing balance depreciation authorised by tax law. If diminishing balance depreciation is not used to enter depreciation into the accounts, the difference between it and cumulated straight-line depreciation is entered under liabilities (exceptional depreciation), traditionally included in French accounting under capital. Total depreciation at the end of the accounting period remains the same and the system therefore does not make it possible to anticipate and generate a tax reduction in the first years.

([108]) Outlined in the annexes to the 2001 annual accounts (p. 24) and the 2002 provisional accounts (note 2.18).

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— analysis of the company's internal financing capacity (EUR 29 million in 2001 and EUR 24,7 million in 2002) reveals the same weaknesses: its level hardly covers refund commitments on existing debts (EUR 27,5 million in 2001 and EUR 21,3 million in 2002). Internal financing capacity can therefore provide no security to a new lender.

(295) Moreover, the French authorities have confirmed to the Commission that the banks are now refusing to lend money to the company because of its indebtedness, even though SNCM has proposed to put up its newest vessels, unencumbered by mortgage or other servitude, as a security for a bank loan.

(296) The current public service delegation contract in no way changes this analysis. While the contract will certainly enable SNCM, in combination with the success of the restructuring plan, to attain positive operating results, the fact remains that its acute lack of capital, its growing indebtedness and the cost of operational measures under the restructuring plan should after a certain lapse of time lead the company to cease payment.

(297) The Commission's conclusion is that SNCM is certainly a firm in difficulty as defined in the guidelines.

5.4.2. *Absence of restructuring aid over the past ten years*

(298) The guidelines ([109]) provide that a company which in the past has already benefited from restructuring aid cannot normally receive such aid a second time during the 10 years following the end of the restructuring period. Among the forms of aid already allocated to SNCM, there is no restructuring aid ([110]). This is in fact SNCM's first restructuring programme since its inception in 1976.

5.4.3. *Restoration of viability*

(299) The restructuring plan, where duration must be as short as possible, should restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. The restructuring plan should provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital should be enough to enable the restructured firm to compete in the market place on its own merits.

(300) Similarly, the effect of the measures and the success of the plan are not dependent on market trends, except for the increase of services to the Maghreb which corresponds in particular to a return to the position which SNCM had in the mid-1990s.

(301) Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring. With regard to services between Corsica and the Italian mainland, SNCM has learned a lesson from its past failures: it has decided to close down its Italian subsidiary, Corsica Marittima, which had been making a loss since its inception in 1990 until 1997.

([109]) See point 48 of the guidelines.
([110]) See section 2.5.

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(302) Restoration of profitability of services between Marseilles and Corsica is expected in the short term and services to the Maghreb are already profitable. Only services from Nice remain more uncertain but its relative importance is diminishing and the early depreciation of the *Liamone* in 2001 will make it possible to turn the company around to positive results on this link. Moreover, the Commission accepts the argument that a presence, even a reduced one, from Nice remains necessary for the company's position on the market as a whole. Redeployment to the Maghreb will help to reduce the company's dependence on its traditional routes and should also help it to restore viability because of the stronger margins on its Maghreb services.

(303) With regard to long-term viability, i.e. beyond the term of the current public service delegation contract, the Commission takes the view that implementation of the plan should make it possible for the company to face competition effectively when contracts are renewed. Finally, it notes that, even if there is a partial loss (a car ferry), this contract should enable the company to maintain positive results. If the loss of this contract should lead to a 40 % or higher drop in company revenue in its traditional market, as envisaged in another scenario, the Commission believes that this would bring about a situation which few restructuring plans, with or without public support, could remedy, and that it is premature to envisage it at this stage.

(304) The Commission should also determine the time-frame of the restructuring period, entailing a number of obligations incumbent on the aid recipient. Even though the restructuring plan comprises actions essentially covering 2002 and 2003, the fact remains that SNCM will not have 'sufficient' capital until 2005 to 2006. Accordingly, the Commission sets 31 December 2006 as the end of the restructuring period.

5.4.4. *Realistic assumptions*

(305) The guidelines require that the restructuring plan should be based on 'realistic assumptions as to future operating conditions' ([111]).

(306) The Commission considers that the market study is a serious one and provides a sound basis for scenarios of company development.

(307) The improvement in viability must derive mainly from internal measures contained in the restructuring plan and may be based on external factors such as variations in prices and demand over which the company has no great influence if the market assumptions made are generally acknowledged. This means that the company's improvement should not only concern services to the Maghreb. It should above all be achieved through better control of production costs and enhanced productivity.

(308) The restructuring plan should normally take account, *inter alia*, of the present state of and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's specific strengths and weaknesses.

(309) The restructuring plan should enable the firm to progress towards a new structure that offers it prospects for long-term viability and enables it to stand on its own feet.

(310) The plan should provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs including depreciation and financial charges. The expected return on capital should be enough to enable the restructured firm to compete in the market place on its own merits, even if after 2007 SNCM is no longer allocated the public service delegation contract for services between Corsica and Marseilles.

([111]) See point 32 of the guidelines.

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5.4.5. *Avoidance of undue distortions of competition*

(311) Measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. Otherwise, the aid should be regarded as contrary to the common interest and therefore incompatible with the common market ([112]).

(312) In accordance with the guidelines, this condition should in the case under discussion take the form of a limitation on the presence which the company can enjoy on its traditional market, i.e. services to Corsica, which is also the one where it faces competition from companies established in the Community, which is not the case for services to the Maghreb.

(313) The Commission is of the opinion that there is no excess capacity on maritime services to Corsica in view of the highly seasonal character of the significant growth in traffic ([113]). The Commission also notes that the average occupancy rate on ships of SNCM's main competitor is lower than that of the public company. As there is no excess capacity on the market within the meaning of the guidelines, there is no need to contribute to its improvement. The sale of ships, rather than their demolition, therefore constitutes a reduction in capacity admissible in the light of the guidelines.

(314) The compulsory limitation or reduction of the company's presence on the relevant market(s) does represent a compensatory factor in favour of its competitors. This factor should be in proportion to the distortive effects which the aid will cause or is likely to cause.

(315) The restructuring plan significantly reduces the firm's presence on its market to the direct benefit of its competitors, because of the following elements:

— the closure of the Corsica Marittima subsidiary (82 000 passengers in 2000) which was responsible for services between Italy and Corsica, and thereby the withdrawal of the SNCM group from the market of services between Italy and Corsica,

([112]) See point 39 of the guidelines: 'Compensatory measures can take different forms according to whether or not the firm is operating in a market where there is excess capacity. In assessing whether or not there is excess capacity on a given market, the Commission can take into account all the relevant data in its possession:

(i) where there is a Community-wide or EEA-wide structural excess of production capacity in a market served by the recipient, the restructuring plan must make a contribution, in proportion to the amount of aid received and its impact on that market, to the improvement of market conditions by irreversibly reducing production capacity. A capacity reduction is irreversible when the relevant assets are rendered permanently incapable of achieving the previous rate of output, or are permanently converted to another use. The sale of capacity to competitors is not sufficient in this case, except if the plant is sold for use in a geographic market in which its continued operation is unlikely to have significant effects on the competitive situation in the Community. The capacity reduction requirements must contribute to a reduction in the recipients firm's presence on its market or markets;

(ii) where, on the other hand, there is no Community-wide or EEA-wide structural excess of production capacity in a market served by the recipient, the Commission will nevertheless examine whether compensatory measures should be required. Where any such compensatory measures involve a reduction in the capacity of the firm concerned, the necessary reduction could be achieved through the hiving-off of assets or subsidiaries. The Commission will have to examine the compensatory measures proposed by the Member State concerned, whatever form they take, and determine whether they are sufficient in scope to mitigate the potentially distortive effects of the aid on competition. In examining the necessary compensatory measures, the Commission will take account of the state of the market, and in particular its level of growth and the extent to which demand is met.'

([113]) See table 1.

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— the virtual withdrawal of services between Toulon and Corsica, a market which in 2002 accounted for as many as 460 000 passengers,

— limitation of the total number of places on offer and the number of round trips made each year from 2003, specifically on services between Nice and Corsica ([114]),

— the sale of four ships ([115]).

(316) Throughout the Gulf of Genoa and from Toulon, SNCM is lowering its services on offer by more than one million places a year compared with 2001, i.e. a division by more than two, which is to the immediate benefit of its competitors even though it is these services that are showing the strongest growth ([116]).

(317) However, the Commission believes that these measures, although of considerable scope, should be combined with conditions designed to limit possible distortions of competition. Specifically, care must be taken to ensure that the company devotes its surplus liquid assets to aggressive activities that are likely to cause distortions on the market ([117]). Accordingly, it should be stipulated that during the restructuring period SNCM cannot finance any new investment other than the costs of redeploying its activities to the Maghreb incorporated in the restructuring plan. This condition, detailed below, regarding the absence of investment in new ships, even to replace existing ones, will prevent any adverse effects of the aid on the main competitors or at least keep such effects to the absolute minimum.

5.4.6. *Aid limited to the minimum*

(318) The amount of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs, without thereby hampering its chances of restoring viability.

(319) In the case under investigation, the Commission notes first of all, in the light of point 40 of the guidelines, that the restructuring plan includes significant sales of essentially naval assets amounting to EUR 40 million in sales price and EUR 21 million in net product from associated debts. Additional disposals are also imposed by the Commission in section 5.5.2 in respect of assets, in the form of shareholding, which the Commission deems non-strategic for the company's activity. Nevertheless, these sales do not suffice to restore viability to SNCM whose financial situation remains characterised by significant liabilities at the end of this operation.

(320) In its decision of 19 August 2002, the Commission indicated that it had not been convinced of the relevance of the calculating method presented by the French authorities to determine the amount of aid. Notwithstanding the additional explanations supplied by France, the Commission has made its own evaluation.

5.4.6.1. Analysis of calculation methods proposed by France

(321) The Commission's views on the approach adopted by the French authorities ([118]), i.e. based on the capital/debt ratio, are as follows:

— the panel of five companies used by the French authorities is not sufficiently representative of the maritime cabotage sector,

([114]) See table 2.
([115]) See section 2.3.2.
([116]) See tables 1 and 2.
([117]) In this regard, see section 5.4.1.
([118]) See section 2.3.8.3.

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— the 79 % capital/debt ratio produced by this panel of companies is in fact in no way a reliable indicator of a company's health,

— the French authorities have not explained what exactly is covered by the amount of financial debts of these five companies and therefore cannot guarantee that these data are consistent with the amount of SNCM's indebtedness as indicated in the restructuring plan,

— the French authorities have not shown that the 79 % capital/debt ratio emerging from this panel of companies is properly taken into account for the period 2002 to 2007 in the financial model included in the restructuring plan.

(322) With regard to the other approaches proposed by France to show that the figure of EUR 76 million is not too high, the Commission questions the relevance of the method used.

(323) The first alternative method ([119]), based on the capital necessary to finance the existing fleet, seems inappropriate in that the French authorities have included in this calculation the value of fleet acquisition and not its sales value in 2002. The fact is, however, that if a new company were to start up with the same fleet as SNCM's such as it exists today it would have to find capital proportionate to the purchase value of all the ships together and not their value when built. Moreover, such an approach fails to take account of other major assets such as the computer booking system and the buildings in which the company has its headquarters.

(324) In the Commission's opinion, the second alternative method ([120]), based on SNCM's expenditure, seems more appropriate. However, the Commission should like to see a revision of the amount of EUR 41,7 million for previous losses, in particular to take account of the 2002 results and only losses connected with services to Corsica prior to 1999. The Commission's approach is set out in section 5.3.6.2.

5.4.6.2. Commission's approach

(325) The Commission takes the view that the primary aim of restructuring aid should not be to increase the company's capital (simple financial restructuring) but to help the company to switch from its monopoly position under the 1976 agreement to a competitive position. This is why the Commission is reticent to base the level of aid on the method adopted by the French authorities, as it is difficult to specify the appropriate level for SNCM's capital. The Commission wishes to point out that by adding or removing certain companies from the panel chosen by the French authorities, the average capital/debt ratio may vary significantly.

(326) The Commission considers that the restructuring aid may cover the costs of the different actions provided for in the restructuring plan (operational restructuring), on the one hand, and the company's losses incurred in carrying out its public service agreements until the end of 2001 (financial restructuring), on the other. First, the Commission accepts that a part of the aid can be used to finance the costs of operational measures required by the change in the legal and competitive contexts in which the company operates. Second, since these actions alone do not enable the company to improve the level of its indebtedness rightaway, the Commission also accepts that the other part of the aid can be used to repay the debts resulting from undercompensa-

([119]) See section 2.3.8.2.
([120]) See section 2.3.8.1.

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tion from which SNCM suffered under the 1991 and 1996 agreements. Accordingly, the Commission wishes:

— to authorise the financing from public funds only the costs inherent in operational measures under the restructuring plan,

— to draw a definitive line under the consequences of the inadequacy of financial compensation under the said agreements in view of the operating expenses and onshore costs recorded for this period on the sea links covered by the public service obligations.

(327) As has already been noted, the financial undercompensation for public service in the period 1991 to 2001 amounted to EUR 53,48 million.

(328) For costs linked with operational restructuring measures, the Commission adopts the figure of EUR 46,0 million ([121]). The Commission notes that the company should make EUR 21 million in the net revenue from disposals ([122]) following implementation of the disposals provided for in the restructuring plan. Bearing these facts in mind, the Commission therefore reaches the conclusion that the sum of EUR 76 million is completely justified to restore the company's viability in the short term. SNCM is now unable to obtain a bank loan, even if it proposed its newest ships, unencumbered by mortgage or other servitudes, as a mortgage guarantee ([123]). Finally, the Commission considers that the company is unable to find other sources of capital to finance its restructuring programme. Accordingly, the remainder of its requirement, amounting to EUR 76 million, should according to this calculation be provided in the form of restructuring aid and any revenue from the disposal of non-strategic shares.

(329) The Commission therefore believes that the amount of recapitalisation of EUR 76 million notified by the French authorities in the last analysis seems consistent with the approach which it has adopted, subject, as will be indicated below ([124]), to the taking into account of revenue from transfers of non-strategic shares that would supplement the disposals provided for in the restructuring plan.

(330) Finally, the Commission considers that the aid proposed does not exceed what is necessary to restore viability. On the basis of the financial situation as presented at the end of 2002, as detailed above, a EUR 76 million cash injection would raise the company's net position, all other things remaining equal, from about − EUR 26,5 million to + EUR 49,5 million. Similarly, the company's financial debt would change from EUR 144,8 million (situation at end 2002) − EUR 76 million (cash injection) + EUR 31,2 million (outflow for operational restructuring measures, excluding exceptional depreciation of the *Liamone*), to about EUR 100 million. Consequently, it would remain equal to double the net position, leading the Commission to conclude that this obviates the risk of surplus cash within the meaning of the guidelines. To the extent that there is such a risk, the conditions laid down in the present decision are intended to prevent any distortion of competition. Even if account is taken of the regulated provisions of EUR 60 million discussed above,

([121]) See section 2.3.8.1. The French authorities have announced EUR 46,2 million, taking into account, in addition to the costs of operational restructuring measures (EUR 31,2 million), an expected depreciation of the *Liamone* of EUR 15 million. This amount was reduced to EUR 14,8 million in the 2001 accounts, and the figure adopted is therefore EUR 46,0 million. See also section 2.4.1.4.

([122]) See section 2.3.2.

([123]) See section 5.3.1.2.

([124]) See section 5.4.2.4.

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of which the Commission considers that only part of these are company capital, the company's own resources of approximately EUR 110 million would remain counterbalanced by virtually equivalent debts. In the Commission's opinion, the presence of net fixed assets to be financed to the tune of EUR 283 million at the end of 2002 fully justifies this level of capital. A reduction of the aid, e.g. through new mortgage loans taken out by SNCM, would automatically lead to an increase in debt and would, because of disrupting this adequate balance according to the Commission's analysis, leave no scope for the company's financial restructuring.

5.5. **Necessity of the conditions imposed by the Commission**

(331) In accordance with the guidelines ([125]), the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest.

(332) In the case under review, the Commission decides to impose a number of conditions with the dual purpose of limiting the company's capacity and preventing it from adopting an aggressive fares policy that would be harmful to its competitors in services to Corsica.

5.5.1. *Reduction of capacity*

(333) However, the reduction of the fleet ([126]) provided for in the restructuring plan should be balanced in the light of the ship purchase policy which SNCM has pursued in recent years, acquiring two new ships in 2002/2003, a car ferry and a passenger cargo ship of average capacity.

(334) Moreover, the increase in the company's capital following recapitalisation could give its management room for manoeuvre to purchase, where appropriate, new ships and/or acquire new shares contrary to the very objective of restructuring which is to focus on internal efforts to turn the company around.

(335) Bearing this in mind, the Commission is obliged to impose additional conditions to ensure compliance with the condition concerning reduction of capacity.

(336) The Commission should guarantee that the fleet of the SNCM group does not exceed the current total number of ships following disposal of four ships. Moreover, the Commission should prohibit the company from renewing its ships during a particular period, except for reasons beyond the company's control, requiring a Commission decision.

(337) The Commission also deems it necessary, in accordance with the restructuring plan notified by the French authorities, to limit the number of round trips on the various sea links to Corsica.

(338) The Commission considers that it is not appropriate to impose more drastic conditions with regard to capacity reduction because of, first, the company's obligations under its public service delegation contract and, second, prospects for traffic increase to Corsica and North Africa and, finally, the risk of bringing about a situation in which its direct competitor has a monopoly position on links between mainland France and Corsica. In this connection, it is recalled that the guidelines allow ‘a relaxation of the need for compensatory measures … if such a reduction or limitation is likely to cause a manifest dete-

([125]) See point 42 of the guidelines, which stipulate that the Commission may require the Member State: ‘(i) to take certain measures itself (e.g. to open up certain markets to other Community operators); (ii) to impose certain obligations on the recipient firm (e.g. to refrain from acting as price leader on certain markets); (iii) to refrain from granting other types of aid to the recipient firm during the restructuring period.’

([126]) See section 2.3.2.

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rioration in the structure of the market, for example by having the indirect effect of creating a monopoly or a tight oligopolistic situation' ([127]).

(339) In view of the expected duration of the restructuring plan ([128]), the Commission deems it reasonable to fix the deadline for the constraints set out above at 31 December 2006, by which time there will be the hoped for restoration of 'normal' net results for a maritime company of SNCM's size and of a reasonable level of company capital. A possibly earlier turnaround, however, will not bring the end of the period in which these constraints will have to maintained forward in time.

5.5.2. *The company's contribution to the restructuring effort*

(340) In accordance with the guidelines, the company in difficulty should 'make a significant contribution to the restructuring plan from [its] own resources, including through the sale of assets that are not essential to the firm's survival, or from external financing at market conditions' ([129]).

(341) The Commission notes SNCM's efforts in the form of the disposal of assets (EUR 40 million in sales price and EUR 21 million in net proceeds from disposal). However, it finds that SNCM holds an important portfolio of shares in various companies which are either not directly related to the company's object or are not intrinsically connected with the services which the shipping company provides. The fact is that none of these shares have been included in the programme for disposing of assets laid down in the restructuring plan. The Commission takes the view that the company should dispose of all non-strategic shares in an open and transparent procedure and that the restructuring plan proposed by France ought to have made provision for this disposal. Moreover, the Commission considers that the proceeds from this disposal should proportionately reduce the requirement for aid in view of the need to keep the amount of aid to a minimum.

5.5.2.1. Determining non-strategic holdings

(342) To counterbalance its conditional approval of recapitalisation, the Commission decides to oblige the company to dispose of all its holdings in the following subsidiaries:

— Amadeus France, a company developing and marketing a computerised booking system, in which SNCM has a 13 % share ([130]),

— the Compagnie Corse Méditerranée, an airline in which SNCM has a 7 % share ([131]),

— the real estate company Schuman, in which CGTH has a 50 % share,

— Someca,

— SMIP; failing this, SNCM could sell SMIP's sole asset, the *Southern Trader* ([132]), and close down this subsidiary.

(343) With regard to all of these holdings, the Commission notes that the French authorities have never in the course of the procedure indicated that they are of strategic importance for SNCM's survival.

([127]) See point 38 of the guidelines.
([128]) See recital 304.
([129]) See point 40 of the guidelines.
([130]) According to the SNCM group's annual report of 2001.
([131]) See footnote 129.
([132]) According to information provided by the French authorities, a promise of sale has been made for this ship.

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(344) The Compagnie Corse Méditerranée (CCM), known under its business name CCM Airlines, is an aviation company operating air services to Corsica. It is a semi-public limited company with a capital of EUR 10 335 520. Its main shareholders are the territorial collectivity of Corsica (60,37 %), Air France (11,95 %), Crédit Agricole (7,55 %), the Caisse des Dépôts et Consignations (4,75 %), SNCM (6,78 %), TAT EA (2,52 %), TAT SA (1,68 %), the Caisse de Développement de la Corse du Sud (1,21 %), the Chambre de Commerce de Haute-Corse (0,84 %). Its board consists of 11 members: the Assembly of Corsica (seven members), Air France (one member), Crédit Agricole (one member), Caisse des Dépôts et Consignations (one member) and SNCM (one member). The Commission takes the view that there is no need for a shipping company such as SNCM to have any holdings in airlines and that SNCM's holding is CCM are not of strategic importance. It should therefore be disposed of as a condition for recapitalisation.

(345) The Schuman company covers various fixed assets. In the Commission's opinion, the holding in this company is not of strategic importance for SNCM's activities and should therefore be sold off.

(346) Someca is specialised in the transport of cement to Corsica on a bulk cargo ship. Bulk transport provides little synergy with ro-ro freight and the small volume of cement transported to Corsica does not justify keeping shares in such a highly specialised subsidiary. Accordingly, the Commission considers that this holding is not of strategic importance to SNCM and that it should therefore be disposed of.

(347) SMIP's sole activity is leasing the *Southern Trader*. This activity of leasing ships is far removed from SNCM's core activity. It is in no way of strategic importance to the group. SNCM should therefore either dispose of this subsidiary or sell off its sole asset, the *Southern Trader*, and close down this subsidiary.

5.5.2.2. The special case of CMN

(348) The case of CMN is more complex. On the one hand, SNCM and the French authorities maintain that SNCM's holding in CMN is of crucial importance and is therefore of strategic significance to ensure execution of the public service delegation contract. On the other hand, Corsica Ferries and Stef-TFE are of the opinion that this holding is not of strategic importance to SNCM.

(349) The Commission notes that even though SNCM and CMN are both competitors and partners, the two companies participate in carrying out the public service contract.

(350) Moreover, the two companies have developed synergies on services to Corsica which go beyond what is required by the public service delegation contract:

— a joint computerised booking system not only for Corsica but also for the Marseilles-Sardinia links,

— a joint passenger embarkation control system,

— coordination of timetables,

— CMN access to SNCM's network of agencies in Europe.

(351) The Commission notes that cooperation between the two companies goes back a long way, to 1954. The Commission also notes that CMN's fleet clearly complements SNCM's in meeting the requirements of services to Corsica. The Commission also notes that the shareholders' pact binding the two companies provides for cooperation between them.

(352) The Commission concludes from the above that SNCM's shareholding in CMN is of crucial importance to SNCM for its long-term development.

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(353) Bearing these facts in mind, the Commission does not deem it appropriate to require in this decision that SNCM disposes of its holdings in CMN.

(354) The same applies to the Cofremar company, a joint subsidiary of SNCM and CMN, which compiles statistics on freight transport to Corsica.

5.5.2.3. Other strategic holdings

(355) The Sud-Cargos company offers major synergies and genuine complementarity with SNCM on services to the Maghreb. Sud-Cargos is a partner of undeniable importance if SNCM is to develop ro-ro transport to the Maghreb. Sud-Cargos also contributes very specific knowledge of the market of services to North Africa. The two companies can draw benefit from pooling particular onshore structures in Marseilles and in the Maghreb to achieve economies of scale. Moreover, SNCM's business structure provides Sud-Cargos with a substantial part of the latter's turnover.

(356) SNCM's other subsidiaries contribute significantly to its activities and can likewise not be severed from the SNCM group. The Commission takes the view that their disposal cannot be contemplated without jeopardising the company's short-term viability because of the essential roles they play within the group.

5.5.2.4. Taking account of the proceeds expected from the required disposals

(357) The Commission wishes, where appropriate, to reduce the amount of aid in order to take account of the proceeds from the disposal of non-strategic holdings. However, it does not have the information necessary to determine the amount that would accrue from the required disposals, although a very rough estimate suggests that it will be around EUR 10 million, excluding the disposals already envisaged under the restructuring plan. The Commission therefore deems it necessary that a part of the aid, of the order of EUR 10 million, be frozen pending clarification of this amount and cannot be granted immediately.

(358) Should it appear that the disposals have generated more than EUR 10 million for the company, the second tranche cannot be granted to SNCM. The Commission has discarded the option of further reducing the amount of the first tranche of aid approved, in order to encourage SNCM to sell off these holdings at the best possible price. However, should the required disposals other than those already provided for in the restructuring plan generate less than EUR 10 million, the remainder will be paid, account being taken of the proceeds from these disposals. The second payment can, where appropriate, be authorised by the Commission only if all other conditions of the present decision are complied with.

5.5.3. *Prevention of price leadership*

(359) In the Commission's opinion, the information supplied by the French authorities enable it to discard the allegations that SNCM has been acting as the price leader ([133]) on services to Corsica.

(360) Nevertheless, the Commission deems it of crucial importance to monitor throughout the restructuring period that SNCM does not pursue an aggressive fares policy. For this reason, the Commission decides to make the grant of restructuring aid conditional on the absence of any fares charged by SNCM below those of its competitors on services to Corsica.

(361) In order to avoid situations in which competitors would abnormally raise their fares for crossings, the Commission combines this rule with a safeguard clause to be applied if all

([133]) On this subject, see sections 2.3.7 and 4.1.1.

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the competitors advertise, for equivalent services and identical dates, prices above those of SNCM's fares in a reference year before the arrival of competitors on this market. If SNCM's competitors were to unfairly increase their fares, SNCM should be allowed to advertise the lowest fares to bring about a return to acceptable price levels. To this end, the Commission chooses 1996 as the reference year, as it was in this year that SNCM was for the first time facing competition on its links between the ports of mainland France and Corsica and because fares have dropped since. Consequently, it would not be normal for prices on the market to exceed those in force in 1996 at any time in the future. The reference prices should of course be reviewed in the light of inflation recorded in France.

(362) The condition laid down in recital 361 will be checked if every day the lowest fares advertised by SNCM exceed the lowest promotional fares advertised by each of its competitors for the same destinations and services. The Commission will investigate any failure to comply with this condition.

5.5.4. *Limitation of round trips to Corsica*

(363) The Commission considers it important that the compensatory measures offered to SNCM's competitors can be maintained throughout the restructuring period. Accordingly, it decides to make aid conditional upon strict adherence to the commitment which the French authorities make in the restructuring plan with regard to the annual number of round trips on the various sealinks with Corsica.

(364) The annual number of round trips of ships on the various sealinks to Corsica will be limited until 31 December 2006 to the thresholds indicated in table 3, save for exceptional reasons beyond the company's control which would make it necessary to transfer particular round trips to other ports and save for a change in the public service obligations incumbent on the company.

5.5.5. *Full implementation of the restructuring plan and compliance with conditions imposed*

(365) SNCM must fully implement the restructuring plan that has been accepted by the Commission and carry out all the obligations laid down in this decision. The Commission regards failure to comply with the plan or with all or some of the obligations laid down in the present decision as an abuse of the aid which will automatically lead to a formal investigation procedure and eventually to the risk that the Commission claims back the aid paid in its final decision.

5.5.6. *Verification and annual report*

(366) The Commission should be enabled to ascertain the smooth implementation of the restructuring plan through regular and detailed reports to be submitted to it by France.

(367) With regard to aid to large firms, the guidelines provide ([134]) that, 'the first of these reports will normally have to be submitted to the Commission not later than six months after approval of the aid. Reports will subsequently have to be sent to the Commission at least once a year, at a fixed date, until the objectives of the restructuring plan can be deemed to have been achieved. They must contain all the information the Commission needs in order to be able to monitor the implementation of the restructuring programme, the timetable for payments to the company and its financial position and the observance of any conditions or obligations laid down in the decision approving the aid.'

([134]) See point 46 of the guidelines.

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6. CONCLUSION

(368) In conclusion, the Commission considers that the restructuring aid in the form of recapitalisation is compatible with the common market, provided that the conditions laid down in the present decision are complied with.

(369) The Commission asks that France:

— inform the Commission as soon as possible, and not later than 15 working days after the date on which this decision is received, of the elements which it believes should be covered by the obligation of professional secrecy provided for in Article 25 of Regulation (EC) No 659/1999,

— inform the recipient of the aid of this decision as soon as possible, without divulging, where appropriate, any elements which it considers as covered by professional secrecy, the communication of which to the recipient of the aid could be harmful to particular interested parties, and indicate in the version transmitted, where appropriate, any other elements which it deems to be covered by professional secrecy and which it has divulged.

(370) The Commission, while reminding France that:

— the restructuring period for SNCM ends on 31 December 2006,

— under the guidelines ([135]), any individual aid intended to encourage tangible investment during the restructuring period for the benefit of SNCM or one of its subsidiaries under an aid scheme approved by the Commission should be individually notified to the Commission,

— under the guidelines, further restructuring aid can normally not be considered, save in exceptional and unforeseeable circumstances for which the company is not responsible, during the 10 years following the end of the restructuring period, i.e. in this case 31 December 2006,

— any new plan for recapitalisation of SNCM must be notified to the Commission before the end of the restructuring period even if the French authorities consider that this new plan complies with the principle of a private investor in a market economy,

HAS DECIDED AS FOLLOWS:

Article 1

The restructuring aid which France plans to grant to the Société Nationale Maritime Corse-Méditerranée (SNCM) is compatible with the common market under the conditions laid down in Articles 2 to 5.

Article 2

From the date on which this Decision is notified and until 31 December 2006, SNCM shall refrain from acquiring new ships and signing contracts for building, ordering or chartering new or renovated ships.

From the date on which this Decision is notified and until 31 December 2006, SNCM can only operate the 11 ships which SNCM already possesses, namely: the *Napoléon Bonaparte*, *Danielle Casanova*, *Île de Beauté*, *Corse*, *Liamone*, ►M1 *Asco* ◄, *Méditerranée*, *Pascal Paoli*, *Paglia Orba*, *Monte Cinto* and *Monte d'Oro*.

([135]) See points 88 and 89 of the guidelines.

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If for reasons beyond its control SNCM has to replace one of its ships before 31 December 2006, the Commission may authorise such a replacement on the basis of a duly reasoned notice served by France.

Article 3

The SNCM group shall dispose of all its direct and indirect holdings in the following companies:

— Amadeus France,

— Compagnie Corse Méditerranée,

— Société civile immobilière Schuman,

— Société Méditerranéenne d'Investissements et de Participations,

— Someca.

Instead of disposing of its holdings in Société Méditerranéenne d'Investissements et de Participations, SNCM may sell this company's sole asset, the *Southern Trader*, and close down this subsidiary.

The disposals may be made, at the choice of the French authorities, either through public auction or through a call for expressions of interest published in advance, providing for a minimum period of two months for any response.

France shall provide the Commission with proof of all these disposals. The low level of bids which SNCM might receive cannot be invoked as a reason for not going ahead with the disposals. If there are no bids and if France can show proof that all the necessary publicity has been made, the condition laid down in the first paragraph shall be deemed to have been complied with.

Article 4

In respect of all links to Corsica, SNCM shall, from the date on which this Decision is notified and until 31 December 2006, refrain from pursuing a fares policy in respect of published fares intended to offer lower fares than those of each of its competitors for equivalent destinations and services and identical dates.

The Commission reserves the right to initiate an investigation procedure whenever it finds that the conditions laid down in this Decision have not been complied with, and in particular the condition laid down in the first paragraph.

The condition laid down in the first paragraph is complied with if every day the lowest prices advertised by SNCM are higher than the lowest promotional prices advertised by each of its competitors for equivalent destinations and services.

The condition laid down in the first paragraph shall no longer apply if the prices of the said competitors exceed SNCM's fares that were in force in the reference year 1996, corrected for inflation.

Before 30 June each year, France shall inform the Commission of all the elements necessary to show that this condition has been duly complied with in the preceding calendar year in respect of all crossings to or from Corsica.

Article 5

In accordance with the commitments made by the French authorities in the restructuring plan, the annual number of round trips of ships on the various sea links to and from Corsica are until 31 December 2006 limited to the thresholds indicated in table 3 of this Decision, save for exceptional reasons for which SNCM is not responsible that would oblige it to transfer particular round trips to other ports, and save for any change made to the public service obligations incumbent on the company.

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Article 6

France is authorised to recapitalise SNCM through a first payment of EUR 66 million from the date on which this Decision is notified.

Until the end of the restructuring period, i.e. until 31 December 2006, the Commission may decide, upon a request from the French authorities, to subsequently authorise a second payment to SNCM which will correspond to the difference between the EUR 10 million remaining and the proceeds from the disposals required in Article 3, in accordance with the conditions laid down in the said Article.

Such a decision can be taken only if the action required in Article 3 has been carried out, the proceeds from the disposals does not exceed EUR 10 million and the conditions laid down in Articles 2, 4 and 5 have been complied with, without prejudice to the Commission's right to initiate, where appropriate, the formal investigation procedure for failure to comply with any of these conditions. Failing this, the second instalment of aid shall not be paid.

Article 7

Within six months of the date on which this Decision is notified, France shall inform the Commission of the measures taken to comply with it.

Article 8

This Decision is addressed to the French Republic.