Official Journal
of the European Union

EN
L series

2025/2453

30.12.2025

COMMISSION DECISION (EU) 2025/2453

of 26 November 2024

in case SA.101557 (2023/NN, ex-2022/PN) – France – Maritime services to Corsica (2023-2030)

(notified under document C(2024) 8473)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

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

Having called on interested parties to submit their comments pursuant to those articles ([1]), and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. Pre-notification phase

(1) By letter of 17 January 2022, the French authorities informed the Commission that the Corsican Transport Board ('**the OTC**') had initiated steps to determine whether there was a public service need relating to maritime services between Corsica and mainland France. The Commission opened a pre-notification procedure on 19 January 2022, registered under SA.101557. The French authorities sent their initial observations to the Commission by letters of 19, 25 and 27 January 2022.

(2) By letters and emails of 4 and 15 February and 22 March 2022, the Commission requested additional information from the French authorities. The French authorities submitted their replies on 15 February, and 7 and 31 March 2022.

(3) By letters of 15 March, 8 April, and 19 and 20 May 2022, the French authorities informed the Commission of their plans to award five public service contracts, for a period of eight years (2023-2030), for the maritime transport of goods and passengers between the port of Marseille and each of the five ports of Ajaccio, Bastia, Porto-Vecchio, Propriano and L'Île-Rousse ('**the PSCs**' or '**the measures**').

(4) By letters and emails of 20 April, 30 May, 12 July, 11 August, 3, 18, 21, 23 and 30 November, and 1 and 2 December 2022, the Commission requested additional information from the French authorities. They submitted their replies by letters and emails of 7 and 22 June, 22 and 27 July, 10, 13 and 14 October, 8, 10, 11, 17, 22, 24, 25 and 30 November, and 1 and 2 December 2022.

(5) During the pre-notification phase, the Commission and the French authorities held meetings on 1, 17 and 22 February, 18 March, 5 April, 28 June, 11 July, and 15, 21 and 30 November 2022. In preparation for, or following, these meetings, the French authorities provided additional information on 21 February, 22 March and 12 July 2022.

([1]) OJ C, C/2024/2266, 22.3.2024, p. 1, ELI: http://data.europa.eu/eli/C/2024/2266/oj.

(6) At the same time, the Commission received general information from a third party on 14 April, 17, 21, 22 and 30 June, 25 July, 2 and 30 September, 5 and 26 October and 2 December 2022, as well as on 30 and 31 January 2023.

1.2. Notification of the measures by the French authorities and Corsica Ferries' complaint

(7) On 27 December 2022, the French authorities notified the Commission of the PSCs electronically. As this notification was incomplete, the Commission requested additional information from the French authorities on 16 February 2023. The French authorities supplemented their notification by emails of 5 April and 2 May 2023.

(8) On 23 March 2023, Corsica Ferries lodged a formal complaint with the Commission challenging the legality and compatibility of the measures with regard, in particular, to State aid law.

(9) The Commission forwarded the complaint to the French authorities and requested additional information on 11 April and 5 June 2023. The French authorities provided their comments on the complaint and additional information on 28 June, 28 July and 27 October 2023.

(10) Corsica Ferries also provided additional information on its complaint by emails of 13 October and 20 December 2023. The Commission sent that additional information to the French authorities on 21 December 2023, and the French authorities replied to it by email of 6 February 2024.

1.3. The Commission's opening of the formal investigation procedure on the measures

(11) By letter dated 23 February 2024, the Commission informed the French authorities of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('**TFEU**') in respect of the PSCs ('**the opening decision**').

(12) The opening decision was published in the *Official Journal of the European Union* ([2]). The Commission invited the French authorities and interested parties to submit their comments on the PSCs.

(13) The Commission received comments from the French authorities on 27 March 2024. Following receipt of those comments, the Commission sent requests for information to the French authorities on 23 April, 13 and 30 May, 14 and 21 June, and 2 and 9 July 2024, and the French authorities replied to them on 23 and 31 May, 13 June and 9, 11, 12 and 17 July 2024 respectively.

(14) The Commission received comments from several interested parties, namely Corsica Ferries (22 April 2024), Corsica Linea (29 April 2024), La Méridionale (29 April 2024) and the Stef Group (29 April 2024) ([3]).

(15) The Commission forwarded to France the comments from Corsica Ferries (on 23 April 2024), and from Corsica Linea, La Méridionale and the Stef Group (on 30 April 2024), giving it the opportunity to react to those comments. France responded to Corsica Ferries' comments on 25 June and 11 July 2024. It did not wish to comment on the submissions from the other interested parties.

([2]) OJ C C/2024/2266, 22.3.2024, p. 1, ELI: http://data.europa.eu/eli/C/2024/2266/oj.

([3]) Corsica Linea, La Méridionale and the Stef Group requested, by emails dated 8, 15 and 16 April 2024 respectively, an extension of the deadline for submitting comments. The Commission granted them an extension until 29 April 2024.

2. MARITIME SERVICES BETWEEN CORSICA AND THE FRENCH MAINLAND

2.1. Socio-economic characteristics of Corsica

(16) Corsica is a French island located in the Mediterranean Sea. It is characterised by mountainous terrain, protected areas and particularly large rural areas ([4]). The island has a population of almost 350 000 inhabitants, of which around 53 % live in urban areas and 47 % in rural areas ([5]). This restrictive geography makes Corsica one of the least densely populated regions in France with a population density of 39 inhabitants per km^2. This is well below the French average of 105 inhabitants per km^2 ([6]).

(17) The low population density means there are significant distances to travel between homes and workplaces or places of leisure. More and longer trips are undertaken in Corsica compared with the national average ([7]). Furthermore, according to INSEE, ([8]) the topography and rural nature of municipalities and the scarcity of public transport mean that more personal vehicles are used for daily journeys (86 % compared with 72 % in metropolitan France) ([9]).

(18) Corsica has no motorway infrastructure. It has a limited road network consisting of around 10 territorial roads as well as subsidiary roads. These roads are fairly winding, which contributes to longer journey times ([10]), complicates traffic conditions, ([11]) and increases the risk of road accidents. Corsica has the highest road fatality rate in France ([12]). According to the French Road Safety Observatory, these characteristics are compounded by tourism. The Observatory estimates that every year the arrival and departure of around 500 000 cars transported on scheduled maritime services almost doubles the average daily traffic on Corsica's roads during the summer period ([13]).

(19) Corsica's economy is essentially based on the tertiary sector. ([14]) Among its services, tourism ([15]) and retail ([16]) are among the main drivers of wealth and job creation on the island. The local economy is heavily dependent on imports from the French mainland. In 2019, imports from the mainland were almost five times higher than exports ([17]).

([4]) https://www.insee.fr/fr/statistiques/6006409?sommaire=6006454 (accessed on 18 October 2024).
([5]) https://www.insee.fr/fr/statistiques/6006409?sommaire=6006454 (accessed on 18 October 2024). By comparison, the national average is 67 % for urban areas and 33 % for rural areas. The island of Corsica is therefore much more rural than the rest of France.
([6]) https://www.insee.fr/fr/statistiques/6006409?sommaire=6006454 (accessed on 18 October 2024).
([7]) See, for example, the 2023-2027 general guidance paper on southern Corsica (p. 6) drawn up by the French Road Safety Observatory, available at: https://www.onisr.securite-routiere.gouv.fr/etat-de-linsecurite-routiere/diagnostics-et-politiques-locales-de-securite-routiere/2a-corse-du-sud-document-general-dorientations (accessed on 18 October 2024).
([8]) National Institute of Statistics and Economic Studies.
([9]) https://www.insee.fr/fr/statistiques/6676021 (accessed on 18 October 2024).
([10]) The Corsican regional authority's 2015 regional plan for infrastructure and transport services noted that 'the large mountain range in Corsica makes internal communications particularly difficult. The road and rail networks are winding and distances are measured more in travelling time than in kilometres' (https://www.aue.corsica/attachment/619085/, p. 9, accessed on 18 October 2024). See also the 2023-2027 general guidance paper on southern Corsica (p. 6) drawn up by the French Road Safety Observatory (cf. footnote 7).
([11]) See the series of reports by the public television channel 'France 3 Corse' on the state of the roads in Corsica: https://france3-regions.francetvinfo.fr/corse/dossier-etats-des-lieux-des-routes-de-corse-et-enjeux-2730762.html (accessed on 18 October 2024).
([12]) See the particularly serious situation in 2022, with a road fatality rate in Corsica 2,5 times higher than the national average: https://www.corsematin.com/articles/le-lourd-bilan-de-2022-sur-les-routes-corses-135750 (accessed on 18 October 2024). See also the 2023-2027 general guidance paper on southern Corsica (p. 6) drawn up by the French Road Safety Observatory (cf. footnote 7).
([13]) See the 2023-2027 general guidance paper on southern Corsica (p. 6) drawn up by the French Road Safety Observatory (cf. footnote 7).
([14]) https://www.insee.fr/fr/statistiques/6006425?sommaire=6006454 (accessed on 18 October 2024).
([15]) See INSEE analyses on the importance of tourism for employment in Corsica: https://www.insee.fr/fr/statistiques/6439057 (accessed on 18 October 2024).
([16]) According to INSEE, retail accounts for 67 % of the island's trade, nine points more than the French average (https://www.insee.fr/fr/statistiques/6006439?sommaire=6006454, accessed on 18 October 2024).
([17]) Comments from the French authorities submitted on 5 April 2023.

(20) In its opinion of 17 November 2020 on the concentration of markets in Corsica and the associated impact on local competition ('**the competition authority opinion**') ([18]), the French competition authority states that 'insularity is the main specific constraint on the development of the island's economy, as access to markets may be reduced by additional costs caused by geographical isolation' ([19]). The competition authority thus considers that 'the insularity and geographical remoteness from mainland France increase supply costs, as the use of maritime transport is structurally more expensive'. Thus, 'economic operators are constrained by a more complex supply chain than on the mainland' ([20]).

(21) For example, in the fuel distribution sector, the competition authority notes a significant gap between the fuel price paid by consumers in Corsica and that paid on the mainland ([21]). According to the competition authority, that difference is partly explained by the fact that Corsica is supplied with fuel only by sea, which increases its final price. Transporting fuels by road to service stations is also more expensive, as the mountainous terrain increases transport times. Finally, the seasonal nature of demand linked to the summer tourist season means that stocks have to be managed on a just-in-time basis, leading to the risk of quotas, which can cause significant additional costs, as Corsica's oil depots have limited storage capacity ([22]).

(22) Similarly, food and consumer products are much more expensive in Corsica than in the rest of France, with differences of 14 % and 11 % respectively ([23]). The competition authority opinion considers that this is partly due to structural factors, linked to insularity and seasonality. The supply chain from the purchasing centres in southern France is also extended due to the necessary use of maritime transport ([24]). The limited storage capacity of Corsican shops also means that goods have to be delivered more frequently than on the mainland, and does not allow them to benefit from the same discounts from purchasing centres as shops located on the mainland ([25]).

(23) In general, INSEE notes that Corsica is the poorest region of metropolitan France: 18,5 % of people living in Corsica lived below the poverty line in 2018, compared with 14 % at national level. This economic and social situation also deteriorated as a result of the COVID-19 pandemic in 2020 and 2021 ([26]) and high inflation resulting mainly from energy and food price increases from 2022 onwards ([27]).

([18]) Opinion 20-A-11 of 17 November 2020. The competition authority states that its opinion was requested by the Minister for the Economy. The purpose of this referral was to inform the public authorities of various competition issues, particularly in relation to the purchasing power of residents.

([19]) Id., para 25.

([20]) Id., para 26.

([21]) The competition authority notes that, due to the geography of Corsica and the underdevelopment of public transport, Corsican households are highly dependent on cars. However, despite the VAT rate being 7 percentage points lower on the island, there is a very significant price differential for fuel in Corsica compared with the mainland, of around + 6,7 % for diesel and + 5,3 % for unleaded 95. This point has also been confirmed by INSEE (https://www.insee.fr/fr/statistiques/7635831#titre-bloc-8, accessed on 18 October 2024).

([22]) For more details, see sectoral focus No 2 of the competition authority's opinion.

([23]) See INSEE's survey on 2022 price levels in Corsica compared to mainland France: https://www.insee.fr/fr/statistiques/7635831#titre-bloc-8 (accessed on 18 October 2024). Overall, prices are 7 % higher in Corsica, and the gap has widened since 2015, despite a much reduced VAT rate enjoyed by Corsica on products intended for human consumption (2,1 % instead of 5,5 % or 20 % on the mainland depending on the product family).

([24]) Competition authority opinion, paras 590-594. The competition authority notes that the cost of maritime transport is one of the major additional costs incurred by large and medium-sized supermarkets: contrary to common commercial practice, according to which purchase prices include the costs of delivery up to the intended destination of the goods, maritime transport costs are not systematically included in the purchase price. Corsican shops therefore bear the cost of maritime freight between the mainland and Corsica themselves.

([25]) Competition authority opinion, paras 595-598. According to the competition authority, deliveries of goods to Corsica take longer than for any other place in metropolitan France. They usually take three days, which is on average one day longer than for a shop on the mainland. Furthermore, shops on the mainland have better logistics systems for their goods, while Corsican shops are constrained by the time taken for maritime transport (unloading of vessels and transport by road). Finally, Corsica lacks local logistics infrastructure (few storage areas are available). These three factors have two consequences for Corsican shops. Firstly, frequent round trips with the mainland are needed to ensure that shops are restocked, thereby increasing the supply cost. Secondly, smaller discounts are offered by mainland purchasing centres to Corsican shops, due to the low volumes ordered by Corsican shops linked in particular to the limited storage space.

([26]) https://www.insee.fr/fr/statistiques/5386057 (accessed on 18 October 2024).

([27]) https://www.insee.fr/fr/statistiques/6676021#tableau-figure3 (accessed on 18 October 2024). Figure 4 of the INSEE file shows that many associations of municipalities in Corsica are overexposed to inflation, especially almost the whole northern half of the island and the Sartenais-Valinco-Taravo association of municipalities in the south of the island, where the main municipality is Propriano.

2.2. Port infrastructure used for maritime transport services between the French mainland and Corsica

2.2.1. *The mainland ports*

(24) The mainland ports used for maritime transport services between Corsica and the French mainland are the ports of Marseille, Toulon and Nice ('**the mainland ports**').

(25) Marseille is located more than 60 km from Toulon (approximately 45 minutes by road via the A50 motorway, and less than one hour by train ([28])) and nearly 200 km from Nice (approximately 2 hours 30 minutes by road via the A8 motorway). Toulon is located 150 km from Nice (approximately 1 hour 45 minutes by road via the A57 and A8 motorways, and 1 hour 45 minutes by train ([29])).

Figure 1

The mainland ports and Corsican ports

Source: Gecodia.

2.2.1.1. The port of Marseille

(26) The port of Marseille is one of the largest in France. It hosts a large number of national and international maritime connections, and is located close to the city of Marseille, the second largest in France by population.

(27) The Marseille port authority, Grand Port Maritime de Marseille, is a public industrial and commercial agency.

([28]) See the SNCF railway company website, available at: https://www.ter.sncf.com/sud-provence-alpes-cote-d-azur/trajet-toulon-marseille (accessed on 18 October 2024). Almost 20 services are operated between Marseille and Toulon each day, with an average journey time of one hour.

([29]) See the SNCF website, available at: https://www.ter.sncf.com/sud-provence-alpes-cote-d-azur/trajet-nice-toulon (accessed on 18 October 2024). Around 15 services are operated between Toulon and Nice each day, with an average journey time of two hours.

(28) The port of Marseille is a global port with infrastructure enabling all types of traffic to be handled. It has two main docks:

— the eastern docks (west of Marseille), with ten maritime terminals, are mainly used by ferries, passenger-cargo ships and cruise ships, and have a ship repair yard;

— the western docks (Fos-sur-Mer) are dedicated to large intercontinental movements of goods (energy, cars, containers, special goods, etc.).

(29) The eastern docks have four maritime terminals dealing with ferries and passenger-cargo ships, including the two national terminals of Joliette and Arenc, which host in particular the current maritime traffic to Corsica (with more than 10 berths available). These two terminals are directly connected to three motorways: the A7, which crosses the entire Rhône corridor from Lyon to Marseille; the A50, connecting Marseille to Toulon in the east; and the A55, linking Marseille to Martigues in the west.

2.2.1.2. The port of Toulon

(30) The port of Toulon hosts national and international maritime connections (Spain, Italy). It has four terminals around Toulon bay: two terminals in Brégaillon and two terminals located in the city centre of Toulon and La Seyne-sur-Mer respectively. The port of Toulon is managed by Var Chamber of Commerce and Industry (‘**Var CCI**’).

(31) The southern terminal in Brégaillon is entirely dedicated to the transport of heavy packages, while the northern terminal (‘**Toulon-Brégaillon**’) is equipped with one berth to exclusively accommodate freight transport. The terminal at La Seyne-sur-Mer is used exclusively for cruise ships, while the city centre terminal (‘**Toulon-Port de Commerce**’), with three berths, is used for ferries, cruise ships and passenger-cargo vessels. The Toulon-Port de Commerce terminal currently handles all maritime transport services between Toulon and Corsica. The port of Toulon is relatively close to the A50 motorway and Toulon railway station.

2.2.1.3. The port of Nice

(32) The port of Nice is located in the city centre. It is managed by Nice Côte d’Azur Chamber of Commerce and Industry (‘**Nice Côte d’Azur CCI**’). It has two terminals, each with two berths that can accommodate ferries and passenger-cargo vessels. Both terminals are mainly used for cruise ships and passenger traffic and, to a lesser extent, freight traffic. The port of Nice is relatively far away from motorway infrastructure (about ten kilometres), while the railway station is fairly close.

2.2.2. *The Corsican ports*

(33) The Corsican ports with maritime links to mainland France are Bastia, Ajaccio, L’Île-Rousse, Porto-Vecchio and Propriano (‘**the Corsican ports**’).

(34) Propriano is the only Corsican port with only one route connecting it to the French mainland (to Marseille). The other Corsican ports each have connections with the three mainland ports (Marseille, Toulon, Nice).

(35) The Corsican ports are all managed by the Corsica Chamber of Commerce and Industry (‘**Corsica CCI**’).

(36) The city of Bastia is located in the north-east of Corsica. It is approximately 70 km from L’Île-Rousse (1 hour 40 minutes by car and almost 2 hours by public transport), located in the north of Corsica; 145 km from Porto-Vecchio, in the south-east of the island, and 150 km from Ajaccio. The city of Ajaccio, in western-central Corsica, is around 70 km from Propriano (approximately 1 hour 30 minutes by car and 2 hours by public transport), located in south-west Corsica, and 140 km from Porto-Vecchio. Propriano and Porto-Vecchio are 70 km apart (approximately 1 hour 30 minutes by car and 2 hours by public transport).

(37) Only Bastia, Ajaccio and L'Île-Rousse have a railway station. From Porto-Vecchio, there are intercity bus services to Ajaccio, Propriano and Bastia, while from Propriano there are intercity bus services to Ajaccio and Porto-Vecchio. Table 1 and Table 2 show the estimated distances between places by public transport and the frequency of services:

Table 1

Rail services in Corsica

	Number of round trips ([1]) per day	Duration of journey
Ajaccio – Bastia	5	4 h
Ajaccio – L'Île-Rousse	2	4 h 45 mins - 5 h
Bastia – L'Île-Rousse	3	3 h 15 mins

([1]) One round trip corresponds to two journeys.
Source: Corsica railways.

Table 2

Intercity services in Corsica (coaches)

	Number of round trips per day	Duration of journey
Ajaccio – Propriano	5	1 h 45 mins
Ajaccio – Porto-Vecchio	4	3 h 30 mins
Propriano – Porto-Vecchio	3	1 h 45 mins
Bastia – L'Île-Rousse	2	1 h 30 mins

Source: Corsican regional authority.

2.2.2.1. The port of Bastia

(38) Bastia is the largest port in Corsica in terms of passenger and freight volumes, accounting for almost 60 % of the total traffic between Corsica and the mainland. It is an international port since, in addition to the services to Marseille, Toulon and Nice, it also hosts routes with Italy.

(39) The port of Bastia has a maritime terminal with eight berths that can accommodate ferries and passenger-cargo vessels. Plans to expand or build a larger port are currently under consideration, as the existing port is subject to heavy congestion. ([30]) Located in the city centre, the port is served by territorial road 20 from Bastia to Ajaccio.

2.2.2.2. The port of Ajaccio

(40) Ajaccio is the second largest port in Corsica in terms of passenger and freight volumes. In addition to regular maritime links to Marseille, Toulon and Nice, the port of Ajaccio also hosts seasonal routes to Porto Torres (Sardinia), Calvi and Propriano.

(41) The port of Ajaccio has a maritime terminal with six berths that can accommodate ferries and passenger-cargo vessels. Located in the city centre, it is served by territorial road 20 to Bastia in the north-east and by territorial road 40 to Bonifacio at the southern tip of the island.

([30]) http://www.bastia.port.fr/developpement/ (accessed on 18 October 2024).

2.2.2.3. The port of L'Île-Rousse

(42) The port of L'Île-Rousse, located in the town centre, has a maritime terminal with two berths for ferries and passenger-cargo vessels. It is the only Corsican port authorised to handle class 1 dangerous goods (explosive substances and articles). It has rapid access to territorial road 30 connecting Calvi (25 km to the west) to Ponte-Leccia in central Corsica.

2.2.2.4. The port of Porto-Vecchio

(43) The port of Porto-Vecchio, located in the town centre, has a maritime terminal with two berths for ferries and passenger-cargo vessels. It has relatively fast access to territorial road 10 to Bonifacio in the south and Bastia in the north.

2.2.2.5. The port of Propriano

(44) The port of Propriano, located in the town centre, has a maritime terminal with two berths for ferries and passenger-cargo vessels. It has relatively fast access to territorial road 40 linking Bonifacio in the south and Ajaccio in the north.

2.3. **Maritime transport services between Corsica and the French mainland**

(45) The French authorities provided a description of the maritime transport services operated between 2016 and 2020 ([31]). Between 2016 and 2020, three maritime operators ran maritime transport services between Corsica and the French mainland: Corsica Ferries (from Toulon and Nice), Corsica Linea and La Méridionale (from Marseille). A fourth operator, Moby Line, also ran maritime services between Nice and Corsica between 2016 and 2019.

2.3.1. *Maritime freight transport*

(46) Maritime transport is the dominant mode of goods transport between mainland France and Corsica. Overall, the level of maritime freight transport between Corsica and the mainland is relatively stable throughout the year. It did not decrease significantly during the COVID-19 health crisis.

2.3.1.1. Data on maritime freight transport between Corsica and the French mainland

(47) Maritime freight is transported to Corsica only from mainland France on the routes between the mainland and Corsican ports.

(48) As regards the mainland ports, most freight transport is concentrated on routes to/from Marseille (Table 3 and Table 4). The port of Marseille has a relatively stable market share of around 80 % of total freight traffic between mainland France and Corsica (Table 4).

Table 3

Transport of goods between mainland France and Corsica by mainland port (imports/exports, in linear metres ([1]))

	2016	2017	2018	2019	2020
Marseille	1 570 993	1 802 005	1 835 525	1 853 897	1 747 015
Toulon	429 873	394 447	375 722	388 407	371 665
Nice	30 891	34 746	25 352	18 834	32 607
Total	**2 031 757**	**2 231 198**	**2 236 599**	**2 261 138**	**2 151 287**

([1]) The linear meter (or '**LM**') is a unit of measurement used to measure goods sold per metre with a constant cross-section. It is also used to indicate the length of constant elements (e.g. trailers), regardless of their other dimensions.

Source: Comments from the French authorities submitted on 5 April 2023.

([31]) The traffic data presented in this decision do not take into account 2021 or 2022, since the identification of the public service need undertaken by the French authorities began at the end of 2021.

Table 4

Transport of goods between mainland France and Corsica by mainland port (imports/exports, %)

	2016	2017	2018	2019	2020
Marseille	77 %	81 %	82 %	82 %	81 %
Toulon	21 %	18 %	17 %	17 %	17 %
Nice	2 %	2 %	1 %	1 %	2 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

Source: Comments from the French authorities submitted on 5 April 2023.

(49) As far as the Corsican ports are concerned, flows are mostly concentrated on the ports of Ajaccio and Bastia (Table 5 and Table 6). As shown in Table 6, these two ports had a relatively stable market share between 2016 and 2020 of approximately 35 % (Ajaccio) and 50 % (Bastia) of total freight traffic between mainland France and Corsica.

Table 5

Transport of goods between mainland France and Corsica by Corsican port (imports/exports, LM)

	2016	2017	2018	2019	2020
Ajaccio	715 919	800 026	802 201	782 495	757 982
Bastia	1 006 938	1 088 862	1 079 361	1 082 717	1 037 295
Porto-Vecchio	147 864	171 071	183 007	205 642	194 656
Propriano	67 793	73 093	69 820	72 152	66 747
L'Île-Rousse	93 243	98 146	102 210	118 132	94 607
Total	**2 031 757**	**2 231 198**	**2 236 599**	**2 261 138**	**2 151 287**

Source: Comments from the French authorities submitted on 5 April 2023.

Table 6

Transport of goods between mainland France and Corsica by Corsican port (imports/exports, %)

	2016	2017	2018	2019	2020
Ajaccio	35 %	36 %	36 %	35 %	35 %
Bastia	50 %	49 %	48 %	48 %	48 %
Porto-Vecchio	7 %	8 %	8 %	9 %	9 %
Propriano	3 %	3 %	3 %	3 %	3 %
L'Île-Rousse	5 %	4 %	5 %	5 %	4 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

Source: Comments from the French authorities submitted on 5 April 2023.

2.3.1.2. Types of maritime freight transport

(50) Maritime freight is transported between the French mainland and Corsica only by means of roll-on roll-off transport ([32]), using the appropriate vessels, namely '**Ro-Pax**' (passenger-cargo vessels) ([33]) and pure roll-on roll-off ('**Ro-Ro**') vessels (transporting only freight). Apart from certain special goods (cement, heavy packages, etc.), transport between Corsica and the mainland is only by means of Ro-Pax.

(51) According to the French authorities ([34]), ro-ro freight transport is divided into 'towed freight' and 'non-towed freight'.

(52) Towed freight is defined as the transport of goods using a road vehicle of more than 6 metres in length with its own means of propulsion (vans, lorries and similar vehicles, as well as semi-trailers coupled with a tractor). These vehicles can therefore be directly rolled on and rolled off by the driver, without the need for port handling. The three mainland ports and the Corsican ports all deal with towed freight.

(53) Non-towed freight is defined as the transport of goods using a semi-trailer ([35]). During boarding, the semi-trailer is detached from the tractor on the departure quay and then attached to a special port traction vehicle, before undergoing the reverse operation at the port of arrival, where another tractor takes the trailer to its destination. Non-towed freight transport accounts for the largest share of maritime freight transport between Corsica and mainland France (64 % of the total LM transported on average between 2016 and 2020, compared with 36 % for towed freight).

2.3.1.2.1. Towed freight

(54) As regards the mainland ports, towed freight transport is mainly shared between the ports of Marseille and Toulon (Table 7 and Table 8). At the port of Marseille, towed freight accounted on average for around 20 % of the overall freight transported to/from Corsica between 2016 and 2020.

Table 7

Transport of towed freight by mainland port (imports/exports, LM)

	2016	2017	2018	2019	2020
Marseille	414 752	352 209	367 056	368 175	289 197
Toulon	429 873	394 447	375 722	388 407	371 665
Nice	30 891	34 746	25 352	18 834	32 607
Total	**875 516**	**781 402**	**768 130**	**775 416**	**693 469**

Source: Comments from the French authorities submitted on 5 April 2023.

([32]) Roll-on roll-off transport is the carriage of freight (cars, heavy goods vehicles, trailers, construction machinery and oversized equipment) by special vessels known as 'ro-ro' ships.

([33]) Under Article 2(1) of Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC (OJ L 315, 30.11.2017, p. 61, ELI: http://data.europa.eu/eli/dir/2017/2110/oj), a ro-ro passenger ship (or Ro-Pax) is a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers.

([34]) Comments from the French authorities submitted on 5 April 2023.

([35]) Semi-trailers are vehicles without engines which have wheels only at the rear. The front part has no wheels and is adapted to the traction device on carrier vehicles or semi-trailer tractors. The combination of a tractor and a semi-trailer forms an articulated vehicle.

Table 8

Transport of towed freight by mainland port (imports/exports, %)

	2016	2017	2018	2019	2020
Marseille	47 %	45 %	48 %	47 %	42 %
Toulon	49 %	50 %	49 %	50 %	54 %
Nice	4 %	4 %	3 %	2 %	5 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

Source: Comments from the French authorities submitted on 5 April 2023.

2.3.1.2.2. Non-towed freight

(55) The port of Marseille is the only mainland port that handled non-towed freight to/from Corsica between 2016 and 2020. All of the Corsican ports handle non-towed freight. This type of transport is handled entirely between Marseille and the Corsican ports.

2.3.2. *Maritime passenger transport*

(56) Maritime passenger services operate between Corsica and France/Italy. Connections with mainland France accounted for around 65 % of total maritime passenger transport on average between 2014 and 2019, with more than 2,7 million passengers in 2017 and 2018, falling to 2,52 million in 2019. In 2020, following the COVID-19 health crisis, maritime passenger transport decreased by 32 %.

(57) Unlike maritime freight transport, maritime passenger transport is seasonal, and demand during the high season (i.e. from April to October) is higher than during the rest of the year.

(58) Most of the maritime passenger transport at the mainland ports is concentrated in Toulon (Table 9 and Table 10). Between 2016 and 2020, the ports of Marseille and Toulon increased their market shares slightly, while Nice's fell considerably (Table 10).

Table 9

Maritime passenger transport between mainland France and Corsica by mainland port (number of passengers)

	2016	2017	2018	2019	2020
Marseille	606 071	653 643	690 855	662 846	476 414
Toulon	1 368 451	1 400 037	1 361 044	1 459 934	1 029 888
Nice	713 983	697 494	672 930	404 433	224 162
Total	**2 688 505**	**2 751 174**	**2 724 829**	**2 527 213**	**1 730 464**

Source: Comments from the French authorities submitted on 5 April 2023.

Table 10

Maritime passenger transport between mainland France and Corsica by mainland port (%)

	2016	2017	2018	2019	2020
Marseille	23 %	24 %	25 %	26 %	28 %
Toulon	51 %	51 %	50 %	58 %	60 %
Nice	27 %	25 %	25 %	16 %	13 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

Source: Comments from the French authorities submitted on 5 April 2023.

(59) Most maritime passenger transport at Corsican ports is concentrated in Bastia and Ajaccio. As can be seen from Table 11 and Table 12, the distribution of passenger traffic among the Corsican ports has remained relatively stable.

Table 11

Maritime passenger transport between mainland France and Corsica by Corsican port (number of passengers)

	2016	2017	2018	2019	2020
Ajaccio	967 182	1 008 021	983 285	926 771	629 585
Bastia	1 139 099	1 155 137	1 133 514	1 055 491	698 844
L'Île-Rousse	368 783	375 960	391 792	320 997	212 632
Porto-Vecchio	146 495	147 009	152 477	166 922	144 355
Propriano	66 946	65 047	63 761	57 032	45 048
Total	**2 688 505**	**2 751 174**	**2 724 829**	**2 527 213**	**1 730 464**

Source: Comments from the French authorities submitted on 5 April 2023.

Table 12

Maritime passenger transport between mainland France and Corsica by Corsican port (%)

	2016	2017	2018	2019	2020
Ajaccio	36 %	37 %	36 %	37 %	36 %
Bastia	42 %	42 %	42 %	42 %	38 %
L'Île-Rousse	14 %	14 %	14 %	13 %	12 %
Porto-Vecchio	5 %	5 %	6 %	7 %	8 %
Propriano	2 %	2 %	2 %	2 %	2 %
Total	**100 %**	**100 %**	**100 %**	**100 %**	**100 %**

Source: Comments from the French authorities submitted on 5 April 2023.

2.4. The legal framework governing the provision of maritime transport services between Corsica and the French mainland

(60) Maritime transport was liberalised in the European Union in 1992, when the Regulation on maritime cabotage ('**the Cabotage Regulation**') ([36]) was adopted. However, the French authorities have never applied full liberalisation of maritime transport services in the case of maritime services to Corsica, due to the existence of public service needs requiring a general restriction on the freedom to provide such services.

(61) Consequently, there is currently no purely commercial transport between mainland France and Corsica. Maritime transport services are provided either under a scheme of public service obligations ('**the PSO scheme**') as defined in Article 2(4) and Article 4(2) of the Cabotage Regulation, or under a public service contract meeting the definition laid down in Article 2(3) and Article 4(1) of the Cabotage Regulation.

2.4.1. *The PSO scheme*

(62) By Corsican Assembly Resolution No 13/263 of 20 December 2013, as amended by the Assembly in its Resolutions No 18/266 of 27 July 2018 and No 19/128 of 25 April 2019, the Corsican regional authority ('**CdC**') established a PSO scheme setting out public service obligations to be complied with by any operator wishing to offer maritime transport services between Corsica and the French mainland ('**the 2019 PSO scheme**') ([37]).

(63) The 2019 PSO scheme applies to all maritime transport services carried out between the Corsican ports and the three mainland ports from 1 October 2019 for a period of ten years – i.e. until 30 September 2029. It provides for a number of obligations to be complied with, including a minimum number of round trips to be operated on each maritime route throughout the year and maximum fares for the transport of goods/passengers which operators must not exceed. The 2019 PSO scheme does not provide for any financial compensation to maritime transport operators for fulfilling the public service obligations it imposes.

2.4.2. *History of public service contracts concluded between 1976 and 2022*

(64) Historically, and to date, only maritime transport services between Marseille and the Corsican ports have been the subject of a public service contract. Maritime transport services from the ports of Toulon and Nice have been operated under a PSO scheme.

(65) A first public service concession between the public undertaking Société Nationale Corse Méditerranée ('**SNCM**') and the private undertaking Compagnie Méridionale de Navigation (now La Méridionale), on the one hand, and the French state, on the other, was signed in 1976 to ensure territorial continuity between Corsica and the mainland for a period of 25 years, i.e. until 2001.

(66) With effect from 1 January 2002, SNCM provided a service, through La Méridionale, between Marseille and Corsica under a public service contract concluded with the CdC for a period of 5 years.

(67) From 1 July 2007 to 31 December 2013, SNCM and La Méridionale provided that service under a new public service contract concluded on 7 June 2007 ('**2007-2013 PSC**') covering all five routes between the port of Marseille and the Corsican ports. The Commission declared part of the compensation granted under the 2007-2013 PSC as constituting State aid that was incompatible with the internal market ([38]).

([36]) 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, ELI: http://data.europa.eu/eli/reg/1992/3577/oj).

([37]) Resolution No 19/128 of 25 April 2019 detailing the contents of the 2019 PSO scheme is available at: https://www.isula.corsica/assemblea/downloads/Deliberations-AC-2019_t21928.html (accessed on 18 October 2024).

([38]) Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) implemented by France in favour of Société Nationale Maritime Corse-Méditerranée (OJ L 220, 17.8.2013, p. 20, ELI: http://data.europa.eu/eli/dec/2013/435/oj). In that decision, the Commission considered that the financing of the public service for maritime passenger and freight transport throughout the year (basic service) was compatible with the internal market. However, it declared incompatible the compensation paid by the CdC for the financing of an additional passenger service between Marseille and each of the five Corsican ports in the summer period.

(68) By Corsican Assembly decision of 6 September 2013, the CdC decided to award five separate public service contracts for each of the five routes between the port of Marseille and the Corsican ports for the 2014-2023 period. The CdC awarded those contracts to SNCM and La Méridionale. However, following administration proceedings brought against it on 28 November 2014 and concluded on 20 November 2015 by judgment of Marseille Commercial Court, SNCM withdrew from the contract in December 2015. Most of its assets were acquired in 2016 by the Corsica Maritima consortium and incorporated into the new Corsica Linea shipping company launched on 10 December 2015. Corsica Linea became a subcontractor of the 2014-2023 public service contracts until 1 October 2016, when the contracts were terminated by judgment of Bastia Administrative Court, delivered on 7 April 2015.

(69) The Corsica Linea - La Méridionale consortium was then awarded several 'temporary' public service contracts for maritime passenger and freight transport between 2016 and 2022:

— five public service contracts concluded for the period from 1 October 2016 to 30 September 2017, covering the routes between the port of Marseille and each of the Corsican ports;

— five public service contracts for the period from 1 October 2017 to 31 May 2019, and extended until 30 September 2019, covering the routes between the port of Marseille and each of the Corsican ports;

— five public service contracts concluded for the period from 1 October 2019 to 31 December 2020, and extended until 28 February 2021, covering the routes between the port of Marseille and each of the Corsican ports ('**2019-2020 PSCs**') ([39]);

— five public service contracts concluded for the period from 1 March 2021 to 31 December 2022, covering the routes between the port of Marseille and each of the Corsican ports ('**2021-2022 PSCs**') ([40]).

(70) The 2019-2020 PSCs are the subject of a separate State aid investigation by the Commission (registered under SA.49207).

3. DESCRIPTION OF THE PSCS

3.1. Purpose of the PSCs

(71) The measures which are the subject of this procedure concern the financial compensation granted by the OTC under each of the five PSCs relating to maritime services to Corsica for the period from 1 January 2023 to 31 December 2030. The PSCs concern the provision of maritime freight and passenger transport services for each of the maritime links between the port of Marseille and each of the Corsican ports (recital 33). The total amount of aid is estimated at EUR 853 600 000.

(72) The purpose of the PSCs is to meet the public service needs for maritime freight and passenger transport identified by the French authorities on each of those routes.

3.2. Beneficiaries of the PSCs

(73) The beneficiaries of the PSCs are Corsica Linea and La Méridionale ('**the beneficiaries of the PSCs**' or '**the concession holders**'), separately or jointly (Table 13)

([39]) The 2019-2020 PSCs concerned the maritime transport of passengers (passengers travelling for medical reasons, students, drivers accompanying towed freight and, for the route between Marseille and Propriano alone, all passengers) and freight (towed freight and non-towed freight).

([40]) The 2021-2022 PSCs had the same purpose as the 2019-2020 PSCs.

Table 13

Beneficiaries of the PSCs

Lots	Routes	Concession holders
1	Marseille-Ajaccio	Corsica Linea - La Méridionale consortium
2	Marseille-Bastia	Corsica Linea
3	Marseille-Porto-Vecchio	La Méridionale
4	Marseille-Propriano	Corsica Linea
5	Marseille-L'Île-Rousse	Corsica Linea

Source: Notification by the French authorities of 27 December 2022.

3.2.1. *Corsica Linea*

(74) Corsica Linea is a simplified joint-stock company specialising in maritime passenger and freight transport ([41]).

(75) Corsica Linea is a subsidiary of the CM Holding Group, which consists of 150 companies and has 15 main shareholders. It employs more than 1 000 people and has a fleet of nine vessels.

(76) The company currently operates, under the French flag, maritime services between Corsica and the port of Marseille under the PSCs, as well as maritime services from the port of Marseille to Tunisia and Algeria ([42]).

3.2.2. *La Méridionale*

(77) La Méridionale is a public limited company specialising in maritime passenger and freight transport ([43]).

(78) Since 1 June 2023, la Méridionale has been a subsidiary of the CMA CGM Group, after being acquired from the STEF Group, which had owned the company since 2009. La Méridionale employs almost 650 people and has a fleet of four vessels ([44]).

(79) The company currently operates, under the French flag, maritime services between Corsica and the port of Marseille under the PSCs and, since 2024, a scheduled maritime service between Toulon and L'Île-Rousse under the 2019 PSO scheme. It also operates maritime services from the port of Marseille to Morocco.

3.3. **Administrative authority granting the measures**

(80) The French authorities indicated in their notification that the OTC is the authority responsible for granting the measures.

(81) The OTC is a public industrial and commercial agency at regional level created by Law No 91-428 of 13 May 1991 establishing the statute of the Corsican regional authority.

([41]) https://annuaire-entreprises.data.gouv.fr/entreprise/corsica-linea-815243852 (accessed on 18 October 2024).
([42]) https://www.corsicalinea.com/la-compagnie/l-entreprise/decouvrir-corsica-linea (accessed on 18 October 2024).
([43]) https://annuaire-entreprises.data.gouv.fr/entreprise/la-meridionale-la-meridionale-cmn-057801730 (accessed on 18 October 2024).
([44]) https://www.lameridionale.fr/fr/la-meridionale/a-propos/compagnie-maritime-la-meridionale (accessed on 18 October 2024).

(82) Article L. 4420-20 of the General Code for Regional and Local Authorities ('**CGCT**') lays down the tasks and powers of the OTC and points out that it is subject to the supervision of the CdC (which is itself a public authority, under Article L. 4421-1 of the CGCT ([45])) ([46]). Under Article L. 4420-20 of the CGCT, the OTC is chaired by an executive councillor appointed by the president of the CdC's executive council. The state representative in the CdC automatically attends meetings of the OTC's management board and is an addressee of its resolutions. The OTC is managed by a director appointed on a proposal from the president of the OTC by order of the executive council. The OTC's management board is made up of representatives of socio-professional organisations and, chiefly, elected representatives from the Corsican Assembly, which is one of the bodies of the CdC under Article L. 4422-1 of the CGCT.

(83) Within guidelines set out by the CdC ([47]), the OTC is responsible for developing, coordinating and implementing regional air and maritime transport policy between Corsica and the French mainland. Under Article L. 4420-20 of the CGCT, the OTC concludes, with the companies designated to operate the air and sea routes necessary to ensure territorial continuity, public service contracts setting out fares, conditions of performance, quality of service and monitoring procedures.

(84) Article L. 4420-20 of the CGCT states in that regard that the OTC finances the contracts through the territorial continuity grant provided for in Article L. 4425-26 of the CGCT, which is paid to it by the CdC. This grant is paid by the state to the CdC in accordance with Article L. 4425-23 of the CGCT. Amounting to EUR 187 million per year, the territorial continuity grant finances the air and maritime territorial continuity arrangements between Corsica and the mainland ([48]).

3.4. Characterising the existence of a public service need for maritime transport between Corsica and the French mainland

(85) This section first describes (i) the procedures initiated by the French authorities to characterise the existence of a public service need. It then describes the conclusions drawn by the French authorities as to the existence of such a need for (ii) maritime passenger transport and (iii) maritime freight transport.

3.4.1. *Presentation of the procedures initiated by the French authorities to characterise a public service need*

(86) Given the expiry, on 31 December 2022, of the 2021-2022 PSCs (recital 69), the French authorities carried out, from December 2021, an analysis of whether there was still a public service need among users for maritime transport services between Corsica and the French mainland, and especially between Marseille and the five Corsican ports.

(87) The French authorities indicated that the method to determine whether there was still such a need for maritime freight and passenger transport had to be carried out in three stages.

(88) The first stage was to identify and quantify user demand for maritime transport services. To that end, the French authorities organised two public consultations.

(89) The aim of the second stage was to ascertain whether the market could fully or partially meet the user demand identified. The French authorities also organised a public consultation in that regard.

([45]) https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033463146/2023-01-01 (accessed on 18 October 2024).
([46]) Id.
([47]) Under Article L. 4424-18 of the CGCT, the CdC sets out, on the basis of the principle of territorial continuity intended to alleviate the constraints of insularity, the arrangements for organising maritime transport between Corsica and any destination in mainland France, in particular as regards services and fares.
([48]) Report from Corsica's Regional Court of Auditors, 2 November 2021, Section 2.1, published on the website of the French Court of Auditors: https://www.ccomptes.fr/fr/documents/57539 (accessed on 18 October 2024).

(90) The French authorities commissioned the economic consultancy firm Gecodia to carry out these first two stages. In particular, Gecodia was responsible for collecting and processing the information gathered from users and operators, and for compiling a summary of the responses received following the public consultations conducted by the OTC. Gecodia was also responsible for conducting additional studies to determine whether there was any need for a public service in relation to maritime transport between Corsica and the French mainland.

(91) At the end of the second stage, Gecodia submitted its final report of 14 March 2022 to the OTC ('**the Gecodia report**'). The Gecodia report analyses market demand and supply, and draws conclusions on the existence of a public service need for maritime transport between Corsica and the mainland.

(92) The third stage was designed to help identify the approach that would least affect the proper functioning of the internal market in meeting the public service need identified. The aim of this final stage was to ensure that the CdC's decisions on how to meet the public service need identified were the least restrictive of competition. The third stage will be described in Section 3.5.

3.4.1.1. Procedures initiated to identify the existence of user demand

(93) With a view to completing the first stage referred to in recital 88, on 7 December 2021 the French authorities launched a public consultation among users of maritime freight and passenger transport on the routes between the port of Marseille and the five Corsican ports ('**the user consultation**').

(94) The consultation, which lasted one month, invited all those users and any other interested people to submit their comments on the maritime transport services in question. The user consultation was published on the OTC website and featured in the local and regional press.

(95) It involved several questionnaires, each consisting of around 20 questions, addressed to various user categories. The consultation was also accompanied by a document supporting the public inquiry, which set out the general characteristics of maritime transport services between Corsica and the French mainland ([49]), and gave a brief and preliminary description of the various categories of users of maritime freight and passenger transport between Corsica and the French mainland.

(96) The French authorities also launched a consultation of mainland ports (Marseille, Toulon and Nice) on 22 January 2022 for a period of one month ('**the port consultation**'). That consultation included a questionnaire essentially asking the port authorities about the characteristics of their infrastructure, both for freight transport and passenger transport.

3.4.1.2. Procedures initiated to determine the market supply available to meet user demand

(97) With a view to completing the second stage referred to in recital 89, on 19 January 2022 the French authorities launched a consultation of maritime transport service operators for a period of five weeks ('**the operator consultation**'). This consultation was available and accessible on the CdC website.

(98) On the introductory page to the operator consultation, the French authorities asked the shipping companies concerned to clarify their intentions with regard to scheduled services to Corsica from 1 January 2023. The operator consultation also included a questionnaire for operators to fill in. There was also an accompanying document, setting out in full the content of the user consultation support document of 7 December 2021 (recital 95) and a brief presentation of the results of the user consultation. Lastly, the consultation invited interested shipping companies to provide information on capacity and the volume of passengers and freight they could carry in the absence of a public service contract between 2023 and 2028.

([49]) These general characteristics are described in Section 2.3 of this decision.

3.4.2. *Characterisation of a public service need for maritime passenger transport*

(99) This subsection describes the conclusions drawn by the French authorities as to (i) the existence of demand from users of maritime passenger transport between Corsica and the mainland and (ii) the identification of the market's failure to meet that demand.

3.4.2.1. Identification of passenger demand

(100) The following subsections describe the analyses carried out by the French authorities relating to the *qualitative* demand from passengers of maritime transport between Corsica and the mainland and the *quantitative* demand from those users.

3.4.2.1.1. Identification of qualitative passenger demand

(101) This subsection presents first the results of the user consultation; second, the results of the port consultation; and last, the conclusions of the Gecodia report supplementing the results of the public consultations.

3.4.2.1.1.1. Results of the user consultation

3.4.2.1.1.1.1. Questions submitted to users

(102) In the user consultation support document (recital 95), the French authorities explained first that, as regards maritime passenger transport ([50]), a distinction had to be drawn between passengers living in Corsica ([51]) and non-resident passengers ([52]). They also considered that, among the passengers living in Corsica, there was specific demand for maritime transport from a particular category of user, namely passengers travelling for medical reasons ('**medical passengers**'), which was separate from general passenger demand. The user consultation support document also noted that the OTC had identified a need for a public maritime transport service for these categories of user under the 2021-2022 PSCs.

(103) The user consultation therefore asked users to respond to two questionnaires: one addressed to all passengers (residents and non-residents of Corsica); the other, more specific one, addressed to medical passengers only ([53]).

(104) The questionnaire sent to all passengers (residents/non-residents of Corsica) contained around 20 questions, with suggested answers (in some cases users could select multiple answers), and the time needed to complete the questionnaire was estimated at five minutes.

(105) The first question asked users to provide information on the maritime route(s) to Corsica which they used between the port of Marseille and the five Corsican ports ([54]). Questions 2 to 6 sought information on the user profile (socio-professional category, resident/non-resident of Corsica, reason(s) for the trip ([55]), frequency of travel ([56]) and

([50]) The user consultation support document excluded possible intermodal competition between maritime transport and air transport for journeys between Corsica and the French mainland, in so far as 'the assessment of the companies and an analysis of journey times, frequencies, prices and reliability of transport modes lead to passenger air transport not being included in the whole of or part of the relevant market'.

([51]) The passenger status of 'Corsican resident' is assigned by the OTC to anyone proving a main residence in Corsica.

([52]) According to the public consultation support document, several factors justified that distinction, including the fact that Corsican residents benefit from a special fare and travel more regularly than other passengers.

([53]) A third questionnaire was also addressed to students travelling between Corsica and the French mainland. However, since France did not conclude that there was a public service need for that category of user, this decision will not contain an analysis in that regard.

([54]) If users used more than one route, they had to fill in a questionnaire for each route used.

([55]) The answers proposed (several were possible) were: visiting family or friends; tourist/leisure trip; business trip; travelling for medical reasons; student travel; other (reason to be specified).

([56]) The answers proposed were: never; once a year; two to five times a year; six to nine times a year; more than ten times a year.

travel needs ([57])). Questions 7 to 9 asked users about their satisfaction with the departure and arrival times in Corsica (satisfactory or unsatisfactory; if unsatisfactory, did passengers want an earlier or later departure or arrival?) and the frequency of the maritime transport services offered on the maritime routes used. Questions 10 to 14 concerned the fare for the services in question for Corsican residents and sought, in particular, to understand whether that fare was appropriate or should be changed.

(106) Questions 15 to 19 invited users to comment on the alternatives to the port of Marseille that they could use. In particular, these questions were designed to ascertain:

— if, at the time of booking one of the routes from Marseille, users were also looking at available crossings at the other mainland ports ([58]);

— the main reason for choosing the port of Marseille compared with the other mainland ports ([59]);

— if, in the event of a hypothetical 5-10 % fare increase for maritime transport at the port of Marseille, users were prepared to use maritime transport services at another mainland port (Toulon, Nice or both) to travel to or from Corsica;

— whether users had already used routes from Toulon or Nice to Corsica since 2019 (yes or no) and, if so, the main reason for choosing another mainland port (Toulon or Nice) rather than the port of Marseille was to be specified ([60]).

(107) Questions 20 to 22 concerned substitutability between maritime transport and air transport. More specifically, the questions sought to ascertain, respectively, how often users compared flights and sea crossings at the time of booking ([61]), the main reason for choosing to travel by boat rather than by plane ([62]), and whether, in the event of a 5-10 % fare increase, they were prepared to use air transport services (yes or no).

(108) The questionnaire for medical passengers included both specific questions and questions identical to those in the general questionnaire (recital 103) ([63]). Among the specific questions, question 3 concerned the age group of users; question 4 concerned the number of round trips made annually by users; question 5 concerned the presence or absence of an accompanying person; question 6 concerned the need for a cabin and parking space on board the vessel; question 7 concerned the medical treatment carried out; and question 12 concerned the level of health insurance cover for costs related to medical treatment.

(109) In general, the questionnaires allowed users to send free text contributions to consultationpublique@ofc-corse.fr.

3.4.2.1.1.1.2. Summary of the replies received

(110) The French authorities state that they received more than 1 000 replies to the user consultation, of which 987 were usable (686 were from Corsican residents and 301 from non-resident passengers).

(111) In contrast, only 42 replies were received to the questionnaire addressed to medical passengers. Given the low number of replies received, the results of that consultation were not taken into account by the French authorities.

([57]) The answers proposed were: trip with cabin and car; trip without cabin or car; with car and without cabin; with cabin and without car.
([58]) The answers proposed were: I have no choice (booking imposed); systematically; not for some trips (type of trip for which no comparison is made to be specified); never.
([59]) The answers proposed were: lowest fare; timetable; better quality of service; proximity of the port to my destination; season ticket for this route; type of trip; other (to be specified).
([60]) The answers proposed were: lowest fare; more suitable timetable; my destination was closer to the chosen port; I do not know; other (to be specified).
([61]) The answers proposed were: systematically; regularly; occasionally; never.
([62]) The answers proposed were: lower fare; need to travel with a vehicle; option of a night crossing with a cabin; unable to fly; other (to be specified).
([63]) Questions 1-2 and 8-24 (except question 12) of the medical passenger questionnaire were identical to those in the questionnaire for all passengers.

(112) The replies to the questionnaire sent by the French authorities to all passengers can be summarised as follows:

— most residents and non-residents (nearly 60 %) travel by boat between Corsica and the mainland two to five times a year ([64]);

— 95 % of residents and 93 % of non-residents say they need a cabin and a car to travel on all routes;

— the main reasons why residents travel are family visits (72 %), tourism (56 %), business (29 %) and medical reasons (23 %). Non-resident passengers travel exclusively for tourism (56 %) and family visits (52 %) ([65]);

— most residents and non-residents are in favour of the departure and arrival times in force at the time of the user consultation (more than 80 % favourable opinion in both cases on all routes);

— the frequency of sea crossings between Marseille and Corsica in force at the time of the user consultation largely meets the needs of resident passengers (57 %) and non-resident passengers (65 %) ([66]).

(113) The summary also shows that 54 % of resident passengers (41 % of non-residents) systematically compare available crossings at the port of Marseille with the other mainland ports ([67]). However, the comparison rates vary from route to route: for certain routes such as Marseille-L'Île-Rousse or Marseille-Porto-Vecchio, resident respondents systematically compare with other crossings available at mainland ports (70 % and 60 % respectively for residents, 66 % and 35 % respectively for non-residents), while the comparison rates for the Marseille-Propriano route are low ([68]).

(114) Moreover, irrespective of the route concerned, the main reason for both resident and non-resident passengers choosing the port of Marseille is its proximity to their final destination (53 % and 50 % respectively). In the event of a hypothetical 5-10 % fare increase for the sea crossing from Marseille, at least 60 % of respondents (residents and non-residents) say they would be prepared to switch to Toulon and 35% also to Nice ([69]). Finally, almost 70 % of resident respondents used the ports of Toulon or Nice in 2019 for their trips to/from Corsica (compared with 52 % of non-resident respondents) ([70]). The main reason for using these two other ports is lower fares via Toulon or Nice (57 % of residents, 56 % of non-residents) ([71]).

([64]) 59 % of resident passengers (57 % of non-residents) report travelling between two and five times a year on average. 29 % of resident passengers travel once a year (38 % of non-residents). Passengers travelling more than six times a year are in the minority (12 % of residents, 5 % of non-residents). The statistics are fairly similar for the Marseille-Propriano route.

([65]) The statistics are fairly similar for the Marseille-Propriano route, although tourism is less important for resident passengers (46 %), while family visits (80 %), medical travel (27 %) and business travel (26 %) are higher than average. As regards non-resident passengers, tourism is higher than average (63 %) and family visits are lower (44 %).

([66]) The statistics for the Marseille-Propriano route are broadly similar to the average.

([67]) By contrast, 20 % of resident respondents (35 % of non-residents) never compare and travel only from/to Marseille. For 20 % of residents (21 % of non-residents) comparison is not an option (booking imposed) and 5 % of residents (3 % of non-residents) compare only for some trips.

([68]) 31 % of resident respondents (27 % of non-residents) systematically compare, while 44 % (50 %) never do.

([69]) These rates are lower for the Marseille-Propriano route, where more than half of respondents would not switch to the other mainland ports.

([70]) This proportion is valid for all routes to Corsica, with the exception of Propriano, with more than 60 % of respondents using the Marseille-Propriano route stating that they had not used the other mainland ports to travel to and from Propriano in 2019.

([71]) This proportion is much lower for the Marseille-Propriano route, where a lower fare at the other ports is considered by only 40 % of respondents, the proximity of the port to the final destination being another main reason for using crossings to/from the other mainland ports (25 % of respondents).

(115) Lastly, as regards the substitutability of air transport and maritime transport, the user consultation showed that 56 % of resident passengers (79 % of non-residents) did not compare flights with boat journeys at the time of booking ([72]). These proportions are bigger for certain routes, such as Marseille-Propriano ([73]). As regards question 21 (recital 107), the main reason for both Corsican residents (83 % of respondents) and non-residents (76 %) choosing a sea crossing rather than air travel on all routes is the need to travel with a vehicle. As regards the possibility of switching to air transport in the event of a hypothetical 5-10 % increase in the sea fare, just over half of respondents say that they would not switch ([74]).

3.4.2.1.1.2. Results of the port consultation

3.4.2.1.1.2.1. Questions asked

(116) The questionnaire accompanying the port consultation comprised three parts on passenger traffic.

(117) The first part of the questionnaire (questions 1.1 to 1.5) invited the port authorities to comment on the characteristics of user demand, as identified and presented in the user consultation support document (recital 95). More specifically, the first part asked the authorities to:

— comment on the distinction between resident, non-resident and medical passengers;

— indicate the size of their port's catchment area, based on their market knowledge;

— indicate whether they considered their port infrastructure to be non-substitutable with other ports for all or part of the passenger traffic between Corsica and the mainland;

— comment on the level of competition, both current and over a seven-year period, between ports for passenger transport.

(118) The second part of the questionnaire asked the port authorities to provide a full description of the port infrastructure that they would be likely to assign to maritime transport services between Corsica and the mainland.

(119) The third part (questions 4.1 to 4.8) essentially asked the port authorities about the capacity of their infrastructure to handle passenger traffic. More specifically, it asked them to indicate:

— whether their infrastructure had areas dedicated to scheduled passenger traffic ([75]);

— the type of vessels they could accommodate ([76]);

— whether their infrastructure currently handled scheduled passenger traffic ([77]);

([72]) More specifically, according to the summary of the user consultation, 33 % of residents never compare air transport with maritime transport; 23 % occasionally do so; 13 % regularly do so and 31 % systematically do so. Among non-residents, 64 % never compare; 15 % occasionally do so; 7 % regularly do so and 14 % systematically do so.

([73]) Almost 80 % of respondents for the Marseille-Propriano route do not compare or rarely compare a sea journey with an air journey.

([74]) More than 60 % of respondents for the Marseille-Propriano route would not switch to air transport.

([75]) The question asked the port authorities to specify (i) the size of the handling areas; (ii) the availability of handling areas for scheduled traffic with Corsica; (iii) the possibility of dedicating handling areas on a daily or weekly basis to scheduled traffic with Corsica; and (iv) whether terminals were available for scheduled traffic with Corsica.

([76]) The question asked the port authorities to specify (i) the number of quays available; (ii) reception hours depending on the capacity of the vessel; (iii) the environmental measures implemented.

([77]) The question asked the port authorities to specify (i) daily passenger reception capacity; (ii) passenger reception hours; (iii) the number of passengers boarding or disembarking that could be processed per hour.

— whether their infrastructure could accommodate daily ([78]) and non-daily ([79]) round trips for passenger traffic;

— whether the port authorities were able to guarantee a number of daily and/or weekly round trips for passenger services to Corsica ([80]).

3.4.2.1.1.2.2. Summary of the replies received

(120) The French authorities collected contributions from the port authorities of Toulon (Var CCI) and Nice (Nice Côte d'Azur CCI). The French authorities also explained during the formal investigation procedure that the Marseille port authority (Grand Port Maritime de Marseille) had already provided a free text contribution on 21 December 2021 as part of the user consultation, and that it submitted the same contribution in response to the port consultation, without responding specifically to the questionnaire provided for in the port consultation. However, the French authorities explained that the contribution from the port of Marseille contained the relevant information requested in the port questionnaire ([81]).

(121) As regards the first part of the questionnaire, none of the three ports contested the distinction between the various passenger categories identified by France. With respect to their catchment area, the ports of Marseille and Toulon consider that they attract customers from all over France and beyond, while the port of Nice indicates that its catchment area is primarily regional.

(122) The three ports consider their port infrastructure to be substitutable in respect of passenger transport. As regards competition between the mainland ports, Toulon and Marseille state that they openly compete with each other, with the port of Toulon claiming to be the '*undisputed leader in passenger transport*'. They point out, as does the Nice port authority itself, that the port of Nice lags behind Marseille and Toulon, as a result of a significant drop in passenger traffic in recent years.

(123) Regarding the third part of the questionnaire:

— *the Marseille port authority* states that it has 13 berths capable of handling passenger traffic destined for Corsica. Five of them are already fully dedicated to traffic to Corsica under the 2021-2022 PSCs, and eight more can be allocated in addition. The port can thus accommodate scheduled passenger traffic. Furthermore, the port of Marseille explains in its contribution that access to ships is easy for both passengers with vehicles and foot passengers ([82]). Lastly, the port of Marseille states that it is able to offer a ship repair service for immediate technical intervention;

([78]) The question asked the port authorities to specify (i) the number of possible stopovers per day; (ii) the minimum and maximum duration of stopovers; (iii) the rules for allocating berths.

([79]) The question asked the port authorities to specify (i) the number of possible stopovers in a week; (ii) the minimum and maximum duration of those stopovers and (iii) the rules for allocating berths.

([80]) The question asked the port authorities to specify the number of guaranteed stopovers.

([81]) The contribution from Grand Port Maritime de Marseille describes: the port's hinterland connections for freight and passenger traffic; the maritime routes and freight transport logistics chain between Corsica and the mainland; the port, sea and land infrastructure of the port of Marseille; the environmental footprint of port transit; related services, and the safety and security of port facilities; the legal security of shipping company terminals dedicated to Corsican traffic.

([82]) Passengers in vehicles have access to the port through a gate located in the immediate vicinity of the berths dedicated to services to Corsica – the entire circuit between the entry gate and access to the ship takes less than half an hour. The port of Marseille has a boarding area of almost 30 500 m² for vehicles, part of which is covered. The occupancy rate of parking areas is 50 % in the low season and up to 90 % during the summer peaks. However, the port of Marseille explains that, now that scheduled international services have been transferred to another terminal in the port, the parking areas for traffic to Corsica can be extended. The port of Marseille specifies that, for foot passengers, the Joliette and Arenc sea terminals are located in the immediate vicinity of the city centre and are well served by public transport.

— *the Toulon port authority* states that its port infrastructure allows it to handle scheduled passenger traffic, but only at the Toulon-Port de Commerce terminal, since passenger traffic is prohibited at the two Brégaillon terminals. It states that Toulon-Port de Commerce has dedicated areas for this traffic, with a handling area of 24 000 m². However, the port authority warns that, given the current occupancy rate of these areas by Corsica Ferries (80 %), it cannot guarantee that they can be allocated on a daily basis to scheduled traffic with Corsica ([83]). Toulon-Port de Commerce has three berths for passenger ships. This terminal is able to handle the boarding/disembarkation of 2 000 passengers per hour, and to accommodate up to three long stopovers per day. The port authority states that it cannot guarantee a daily round trip passenger service to Corsica;

— *the Nice port authority* states that its port infrastructure can handle scheduled passenger traffic. This infrastructure has a handling area of 25 900 m². Four berths are available. The port authority also indicates that the port can accommodate up to eight short stopovers per day. The port of Nice claims to be able to guarantee up to four daily round trip passenger services to Corsica.

(124) In addition, the French authorities also explained during the formal investigation procedure that the Corsican port authority, Corsica CCI, had also provided a free text contribution on 7 January 2022 as part of the user consultation. This free text contribution provided information on the characteristics of the five Corsican ports used for maritime services to Corsica.

(125) Corsica CCI does not point to any particular constraints on passenger transport. However, it mentions considerable congestion in the Corsican ports, in particular Bastia (critical situation all year round), and Ajaccio and Porto-Vecchio (high levels of congestion in summer).

3.4.2.1.1.3. Conclusions of the Gecodia report on qualitative passenger demand

(126) In addition to the public consultations, the French authorities also entrusted Gecodia with carrying out additional analyses of passenger demand for maritime services to Corsica. The conclusions of these analyses are described in the subsections below.

3.4.2.1.1.3.1. Demand for maritime transport not met by air transport

(127) First, the Gecodia report analysed whether, from passengers' point of view, a journey by air could be regarded as substitutable for a journey by boat in order to meet the need for transport between Corsica and the French mainland. The report concludes that this was not the case.

(128) The Gecodia report bases this conclusion, *firstly*, on the European Commission's decision-making practice ([84]), which indicates that substitutability is virtually non-existent in the case of passengers travelling with their own vehicle or with a substantial amount of luggage. This is the case in Corsica, as the ratio between the number of passengers and the number of light vehicles of all types on ships is around 0,7 for resident passengers and 0,4 for non-resident passengers ([85]).

(129) *Secondly*, the Gecodia report refers to the results of the user consultation, which largely tends to show that air and sea transport are not substitutable from the point of view of users (recital 115).

([83]) Var CCI states in its response 'Given that Corsica Ferries already handles more than 1.3 million passengers for Corsica via its non-PSC service and more than 400 000 passengers for other European island destinations through its other services at the [Toulon-Port de Commerce] terminal alone, and as local elected representatives have called for these numbers to be limited to the volumes handled between 2019 and 2021 (i.e. a maximum of 2 million passengers), it seems very difficult to imagine adding to this existing and well-established activity further activity in line with PSC obligations (and in particular the possibility of handling freight throughout the year)'.

([84]) The French authorities refer to the European Commission decision of 9 October 2013, COMP/M.6796 -*Aegean/Olympic II* (OJ C 25, 24.1.2015), paragraph 85.

([85]) This means that, on average, there is one car per resident passenger and almost one car per two non-resident passengers, which, according to France, is consistent with the average journey of a couple with a vehicle.

(130) *Thirdly*, the Gecodia report states that journeys by boat are much longer than those by plane (between 6 and 12 hours depending on the ports, mainly at night, compared with 1 hour by plane) ([86]). The same applies to frequencies, with air services being much more frequent than maritime services ([87]). According to the Gecodia report, a journey by boat cannot therefore be regarded as an alternative for passengers with time constraints.

(131) On the basis of the Gecodia report, the French authorities concluded that there was qualitative demand for *maritime* transport among residents and non-residents of Corsica travelling between Corsica and the French mainland.

3.4.2.1.1.3.2. Separate demand for maritime transport according to a passenger's place of residence (resident/non-resident of Corsica)

(132) The Gecodia report analysed whether there was a substantive difference in demand for maritime passenger transport depending on the user profile or their choice of mainland port of arrival.

(133) The Gecodia report concludes firstly that, with regard to maritime passenger transport between Corsica and the French mainland, a distinction must be made between passengers living in Corsica and non-resident passengers. According to the report:

— the principle of territorial continuity requires a transport service to be offered to Corsican residents to alleviate the constraints of insularity and enable them to travel to the mainland. Resident passengers thus benefit from a special fare imposed by the 2019 PSO scheme ([88]);

— the fares offered by shipping companies differ greatly between the two passenger categories (residents and non-residents). According to the Gecodia report, the ticket price charged to non-resident passengers varies considerably according to the season, whereas the price of the resident ticket is stable throughout the year. Moreover, some shipping companies, such as Corsica Ferries, apply resident fares on their own initiative, outside the scope of legal obligations, and in particular on routes between Italy and Corsica. Accordingly, the shipping companies themselves distinguish between resident and non-resident passengers;

— resident passengers have different behaviours and preferences, as confirmed, according to the French authorities, by the results of the user consultation. Demand for maritime transport from residents continues throughout the year: 30-39 % of resident passenger traffic is seen between November and March, which is the low season, while non-residents mainly travel during the tourist season (80-94 % of non-resident traffic). Also, almost all residents prefer evening departures, while only two-thirds of non-residents are in favour of them ([89]).

(134) For those reasons, overall, the demand for maritime transport among Corsican residents is different from that among non-residents.

([86]) According to the Gecodia report, 82 % of services between Corsica and the French mainland are operated at night, with a sailing time of 10-12 hours. For daytime crossings, which are the exception for Toulon and the rule for Nice, sailing times are usually between 5 and 8 hours.

([87]) According to the Gecodia report, there are three return flights a day from Marseille to Ajaccio and Bastia, and two from Nice (up to three in the high season). There are two return flights a day from Marseille to Calvi and Figari, and one from Nice. As far as maritime transport is concerned, in the high and low season, only the ports of Ajaccio and Bastia are served on at least a daily basis from Marseille or Toulon.

([88]) The French authorities state that the introduction of the 2019 PSO scheme met a public service need previously identified by the CdC among users (Corsican residents) which the market was not able to satisfy in the absence of public service obligations.

([89]) According to the Gecodia report, this conclusion applies only to the routes between Toulon and the Corsican ports: 91 % of residents travel in the evening between Toulon and the Corsican ports, compared with 67 % of non-resident passengers. At the port of Marseille, departures are fixed and take place only at 7 p.m., so there are no departures during the day. At the port of Nice, 19 % of residents travel in the evening, compared with 15 % of non-residents.

(135) Furthermore, the Gecodia report considers that from a geographical point of view:

— *non-resident* passengers make no distinction between the mainland ports of Marseille, Nice and Toulon when choosing a sea crossing between Corsica and the French mainland. Non-resident passengers therefore consider those three ports to be substitutable as regards their maritime transport needs;

— *resident* passengers consider the ports of Marseille and Toulon to be substitutable as regards their maritime transport needs, as they do the ports of Toulon and Nice. However, the ports of Marseille and Nice are not substitutable from their point of view, since the distance between them is more than 200 km.

3.4.2.1.1.3.3. Specific demand for maritime transport among medical passengers

(136) The French authorities addressed a specific questionnaire to medical passengers to identify any characteristics of demand from this category of user. They received few replies to this questionnaire (recital 111). The French authorities therefore had a supplementary analysis carried out by Gecodia to verify whether there was specific demand from medical passengers.

(137) The Gecodia report first refers to the legal framework governing medical travel between Corsica and the mainland. It explains that medical transport between Corsica and the mainland is the subject of coordinated policy by public authorities. The CdC, the state (through the Corsican regional health agency) and health insurance bodies (through the primary health insurance funds of Corse-du-Sud (2A) and Haute-Corse (2B) – '**CPAM**') took coordinated action to reduce obstacles to healthcare access for Corsicans who need to receive or continue treatment which is not available in Corsica.

(138) According to the Gecodia report, the rules governing coverage of transport costs are based on Articles R. 322-10 to R. 322-10-9 of the Social Security Code ('**CSS**'). Article R. 322-10 of the CSS lists the cases in which the costs of transporting an insured person who is obliged to travel to receive treatment or undergo examinations appropriate to their condition may be covered by the health insurance scheme ([90]). This includes situations where the insured person uses transport to travel to a location more than 150 km away, which is the case for an insured person travelling from Corsica to the mainland to receive treatment. Article R. 322-10-2 of the CSS states that, in all cases, the coverage of transport costs by the health insurance scheme 'is subject to presentation by the insured person of a medical prescription for the transport and of an invoice issued by the carrier or proof of carriage. The medical prescription must indicate the reason for the transport and the mode of transport used...'

([90]) Article R. 310-10 of the CSS states that 'the transport costs of an insured person or beneficiary who is obliged to travel are covered:
1. To receive treatment or undergo examinations appropriate to their condition in the following cases:
   (a) Transport in connection with hospitalisation;
   (b) Transport in connection with treatment or examinations prescribed pursuant to Article L. 324-1 for patients recognised as suffering from a long-term condition and presenting one of the impairments or incapacities set out in the prescription guidelines referred to in Article R. 322-10-1;
   (c) Transport by ambulance justified by the condition of the patient under the conditions laid down in the order referred to in Article R. 322-10-1;
   (d) Transport to a location more than 150 kilometres away under the conditions laid down in Articles R. 322-10-4 and R. 322-10-5;
   (e) Multiple trips, where at least four trips are prescribed for the same treatment during a two-month period and each trip is made to a place more than 50 kilometres away;
   (f) Transport in connection with care or treatment in the centres referred to in paragraph I(3) of Article L. 312-1 of the Social Action and Families Code or in the medical/psychological/pedagogical centres referred to in No 19 of Article L. 160-14 of this Code. [...]'

(139) The Gecodia report concludes that it is the doctor who determines the most suitable mode of transport for the patient, depending on their state of health and level of autonomy (Article L. 322-5 of the CSS), and that that choice is itself subject to prior authorisation by the CPAM. Furthermore, Article R. 322-10-4 of the CSS requires that a medical examination be carried out to verify that the treatment cannot be provided in a facility located no more than 150 km away. In other words, according to the Gecodia report, only transport costs for specialities or treatment not available in Corsica are covered. Lastly, Article R. 322-10-5 of the CSS states that the reimbursement of transport costs is calculated on the basis of the distance between the patient's initial place of care and the nearest prescribed treatment facility.

(140) On the basis of this information, the French authorities drew two conclusions.

(141) *First*, the mode of transport used, i.e. boat or plane, is prescribed by the doctor and subject to agreement by the CPAMs for the reimbursement of transport costs. Medical passengers therefore cannot choose the mode of transport if they wish their transport costs to be reimbursed.

(142) The French authorities consider that this demonstrates the absence of any substitutability between air transport and maritime transport from the point of view of medical passengers. The choice of one or the other mode of transport is imposed on them under the national legal framework governing the reimbursement of medical expenses.

(143) *Second*, medical travel covered by health insurance concerns patients who cannot find appropriate treatment in Corsica, and who therefore have an urgent need to travel to the mainland to receive appropriate treatment there. The Gecodia report states that appropriate treatment must be provided, by law, at the medical centre that is geographically closest to the place where the patient receives medical care in Corsica. The Gecodia report thus assumes that medical passengers are highly distance-sensitive and tend to favour ports in the places with the nearest prescribed treatment centre, to avoid their travel costs not being reimbursed, or being only partially reimbursed, by the CPAMs.

(144) The Gecodia report mentions that a number of medical care services related to hospital activities in medicine, surgery and obstetrics ('**MCO**'), follow-up care and rehabilitation ('**SSR**') and psychiatry ('**PSY**') are not available in Corsica. On the basis of data collected by the technical agency for information on hospitalisation ('**ATIH**') for the 2015-2020 period, the French authorities confirmed that there is a flow towards the mainland of patients living in Corsica who are receiving such care. The data provided in the Gecodia report show that on average Corsican residents accounted for almost 15 000 hospital stays (MCO) per year on the French mainland, two thirds of them in the department of Bouches-du-Rhône (Marseille); Corsican residents spent almost 34 000 days per year in SSR treatment on the French mainland, half of them in the department of Bouches-du-Rhône; and they received almost 1 700 PSY treatments per year, almost half of them in the department of Bouches-du-Rhône.

(145) On this basis, the Gecodia report concludes that there is specific demand from medical passengers for maritime transport between Corsica and the French mainland, taking into account, in particular, the conditions for reimbursement of transport costs and the location of appropriate centres for treatment which is not available in Corsica.

(146) The Gecodia report also looked at the needs of medical passengers in terms of destination on the French mainland.

(147) In this context, the French authorities asked the CPAMs to provide them with data on the number of requests for prior approval which they accepted for coverage of transport costs by the health insurance scheme. According to data obtained from CPAM 2A (more than 15 000 authorisations granted) ([91]), more than 80 % concerned one or more trips to Marseille, compared with less than 14 % to Nice, 1,1 % to Paris and less than 0,3 % to Toulon ([92]).

([91]) Contrary to what the Commission stated in recital 79 of the opening decision, CPAM 2A informed the French authorities of 15 237 requests for prior approval it had validated between 17 September 2020 and 31 December 2021 (not 8 000).

([92]) The Gecodia report also refers to data obtained from CPAM 2B collected from [...] (*) ((*): confidential information), revealing that more than 75 % of medical trips by air were made to Marseille, compared with less than 25 % to Nice.

(148) The Gecodia report thus concluded that the demand from medical passengers is likely to be only for the mainland ports close to their final destination on the mainland (prescribed care facilities). The vast majority of medical passengers travel to Marseille.

3.4.2.1.2. Identification of the quantitative passenger demand for maritime transport

3.4.2.1.2.1. Identification of quantitative demand among Corsican resident and non-resident passengers

(149) In order to quantify passenger demand (residents and non-residents of Corsica), the French authorities relied on both historical data and projections for the 2023-2030 period.

(150) The French authorities analysed the historical demand among Corsican resident passengers and non-resident passengers on the basis of the available data from 2016 to 2021. As regards the expected demand for the 2023-2030 period, the French authorities made projections based on the demand observed in 2019 (2020 and 2021 being years affected by the COVID-19 crisis). They estimated the change in demand for maritime transport from resident and non-resident passengers on the basis of the average annual growth rate of transport demand over the long term (2015-2030) published by the Ministry of Ecological Transition in July 2016 ([93]), and updated in October 2021 ([94]).

(151) The expected demand for maritime transport in 2030 is presented in Table 14.

Table 14

Passenger demand by route in 2030

	2030 Non-resident passengers (Marseille, Toulon and Nice area)	2030 Resident passengers (Marseille and Toulon area)	2030 Total
Ajaccio	1 050 000	45 000	**1 095 000**
Bastia	950 000	35 000	**985 000**
Porto-Vecchio	200 000	7 500	**207 500**
Propriano	50 000	4 000	**54 000**
L'Île-Rousse	325 000	5 500	**330 500**

Source: Gecodia report, tables 43-44.

3.4.2.1.2.2. Identification of the quantitative demand from medical passengers

(152) As regards medical passengers, the French authorities did not have direct data on the numbers of patients and accompanying persons transported, their destination or the mode of transport used. In that regard, the Gecodia report states that the Corsican regional health agency and CPAMs were asked about this data. The Corsican regional health agency said that it did not have this information. The CPAMs clarified that their information system did not provide reliable and complete data.

([93]) See the study by the Ministry of Ecological Transition of July 2016 on projected long-term demand for transport, available at: https://www.ecologie.gouv.fr/sites/default/files/Th %C3 %A9ma %20- %20Projections %20de %20la %20demande %20de %20transport %20sur %20le %20long %20terme.pdf (accessed on 18 October 2024). The study states that the overall results of the changes in transport demand and traffic calculated are intended to form the basis for local traffic projections, to be drawn up by the Ministry's decentralised departments or infrastructure managers, in order to analyse the future in the regions, and to evaluate public policies and transport infrastructure projects. The study provides projections for 2030 and 2050.

([94]) See the study of October 2021 updating the 2016 study, taking into account in particular the impact of the adoption of new environmental legislation. The update is available at: https://www.ecologie.gouv.fr/sites/default/files/document_travail_52_projection_transport_snbc2_oct2021.pdf (accessed on 18 October 2024).

(153) The French authorities therefore reconstructed an estimate of these trips using indirect data.

(154) The French authorities first relied on ATIH data (recital 144) on the number of medical treatments or stays (for treatment not available in Corsica) registered for Corsican residents on the French mainland (and, more specifically, in the Provence-Alpes-Côte-d'Azur region, where the cities of Marseille, Toulon and Nice are located). The French authorities estimated the number of medical passengers and accompanying persons on the basis of the number of medical treatments or stays registered for SSR, MCO and PSY activities for Corsican residents throughout the Provence-Alpes-Côte-d'Azur region ([95]). In total, they arrived at an estimate of 65 000 medical passengers per year on average for all medical treatment related to SSR, MCO and PSY activities. The department of Bouches-du-Rhône (Marseille) alone accounts for around 53 000 passengers per year on average over the 2015-2019 period.

(155) This estimate also includes accompanying persons. The French authorities estimated that one accompanying person was systematically present for medical passengers under 19 and over 75 years of age, and one in two was accompanied in the other age groups. As a result, they established that a medical (return) trip by a Corsican patient creates a de facto need for the transport of 1.4 passengers (return trip), taking into account the need for accompanying persons. According to France, this assumption was consistent with the empirical data collected from CPAM 2A, since of the 15 237 requests for prior approval accepted by CPAM 2A, 41,5 % (6 318) involved an accompanying person and of those 6 318 requests, 7,5 % also involved a second accompanying person.

(156) The French authorities then estimated the number of trips by sea in two ways.

(157) The first approach was to obtain the number of medical passengers by deducting the number of medical passengers who travelled by plane from the estimated total number of medical passengers. The data on medical passengers who travelled by plane between Corsica and the department of Bouches-du-Rhône (Marseille), available to the French authorities for the 2016-2019 period ([96]), show that air travel accounted for around 38 000 passengers per year on average (approximately 70 % of the estimated total of 53 000 medical passengers, recital 154). On the basis of these calculations, the French authorities concluded that maritime transport could account for up to 30 % of medical passengers' trips to the department of Bouches-du-Rhône.

(158) The second approach was to analyse the 15 237 requests for prior approval sent to CPAM 2A by Corsican residents between 2020 and 2021 for reimbursement of transport costs related to medical travel. The analysis of these requests for prior approval, which must include the medical prescription indicating the mode of transport prescribed by the doctor according to the patient's condition (recitals 136 to 148), revealed that approximately 4 % of them concerned maritime transport.

(159) On the basis of these two approaches, the proportion of medical passengers travelling by boat out of the total number of medical passengers travelling to Marseille varies between 4 % and 30 %. In order to reconcile the two approaches and ensure that the extent of demand from these passengers was assessed conservatively, the French authorities finally estimated that 10 % of medical passengers travelled by boat (approximately 5 400 medical passengers per year out of a total of 53 000 medical passengers per year estimated by the French authorities for the department of Bouches-du-Rhône in 2019).

([95]) As regards MCO activity, the demand for travel by Corsican patients (return trip, excluding accompanying person) was assessed in relation to the number of registered stays (1 stay = 1 return passenger = 2 trips). As regards SSR activities, expressed in days of hospitalisation, the French authorities estimated the number of trips in relation to the number of registered stays (1 stay = 1 return passenger = 2 trips), taking into account that, irrespective of the place of care, a stay corresponded to an average of 45 days of hospitalisation. Finally, as regards PSY activities, the number of passengers was calculated on the basis of the number of treatments recorded (1 treatment = 1 return passenger = 2 trips).

([96]) The data collected by the French authorities are taken from transport agreements concluded [...] [with] the CPAMs.

(160) Lastly, the French authorities assigned the number of medical passengers to the various Corsican ports on the basis of the breakdown of MCO activity by region (a map of which is available on the ATIH site).

(161) To estimate the annual demand from medical passengers to be met between 2023 and 2030, the French authorities considered that, in order to take into account the expected increase in population and an ageing population, on the one hand, and the development of healthcare provision in Corsica, on the other, the projected demand between 2023 and 2030 would remain stable on the basis of medical passenger trips estimated for 2019. Table 15 shows the estimate of medical trips by boat between the Corsican ports and the port of Marseille.

Table 15

Estimated medical trips by boat of patients living in Corsica and accompanying persons (annual passengers) between Corsica and Marseille

	2018	2019	2020	2023-2030
Ajaccio	2 134	2 145	1 667	**2 145**
Bastia	2 407	2 419	1 880	**2 419**
Porto-Vecchio	251	252	196	**252**
Propriano	126	126	98	**126**
L'Île-Rousse	425	427	332	**427**

Source: Comments from the French authorities submitted on 27 July 2023.

3.4.2.2. Determination of the market's capacity to meet user demand

(162) After estimating the qualitative and quantitative demand from the various categories of users of maritime passenger transport between Corsica and the French mainland, the French authorities attempted to determine the extent to which market supply could meet that demand.

3.4.2.2.1. The operator consultation

3.4.2.2.1.1. Questions asked

(163) The operator consultation first comprised a questionnaire, containing four general questions on passenger transport:

— a first question asked maritime carriers to comment on the characteristics of the user demand identified and presented in the user consultation support document (recital 95);

— a second question asked operators to describe the fleet they were likely to use for maritime services between Corsica and the French mainland;

— a third question asked whether, under the 2019 PSO scheme, operators planned to introduce a service on one or more of the routes from 2023 onwards. This question also proposed a list of routes covering all maritime links between Marseille and the Corsican ports, between Toulon and the Corsican ports, and between Nice and the Corsican ports. For each route, operators had to indicate whether or not they would operate the route under the 2019 PSO scheme. The questionnaire also allowed operators to provide any comments on the operation of the route in question.

(164) If the answer to the third question was 'yes' for one or more routes, the questionnaire then proposed a list of more specific questions on the service that the operator would introduce. Operators had to provide this information for each route for which they had stated that they were able to propose a commercial service under the 2019 PSO scheme.

(165) For example, if an operator stated that it was able to provide a commercial service on the Marseille-Ajaccio route, it had to answer the following questions:

— had it already provided a maritime transport service for the 2015-2022 period on the route in question ([97])?

— at what time of year would the operator provide its service ([98])?

— what type of vessels would the operator use to provide its commercial service ([99])?

3.4.2.2.1.2. Summary of the replies received

(166) Three operators replied to the operator consultation: Corsica Linea, La Méridionale and Corsica Ferries.

(167) Corsica Linea and La Méridionale stated that they would not offer any commercial service between Corsica and the French mainland under the 2019 PSO scheme.

(168) Corsica Ferries submitted the commercial service it would deploy in the absence of a public service contract for passenger transport. In support of its responses to the questionnaire, Corsica Ferries submitted several Excel files detailing, inter alia, the capacities of its vessels and the commercial service it would provide.

(169) In reply to question 1 of the operator consultation, Corsica Ferries pointed out that its responses to the questionnaire, as well as the Excel file of data relating to its transport service, had been drawn up in the absence of any indication in the documents provided by the CdC of the territorial continuity needs and requirements. In the light of these uncertainties, Corsica Ferries had not modelled, in its Excel file on the capacity of its vessels, any increase or decrease in the capacity offered over the 2023-2028 period: the capacity reported was therefore identical throughout the period under analysis.

(170) In reply to question 4, Corsica Ferries stated that, in the absence of a public service contract, from 1 January 2023 it would operate passenger transport services between all the mainland ports (Marseille, Nice, Toulon) and all the Corsican ports except the port of Propriano. More specifically, it would offer daytime and night-time commercial services (freight and passenger), comprising:

— a daily round trip between the French mainland (at least five times a week from Toulon and twice a week from Marseille) and both of the ports of Ajaccio and Bastia;

— two monthly round trips from Marseille, and at least three weekly round trips from Toulon, to each of the ports of Porto-Vecchio and L'Île-Rousse;

— no commercial service to Propriano since, according to Corsica Ferries, that port was substitutable with Ajaccio, which it already proposed to serve at least once a day from Marseille and Toulon;

— additional maritime transport services between the port of Nice and Corsica from July to September.

(171) Corsica Ferries informed the French authorities that it had a fleet of 13 vessels, which were not assigned to a particular route. The company also stated that 15 % of its crossings, on all routes, would be during the day (departure between 6 a.m. and 4 p.m. for arrival between 2 p.m. and midnight in both directions).

([97]) If the answer was 'no', the operator had to state the reason for the absence of a service.

([98]) The operator also had to specify: (i) in the absence of a year-round service, what would be the specific period of the year envisaged; (ii) whether the proposed service was a direct service; (iii) the frequency of crossings; (iv) the departure and arrival times envisaged; and (v) the total number of direct crossings envisaged annually.

([99]) The operator had to specify (i) how the vessel used appeared to meet territorial continuity needs; (ii) the number of vessels envisaged; (iii) the capacity of the vessels; (iv) their characteristics; (v) the environmental measures implemented; and (vi) the services offered on board the vessels.

(172) As regards the capacity of its vessels for passenger transport services, Corsica Ferries provided the French authorities with the information set out in Table 16.

Table 16

Corsica Ferries' potential service under the 2019 PSO scheme (annual passengers) in the absence of PSCs

	2023-2028 Non-resident passengers (Marseille, Toulon and Nice area)	2023-2028 Resident passengers (Marseille and Toulon area)	2023-2028 Total
Ajaccio	1 790 601	971 940	**2 762 541**
Bastia	1 881 317	907 995	**2 789 312**
Porto-Vecchio	279 532	136 803	**416 335**
Propriano	0	0	**0**
L'Île-Rousse	586 182	256 158	**842 340**

Source: Corsica Ferries' response to the market test on maritime services between Corsica and the French mainland (22 February 2022).

(173) Corsica Ferries also stated that its offer (from the port of Marseille) would be valid only in the absence of a public service contract between Corsica and the mainland.

3.4.2.2.2. Analysis of market failure

(174) After analysing the capacity that Corsica Ferries would deploy, the French authorities concluded that, in the absence of PSCs, the market could meet the projected demand in the 2023-2028 period from resident passengers (except medical passengers) and non-residents for maritime services between the ports of Ajaccio, Bastia, L'Île-Rousse and Porto-Vecchio and the French mainland ports.

(175) However, the French authorities note that Corsica Ferries would not serve the port of Propriano. They thus conclude that there is a complete market failure for maritime transport between the port of Propriano and the French mainland ports, both for resident and non-resident passengers.

(176) Furthermore, as regards the demand from medical passengers, the French authorities consider that Corsica Ferries would serve the port of Marseille only twice a week from the ports of Ajaccio and Bastia, and three times a month from the ports of Porto-Vecchio and L'Île-Rousse. In addition, as indicated in recital 170, Corsica Ferries would not serve the port of Propriano. They therefore consider that the service offered by Corsica Ferries was not sufficiently regular to the port of Marseille, which is the preferred port for medical passengers.

3.4.2.3. Conclusion on the existence of a public service need in relation to maritime passenger transport

(177) In the light of a market failure between the port of Propriano and the French mainland ports for the maritime transport of resident and non-resident passengers, the French authorities concluded that there was a public service need covering the entire estimated quantitative demand between 2023 and 2030 from/to the port of Propriano, as indicated in Table 14.

(178) In the light of a market failure between each of the Corsican ports and the port of Marseille for the maritime transport of medical passengers due to the inadequacy of the transport services that would be provided by Corsica Ferries, the French authorities concluded that there was a public service need covering the entire demand from medical passengers travelling to Marseille between 2023 and 2030, as indicated in Table 15.

3.4.3. *Characterisation of a public service need for maritime freight transport*

(179) This subsection describes the conclusions drawn by the French authorities as to (i) the existence of demand from users of maritime freight transport between Corsica and the mainland and (ii) the description of a market failure to meet this demand.

3.4.3.1. Identification of user demand

(180) The following subsections describe the analyses carried out by the French authorities relating both to the qualitative demand from users of maritime freight transport between Corsica and the mainland and to the quantitative demand from those users.

3.4.3.1.1. Identification of the qualitative demand

(181) This subsection presents first the results of the user consultation; second, the results of the port consultation; lastly, the conclusions of the Gecodia report supplementing the results of the public consultations.

3.4.3.1.1.1. Results of the user consultation

3.4.3.1.1.1.1. Questions asked

(182) In the user consultation support document (recital 95), the French authorities made a preliminary distinction between the transport of towed freight and the transport of non-towed freight ([100]).

(183) The user consultation included a questionnaire addressed to all users of maritime freight transport. The questionnaire contained a list of around 20 questions, with proposed answers (in some cases users could tick multiple answers) and an estimated completion time of five minutes.

(184) The first three questions sought general information on user profiles. The first question asked users to provide information on the maritime route(s) to Corsica which they used between the port of Marseille and the five Corsican ports ([101]). The second question sought information on users' sector of activity and the post code of their head office. The third question asked users for their opinion on the distinction between the transport of towed freight and the transport of non-towed freight, and asked them to provide information on the volume of towed and/or non-towed freight transported on the route in question in 2019.

(185) Questions 4 to 13 asked users about their satisfaction with the maritime transport services offered on the route(s) concerned. More specifically, they asked:

— whether the service offered on the route in question met the user's needs (answer: yes or no);

— whether users encountered difficulties in terms of available capacity ([102]);

— to specify the type of freight for which users encountered such difficulties and whether they switched their freight to other routes as a result of those difficulties ([103]);

— whether users were satisfied with the departure and arrival times with Corsica (satisfactory or unsatisfactory; if unsatisfactory, did users want an earlier or later departure or arrival time?) and the frequency of the maritime transport services offered on the maritime routes used;

— whether the maximum freight fare under the 2019 PSO scheme should change.

([100]) The user consultation support document explains that non-towed freight requires significant port handling (port equipment, labour), unlike towed freight.

([101]) If users used several routes, they had to fill in a questionnaire for each one.

([102]) The answers proposed were: systematically; regularly; occasionally; never.

([103]) The answers proposed were: same route; other routes via Marseille; other routes via Toulon; other routes via Nice; other (to be specified).

(186) Questions 14 to 20 invited users to give their assessment of the choice of mainland port for the service. In particular, these questions asked:

— if, at the time of booking one of the routes from Marseille, users also looked at available crossings from the other mainland ports ([104]);

— the main reason for the choice of the port of Marseille as opposed to the other mainland ports ([105]);

— if, in the event of a hypothetical 5-10 % increase in the fare for maritime transport at the port of Marseille, the user was prepared to use maritime transport services at another mainland port (Toulon, Nice or both) to travel to or from Corsica;

— whether the user had already used routes from Toulon or Nice to Corsica since 2019 (yes or no) and, if so, to specify the main reason for choosing a mainland port (Toulon or Nice) other than the port of Marseille ([106]).

(187) Finally, question 21 asked users about the appropriateness of a transport service using vessels entirely dedicated to freight (Ro-Ro) compared with the current service (Ro-Pax).

3.4.3.1.1.1.2. Summary of the replies received

(188) The French authorities had received only five replies to the questionnaire by the end of the consultation period. In light of this low number, Gecodia directly contacted several transport and logistics companies using maritime freight services between Corsica and the mainland, in order to go through the questionnaire directly with them by telephone.

(189) The French authorities state that Gecodia contacted 21 transport companies representing approximately 90% of the total non-towed freight traffic and 70 % of the towed freight moving between Corsica and the mainland. The hauliers surveyed used mainly routes from Marseille, while more than half of them also used routes from Toulon. The hauliers replied for each of the routes they used between Corsica (each of the Corsican ports) and the mainland (each of the mainland ports), and for each type of freight (towed and non-towed freight).

(190) As regards non-towed freight ([107]), the responses to the questionnaire can be summarised as follows:

— just over half of the respondents consider that the current maritime transport service offered generally does not meet their needs. These results vary according to the route: while almost all users using transport services between the mainland and Propriano and L'Île-Rousse are satisfied with the current offering, those using transport services to/from Ajaccio and Bastia are almost all dissatisfied ([108]);

— most users face difficulties in terms of available capacity, particularly on routes between the mainland and Bastia (100 % regularly or systematically encounter difficulties), Ajaccio and Porto-Vecchio (more than 50 % regularly or systematically encounter difficulties);

— the respondents largely appreciate the departure and arrival times in Corsica and the round trip frequencies in force at the time of the user consultation;

([104]) The answers proposed were: I have no choice (booking imposed); systematically; only for some flows (flow for which no comparison is made to be specified); never.

([105]) The answers proposed were: lowest fare; port infrastructure; timetable; better quality of service; proximity of the port to my destination; type of trip; other (to be specified).

([106]) The answers proposed were: lowest fare; more suitable timetable; my destination was closer to the chosen port; services at Marseille fully booked; other (to be specified).

([107]) To recap, non-towed freight is moved exclusively between the Corsican ports and the port of Marseille.

([108]) The situation is more mixed for Porto-Vecchio, with 64 % of respondents finding the service unsatisfactory.

— none of the respondents compares the available crossings at the port of Marseille with the crossings available in other ports. The proximity of the port of Marseille is almost the only reason for choosing that port. Even in the event of a hypothetical increase in maritime transport prices from Marseille, none of the respondents would switch to the other mainland ports;

— almost all respondents would prefer a service with freight-only vessels (Ro-Ro) rather than a passenger-cargo service.

(191) As regards towed freight, the replies to the questionnaire can be summarised as follows:

— just over half of the replies state that the current maritime transport service offered from/to Marseille generally meets the needs, while the service from Toulon is considered unsatisfactory (77 % of the replies). These results vary according to the route: almost all users complain about the route to/from Bastia (for respondents using Marseille and Toulon). Half of them are also dissatisfied with the service to/from Ajaccio and Porto-Vecchio (for respondents using Marseille and Toulon), while they express overall satisfaction with the routes to/from Propriano and L'Île-Rousse;

— most users face difficulties in terms of available capacity, particularly on routes to Bastia (100 % regularly or systematically encounter difficulties, both in Marseille and Toulon) and to Ajaccio and Porto-Vecchio (50 % regularly or systematically encounter difficulties from Marseille and 100 % from Toulon);

— the respondents largely appreciate the departure and arrival times and the frequency of the round trips in force at the time of the user consultation in both Toulon and Marseille;

— almost none of the respondents compares the available crossings at the port of Marseille with the crossings available in the other ports. The proximity of the port of Marseille is almost the only reason for choosing that port. Even in the event of an increase in maritime transport prices from Marseille, none of the respondents would switch to other mainland ports;

— less than 40 % of respondents used mainland ports other than Marseille in 2019. The results vary according to the route: 80 % and 50 % (respectively) of respondents travelling to/from Bastia and Ajaccio used Toulon, compared with virtually none travelling to/from other Corsican ports. The sole reason for using the port of Toulon is that services are fully booked at the port of Marseille. Even in the event of an increase in maritime transport prices from Marseille, none of the respondents would switch to the other mainland ports;

— the majority of respondents would prefer a service with freight-only vessels (Ro-Ro) rather than a service based on Ro-Pax.

3.4.3.1.1.2. Port consultation

3.4.3.1.1.2.1. Questions asked

(192) The questionnaire accompanying the port consultation comprised three parts on freight traffic.

(193) The first part of the questionnaire invited port authorities to comment on the characteristics of the user demand identified and presented in the user consultation support document (recital 95). More specifically, the first part asked the port authorities to:

— comment on the distinction between towed and non-towed freight;

— indicate the size of their port's catchment area, based on their market knowledge;

— indicate whether they considered their port infrastructure to be non-substitutable for other ports for all or part of the towed and non-towed freight between Corsica and the mainland;

— comment on the level of competition, both current and over a seven-year period, between ports for freight transport.

(194) The second part of the questionnaire asked the port authorities to provide a full description of the port infrastructure that they would be likely to use for maritime transport services between Corsica and the French mainland.

(195) The third part (questions 5.1 to 5.8 for non-towed freight and questions 6.1 to 6.8 for towed freight) essentially asked the port authorities about the capacity of their infrastructure to handle freight traffic. More specifically, it asked them to indicate:

— whether their infrastructure includes handling areas for non-towed and towed freight (answer: yes or no) ([109]);

— the type of vessels they could accommodate ([110]);

— whether their port infrastructure currently dealt with towed and/or non-towed freight ([111]);

— whether their infrastructure could accommodate daily ([112]) and weekly ([113]) round trips for freight traffic (answer: yes or no);

— whether the port authorities were able to guarantee a number of daily and weekly round trips for freight services to Corsica (answer: yes or no) ([114]).

3.4.3.1.1.2.2. Summary of the replies received

(196) As indicated in recital 120, the French authorities collected contributions from the port authorities of Toulon, Marseille and Nice.

(197) As regards the first part of the questionnaire, the three ports consider the approach taken by the French authorities in distinguishing between towed and non-towed freight to be appropriate. As regards their catchment area for freight transport, the ports of Nice and Toulon consider their catchment area to be only local and limited to the immediate hinterland, while the port of Marseille considers that it attracts the transport of goods from all over France, and in particular the transport of goods passing through the Rhône valley.

(198) As regards the conditions of competition, the port of Nice considers that its infrastructure, located in the city centre, and the weak industrial and commercial fabric around Nice do not, and will not over a seven-year period, allow it to meet the demand for freight transport between Corsica and the mainland. The port of Toulon also states that the port of Marseille is the undisputed leader in the freight market, and that it can only position itself to complement Marseille. The port of Toulon points out that the level of competition between Marseille and Toulon is 'healthy, despite Toulon's low capacity, which means that it cannot really compete in this market'. The port of Marseille considers that its geographical location, at the heart of motorway and rail junctions and close to the main logistics and transport hubs, as well as the very easy access to its infrastructure from three motorways give it a major advantage for freight transport.

([109]) The questionnaire asked the ports to specify the size of the handling areas, their availability for traffic to Corsica and their capacity to accommodate class 1 and class 2 dangerous goods.

([110]) The port authorities also had to specify (i) the number of quays available; (ii) the maximum capacity in linear metres of the vessels that can be accommodated; (iii) the environmental measures implemented.

([111]) The port authorities also had to specify (i) the daily capacity for accommodating semi-trailers/lorries; (ii) reception hours for semi-trailers/lorries; (iii) the average parking time for semi-trailers/lorries; (iv) the number of semi-trailers/lorries that can be processed per hour for boarding or disembarking.

([112]) The port authorities also had to specify (i) the number of possible stopovers per day; (ii) the minimum and maximum duration of stopovers; (iii) the rules for allocating berths.

([113]) The port authorities also had to specify (i) the number of possible stopovers per week; (ii) the minimum and maximum duration of those stopovers and (iii) the rules for allocating berths.

([114]) The questions asked the port authorities to specify the number of guaranteed stopovers.

(199) Regarding the third part of the questionnaire:

— *The Marseille port authority* declares that it has 13 berths capable of receiving towed and non-towed freight traffic to Corsica. Five of them are already fully dedicated to traffic to Corsica under the 2021-2022 PSCs, and eight more can be allocated in addition. The port of Marseille has 120 000 m² of handling areas, which can be entirely dedicated to towed and non-towed freight traffic to Corsica. Almost 30 000 m² of additional space can be made available depending on weather conditions or to deal with dangerous goods. Finally, a terminal expansion project involves the creation of more than 60 000 m² of additional handling areas, which the port can use for maritime services to Corsica. In addition, the port of Marseille states in its contribution that access to vessels is easy for lorries ([115]). The port of Marseille is also able to board/disembark 35 trailers per hour on average, and to handle almost 240 trailers per day. Lastly, the port of Marseille states that it is able to provide a ship repair service for Ro-Pax to ensure immediate technical intervention.

— *The Toulon port authority* states that its port infrastructure can handle towed and non-towed freight traffic. It points out that Toulon-Port de Commerce has handling areas (3 400 m²) and three berths for Ro-Pax vessels, which can ensure two round trips per day ([116]). The port authority states that it can deal with the boarding or disembarkation of 80 trailers a day (but only about ten in the summer period) at this terminal. However, the port authority warns that, given the current level of occupancy of these dedicated areas by Corsica Ferries (80 %), it cannot guarantee that they can be allocated on a daily basis to scheduled traffic with Corsica ([117]). Toulon-Port de Commerce can accommodate towed freight, with the exception of dangerous goods. Toulon-Brégaillon, for its part, has 30 000 m² of handling areas which it can use for non-towed freight traffic, including dangerous goods. However, it has only one berth, for Ro-Ro ships only. It can handle 120 trailers per day. Var CCI states that Toulon-Brégaillon best lends itself to pure freight traffic, since it cannot accommodate passenger traffic because the terminal is in a zone where explosives are handled.

— *The Nice port authority* states that its port infrastructure cannot accommodate non-towed freight traffic. Towed freight can be handled though. This infrastructure has a handling area of 25 900 m², but the port specifies that passenger traffic takes priority over any other activity. Four berths are available. The port authority claims to be able to guarantee up to four daily round trips for towed freight services to Corsica.

(200) As indicated in recital 124, Corsica CCI also provided a free text contribution during the user consultation. Corsica CCI provided several pieces of information concerning the transport of goods in the Corsican ports.

(201) Generally speaking, Corsica CCI highlights the capacity problems encountered by all Corsican ports, with the exception of the port of Propriano. This situation regularly requires prefectoral exemptions during the summer period in order to allow heavy goods vehicles to drive on days of heavy road traffic ('red' days). More specifically, Corsica CCI observes that:

— *the port of Bastia* has seen a very sharp increase in goods traffic since 2010, which was not slowed down by the COVID-19 pandemic. However, the capacity of the port of Bastia has reached saturation point, with overcrowded handling areas, increasingly tight handling operations during a limited time slot and in a restricted space, and vehicle congestion making it impossible for hauliers to regularly make their deliveries

([115]) The Marseille port authority states that it takes less than five minutes for a lorry to transfer from the port entrance to the maritime terminal. Furthermore, the port states that port transit and registration procedures are fully digitalised, thus ensuring the smooth flow of traffic.

([116]) The Toulon port authority states that one of the three berths, the Fournel quay, is reserved as a priority for cruise ships between 8.30 a.m. and 6.30 p.m.

([117]) Var CCI states in its response 'Given that Corsica Ferries already handles more than 1.3 million passengers for Corsica via its non-PSC service and more than 400 000 passengers for other European island destinations (Sardinia, Minorca, Majorca) through its other services at the [Toulon-Port de Commerce] terminal alone, and as local elected representatives have called for these numbers to be limited to the volumes handled between 2019 and 2021 (i.e. a maximum of 2 million passengers), it seems very difficult to imagine adding to this existing and well-established activity a further activity in line with PSC obligations (and in particular the possibility of handling freight throughout the year)'.

on time. Although the port of Bastia has eight berths, it cannot simultaneously accommodate eight vessels due in particular to the technical characteristics of its berths (limited length and draught). In its contribution, Corsica CCI therefore calls for daily round trips between Bastia and Marseille to be maintained, and for additional round trips to be added to stagger traffic and avoid congestion / goods being left on the quayside;

— *the ports of Ajaccio and Porto-Vecchio* are also experiencing sharp increases in freight traffic, with goods increasingly left on the quayside due to lack of space on board ships. Corsica CCI calls for daily and weekly round trips to be maintained for both ports, with additional round trips to stagger traffic and avoid congestion / goods being left on the quayside;

— according to Corsica CCI, *the port of L'Île-Rousse* suffers from an imbalance compared with the other Corsican ports, in that one in three weekly round trips is dedicated to the transport of dangerous goods, which poses a problem in terms of the economic vitality of the port's catchment area (Balagne), the second most popular tourist destination after Porto-Vecchio. Furthermore, the port of L'Île-Rousse has two berths that cannot be occupied simultaneously given the width of the one and only breakwater used for both berths and the length of the quays. According to Corsica CCI, weekly round trips should be increased to three plus a specific round trip for the transport of dangerous goods;

— there is no significant congestion in the *port of Propriano*.

3.4.3.1.1.3. The conclusions of the Gecodia report on qualitative demand from freight transport users

(202) In addition to the public consultations, the French authorities also asked Gecodia to carry out additional analyses on demand from freight transport users for maritime services to Corsica.

(203) As indicated in recital 95, the French authorities had pointed out in the user consultation support document that a distinction had to be made between the transport of towed freight and the transport of non-towed freight, owing in particular to the different handling constraints that such traffic entails.

(204) The study conducted by Gecodia confirms this distinction between towed freight and non-towed freight. Gecodia also conducted an analysis of the geographical scope of user demand for towed and non-towed freight transport by sea, in order to determine whether there was user demand for one or more mainland ports to transport their freight between Corsica and the mainland. In particular, the following parameters were taken into account in carrying out this analysis:

— the capacity of ports to accept traffic;

— comments gathered during the public consultations;

— the additional cost of passing through one port or another depending on the point of departure of the freight from the mainland to Corsica or the point of destination of the freight from Corsica to the mainland; and

— the observation of a permanent and significant price shock (only for towed freight).

3.4.3.1.1.3.1. Separate user demand according to the type of freight transport (towed freight and non-towed freight)

(205) The Gecodia report considers that there is a substantial difference between towed freight and non-towed freight. First, non-towed freight means the semi-trailer has to be detached from the lorry to be loaded onto the vessel, which requires specialised equipment and intervention by dockers. Second, the port must have sufficient capacity (handling areas) to store semi-trailers before loading. Finally, the loading of semi-trailers cannot take place at the same time as the boarding of passengers and lorries, which means that the ship has a long stopover. However, a long stopover limits the use of a quay, so the port must have several quays to serve several destinations simultaneously. The Gecodia report draws on the results of the user and port consultations to support the appropriateness of this distinction.

(206) Furthermore, the Gecodia report points out that, from the point of view of hauliers, towed freight and non-towed freight have different characteristics. Where towed freight transport requires a large fleet of semi-trailer tractors to ensure the daily transport of several trailers ([118]), non-towed freight transport enables the fleet of tractors to be optimised in relation to the number of semi-trailers, allowing the haulier to make several round trips with a single tractor between the port and its logistics base in a single day. The Gecodia report states that, during the user consultation, hauliers generally stated that they made between four and six round trips in a day with a tractor for non-towed freight.

(207) The Gecodia report thus concludes that, for a haulier, switching from non-towed freight to towed freight involves significant costs in terms of staff and purchasing additional semi-trailer tractors. The transport of towed freight and non-towed freight therefore involves two different types of demand.

(208) Nevertheless, the Gecodia report points out that there are some commonalities between towed freight and non-towed freight. In particular, the Gecodia report states that deliveries (towed or non-towed freight) must be made in the morning before a time imposed by the haulier's customer, subject to a penalty if the delivery is late or has to be rescheduled. The Gecodia report therefore stresses the importance of port reception as early as possible (between 6 a.m. and 7 a.m.) in order to be able to deliver to recipients on time, regardless of the shipper (supermarkets, construction, couriers or bulking). In the case of non-towed freight, very early port reception is also necessary for unladen semi-trailers (returning to the mainland), because of the time needed to return disembarked semi-trailers to logistics bases (retailers or hauliers), load them and then return them to the port. In addition, in both cases, regular maritime services must be ensured to guarantee the supply of goods to Corsica and the return of semi-trailers/lorries to the mainland.

3.4.3.1.1.3.2. Demand for maritime transport of non-towed freight exclusively at the port of Marseille

(209) The Gecodia report considers that users of non-towed freight transport use the port of Marseille exclusively and that this port is therefore not substitutable with the other mainland ports of Toulon and Nice.

(210) *Firstly*, the Gecodia report states that only the ports of Marseille ([119]) and Toulon-Brégaillon have the necessary infrastructure to accommodate this type of traffic, which is not the case for the ports of Toulon-Port de Commerce and Nice. Toulon-Brégaillon also has a capacity limited to a single berth, which would not allow it to provide more than one daily crossing to Corsica, given the constraints of the stopover duration and departure time for non-towed freight ([120]). Substitutability between the ports of Marseille and Toulon-Brégaillon for this type of traffic could thus exist on one route only at most.

(211) *Secondly*, according to the Gecodia report, the user consultation largely confirms that, for non-towed freight, hauliers never or very rarely consider an alternative to the port of Marseille when planning their journeys. None of the respondents indicated that a price increase of 5-10 % at the port of Marseille would lead them to switch to the ports of Toulon, because going through Toulon would not allow them to optimise their daily operations.

([118]) To recap, towed freight involves transporting the lorry in its entirety (tractor + semi-trailer) with the driver, whereas non-towed freight involves the transport of only the semi-trailer.

([119]) The Gecodia report notes that the port of Marseille states in its contribution that it has almost 210 000 square metres of available surface area, with 13 berths which can be dedicated to traffic between Corsica and the mainland and all equipped with modern and digitalised facilities to ensure the smooth flow of traffic.

([120]) The Gecodia report indicates that the average rate of loading trailers onto vessels at the port of Toulon-Brégaillon was between 15 and 20 trailers per hour, well below that of Marseille (35 trailers), and that the available capacity per day is estimated at 120 trailers. By comparison, the median number of trailers loaded at the port of Marseille bound for Corsican ports stood at 237 in 2021, i.e. double that number.

(212) As regards the port authorities, Nice Côte d'Azur CCI stated that the catchment area of the port is only local and that 'the port of Nice, with its infrastructure in the city and its weak industrial and commercial fabric, is at a disadvantage and will never be able to meet the demand for freight to Corsica, as Toulon and Marseille are better adapted to the needs'. Furthermore, the Gecodia report highlights the statement made by the port of Toulon during the port consultation, according to which the port of Toulon can only position itself to complement the port of Marseille, given its limited catchment area of the Toulon hinterland and the limited capacity levels of its maritime terminals.

(213) *Thirdly*, the Gecodia report observes that, in order to ensure deliveries to shops, large distribution units rely mainly on regional or national warehouses. In the case of Corsica, more than 90 % of supplies to Corsica's department stores are sent via these logistics bases, such that most of the goods imported into Corsica originate in the logistics centres in the PACA region ([121]). The Gecodia report explains that warehouses and logistics platforms are mainly concentrated in the north-west and around Marseille, as well as in the Rhône corridor. In this regard, the French authorities refer to the joint study carried out in October 2021 by the urban planning agency of the Marseille metropolitan area and the urban planning agency of the Aix-Durance region, setting out the geographical location of these warehouses and platforms. ([122]) This study shows the very high concentration of logistics flows towards Marseille. The Gecodia report therefore considers that the choice of the port of Marseille is largely justified by the port's proximity to the loading sites and the presence of the appropriate infrastructure.

(214) According to the Gecodia report, the proximity of the majority of logistics bases and warehouses to the port of Marseille has two implications. First, on the basis of the cost simulator published by the national road committee, the use of the port of Toulon-Brégaillon for all hauliers based around Marseille or in the Rhône corridor would result in an average additional cost of EUR 11/LM per semi-trailer trip compared with the port of Marseille ([123]). Second, in addition to this extra road cost, there would be an increase in the production cost for hauliers. This is because, given the greater distance to be covered, hauliers would be forced to halve the number of round trips per tractor they could make in one day between their logistics base and the port of departure/arrival, which would mean they would have to acquire additional tractors to maintain the same volume of activity.

(215) The Gecodia report concludes that, from the point of view of users of non-towed maritime freight transport, the port of Marseille is not substitutable with the ports of Toulon or Nice for maritime services to Corsica.

3.4.3.1.1.3.3. Specific demand for maritime transport of towed freight at the port of Marseille

(216) The Gecodia report considers that, from the point of view of users of towed freight maritime transport, the port of Marseille is substitutable only with the Toulon-Port de Commerce terminal (excluding substitutability with Nice and the other Toulon terminals), and only partially so in so far as some users of towed freight maritime transport do not consider this terminal to be an alternative to the port of Marseille.

([121]) According to the Gecodia report, this point is also confirmed by the French competition authority opinion (opinion No 20-A-11, paragraphs 337-345), which states that 'the port of Marseille is close to the main logistics centres in southern France, which makes it more attractive for maritime freight transport to Corsica, particularly in comparison with Toulon, which is further away from those centres'.

([122]) Study on the connections between the metropolitan area of Aix-Marseille-Provence and neighbouring areas, October 2021, pp. 32-35, available inter alia at: https://www.agam.org/relations-de-voisinage-metropole/ (accessed on 18 October 2024).

([123]) To recap, Toulon is approximately 70 km from Marseille.

(217) *Firstly*, the Gecodia report states that towed freight does not require any particular port infrastructure, since the semi-trailer is loaded by its driver directly onto the vessel as a single vehicle. Each of the three mainland ports can thus accommodate towed freight without particular constraints ([124]). The Gecodia report nevertheless notes that, during the port consultation, the port of Toulon stated that it would find it difficult to accommodate more towed freight traffic throughout the year, as the port's capacity is already 80 % filled by the existing traffic of Corsica Ferries, while the port of Nice stated that it wished to give priority to passenger traffic.

(218) *Secondly*, the Gecodia report notes that none of the respondents to the user consultation indicated that a price increase of 5-10 % at Marseille would lead to their towed freight being diverted to Toulon (and even less so to Nice). It is thus apparent from that consultation that hauliers do not consider an alternative route when planning their journeys. The choice of the port of Marseille is largely justified by its proximity to the loading sites of the hauliers and the available port infrastructure.

(219) *Thirdly*, in the same way as for non-towed freight, the Gecodia report explains that, given the proximity of most hauliers' logistics bases to the port of Marseille (recital 213), the transfer of some users, whose logistics bases are close to Marseille, to the port of Toulon would result in longer distances and additional transport costs (EUR 4,5/LM). These additional costs could increase production costs for a haulier by as much as 17 % ([125]). The Gecodia report states that these findings are consistent with the statements made by the ports of Nice and Toulon during the port consultation, according to which those two ports attract only local traffic, limited to their immediate hinterland. The French authorities also point out that the maritime fare paid by hauliers is passed on in full to their customers and that, consequently, the variation in the maritime transport fare from one mainland port to another has no effect on the production cost for the hauliers.

(220) *Lastly*, the Gecodia report presents a quantitative analysis which shows that an increase in the monthly fare per linear metre of towed freight in Marseille did not lead to a transfer of towed freight traffic to the ports of Toulon. More specifically, the Gecodia report investigated two recent episodes of persistent price shocks on Marseille routes ([126]), while the monthly fare per linear metre remained broadly stable in Toulon ([127]). The Gecodia report explains that, between July 2018 and May 2019, the upward price shock did not lead to a reaction on the part of hauliers, as the port of Toulon's market share remained stable over that period.

(221) The Gecodia report thus concludes that the ports of Toulon and Marseille are only partially substitutable as regards the maritime transport of towed freight between Corsica and the French mainland.

([124]) However, there is an exception for the transport of class 1 dangerous materials (explosives) and class 2 dangerous materials (compressed, liquefied or dissolved gases), which are prohibited at the Toulon-Port de Commerce terminal and the port of Nice.

([125]) Production cost benchmark for road transport (regional transport, national data from December 2021 based on a 360 km journey, which is the average daily distance travelled in regional transport, taking into account journeys to the place of loading and return journeys to the haulier's base). These additional costs take into account the costs per kilometre with tolls, the hourly rate and the daily rate (vehicle ownership costs, tax/day, insurance/day, etc.). The French authorities point out that the average additional logistics cost is inversely proportional to the total road distance of the journey. Thus, the closer the starting point to Marseille, the higher the total additional logistics cost.

([126]) The two episodes correspond to the following periods:

— between October 2017 and October 2018, an average annual increase of 6 % in the monthly fare per linear metre of towed freight;

— between October 2019 and October 2020, an average annual reduction of 16 % in the monthly fare per linear metre of towed freight.

([127]) Based on information on the fares charged by Corsica Ferries collected for the Gecodia report from Corsica Ferries' website in 2020.

3.4.3.1.2. Identification of quantitative demand for maritime freight transport

3.4.3.1.2.1. The quantitative demand for the maritime transport of non-towed freight

(222) The Gecodia report estimated future annual demand for the maritime transport of towed and non-towed freight during the 2023-2030 period for each of the routes between the port of Marseille and the Corsican ports.

(223) Historical demand for non-towed freight was established on the basis of data collected from shipping companies. In order to assess the projected demand for 2023-2030, the annual growth observed between 2010 and 2019 (2,3 % per year) was applied to traffic in 2019. The projected demand was established as follows:

Table 17

Demand for non-towed freight by maritime route (in LM) from Marseille observed for the 2018-2020 period and estimated for the 2023-2030 period

	2018	2019	2020	2023*	2025*	2030*
Ajaccio	523 874	516 467	505 631	565 647	591 965	663 246
Bastia	677 280	674 081	677 321	738 269	772 620	865 653
Porto-Vecchio	141 610	155 785	155 461	170 619	178 558	200 059
Propriano	52 331	54 160	52 453	59 317	62 077	69 552
L'Île-Rousse	73 374	85 229	66 952	93 345	97 688	109 451

Source: Comments from the French authorities submitted on 5 April 2023 (Gecodia report, table 56).

3.4.3.1.2.2. The quantitative demand for maritime transport of towed freight

(224) The quantitative demand for the maritime transport of towed freight was estimated on the basis of the same parameters as the quantitative demand for the maritime transport of non-towed freight (recitals 222 and 223).

(225) As explained in Section 3.4.2.1.1.3.3, the Gecodia report concluded that the port of Marseille and the port of Nice are not substitutable as regards the maritime transport of towed freight and that the ports of Marseille and Toulon are only partially substitutable in that regard.

(226) The French authorities considered, on the basis of the Gecodia report, that the share of the demand from users of towed freight transport who consider the port of Marseille to be non-substitutable with the port of Toulon represents 80 % of the historical demand for towed freight between Marseille and Corsica in 2019, while the remaining 20 % consider Toulon to be an alternative to the port of Marseille.

(227) The French authorities explained that this estimate of 80 % came from statements by the Corsican hauliers trade union and Corsica Linea, made in the context of a market consultation dating from 2020. More specifically, the trade union (which accounts for [20-50] % of the LM volume of towed freight transported between Corsica and the mainland) and Corsica Linea indicated, respectively, that 84 %/85 % of the towed freight originated in or was destined for the Bouches-du-Rhône department (of which Marseille is the main home port).

(228) Having determined the estimated specific demand for towed freight at the port of Marseille, the French authorities quantified this demand for the coming years. The quantitative demand for towed freight from the group of users who do not consider any alternative to the port of Marseille (i.e. 80 % of the estimated demand for 2023-2030 between Marseille and Corsica) is presented in Table 18.

Table 18

Demand for towed freight by maritime route (in LM) from Marseille observed for the 2018-2020 period and estimated for the 2023-2030 period

	2018	2019	2020	2023*	2025*	2030*
Ajaccio	116 797	113 958	95 040	99 848	104 493	117 076
Bastia	172 671	166 125	120 047	145 555	152 328	170 670
Porto-Vecchio	36 082	43 222	37 063	37 870	39 632	44 404
Propriano	17 489	17 992	14 294	15 764	16 498	18 484
L'Île-Rousse	24 017	26 878	22 753	23 550	24 646	27 613

Source: Comments from the French authorities submitted on 5 April 2023 (Gecodia report, table 57 for 2018-2020 and table 60 for 2023, 2025 and 2030).

(229) Furthermore, since towed freight also requires the transport of drivers (who constitute a passenger category), the French authorities also identified demand for the transport of drivers. The French authorities considered that the demand from drivers was proportional to the volume of towed freight transported, and that this proportion was constant over time.

(230) In order to estimate, for each maritime route, the ratio of drivers to LM of towed freight, the French authorities relied on the average value observed for the 2018-2021 period. This ratio was applied to the estimated towed freight demand for 2030. Consequently, according to the French authorities, the demand for the transport of drivers is as follows:

Table 19

Maritime driver traffic (number of drivers) from Marseille observed for the 2018-2021 period and estimated for the 2023-2030 period

	2018	2019	2020	2021	2023*	2025*	2030*
Ajaccio	6 435	6 496	4 736	6 915	5 991	6 270	7 025
Bastia	9 934	9 423	6 303	8 022	8 733	9 140	10 240
Porto-Vecchio	2 222	2 664	2 699	2 536	2 651	2 774	3 108
Propriano	1 414	1 446	1 203	1 411	1 576	1 650	1 848
L'Île-Rousse	1 900	2 289	1 768	2 233	1 884	1 972	2 209

Source: Comments from the French authorities submitted on 27 July 2023.

3.4.3.2. Determination of the market's capacity to meet user demand

(231) After estimating the qualitative and quantitative demand from the various categories of users of maritime freight transport between Corsica and the French mainland, the French authorities sought to determine the extent to which market supply could meet that demand.

3.4.3.2.1. Results of the operator consultation

3.4.3.2.1.1. Questions asked

(232) Maritime transport operators had to answer the same questions set out in recitals 163 to 165 as to the freight service they would deploy in the absence of a public service contract. In particular, maritime transport operators were asked to complete an Excel file providing separate information on the volumes of towed and non-towed freight they would carry.

3.4.3.2.1.2. Summary of the replies received

(233) Three operators replies to the operator consultation: Corsica Linea, La Méridionale and Corsica Ferries.

(234) Corsica Linea and La Méridionale stated that, in the absence of a public service contract, they would not offer any commercial services between Corsica and the French mainland.

(235) Corsica Ferries submitted the commercial offer it would make in the absence of a public service contract for freight transport. In support of its responses to the questionnaire, Corsica Ferries submitted several Excel files detailing, inter alia, the capacity of its vessels and the commercial offer it would implement.

(236) In reply to question 2 of the operator consultation, asking operators to express their views on the appropriateness of the distinction between towed and non-towed freight, Corsica Ferries pointed to the artificial and ineffective nature of the systematic distinction made by the OTC between towed and non-towed freight, which depended on the size, organisation and choices of each haulier rather than the service provided by the shipping companies. Corsica Ferries also emphasised that, according to the French authorities, towed freight meant that there had to be a driver on board the vessel, whereas within towed freight, there was a distinction between accompanied towed freight (with a driver) and unaccompanied towed freight (without a driver).

(237) Corsica Ferries stated in its response that the service it would offer in the absence of a public service contract would not distinguish between the transport capacities offered according to the type of freight envisaged. The Excel data file that it submitted thus showed the company's cumulative freight transport capacities, i.e. including both non-towed and towed freight, without distinguishing between the two.

(238) Corsica Ferries also made the same criticisms mentioned in recital 169.

(239) In response to question 4, Corsica Ferries stated that, in the absence of a public service contract, from 1 January 2023 it would operate freight transport services between all the mainland ports (Marseille, Ajaccio, Toulon) and all the Corsican ports, with the exception of the port of Propriano. More specifically, it would offer daytime and night-time commercial services (freight and passenger), comprising:

— a daily round trip between the French mainland (at least five times a week from Toulon and twice a week from Marseille) and each of the ports of Ajaccio and Bastia;

— two monthly round trips from Marseille, and at least three round trips per week from Toulon, to each of the ports of Porto-Vecchio and L'Île-Rousse;

— no commercial service to Propriano given, according to Corsica Ferries, the substitutability of that port with that of Ajaccio, which it proposed to serve at least once a day from Marseille and Toulon;

— additional maritime transport services between the port of Nice and Corsica from July to September.

(240) Corsica Ferries informed the French authorities that it had a fleet of 13 vessels, which are not assigned to a particular route. The company also stated that 15 % of its crossings, on all routes, would be during the day (departure between 6 a.m. and 4 p.m. for arrival between 2 p.m. and midnight in both directions).

(241) As regards the capacity of its vessels for freight transport services, Corsica Ferries provided the French authorities with the information set out in Table 20.

Table 20

Corsica Ferries' maritime freight transport by maritime route (in LM) from Marseille and Toulon observed for the 2016-2019 period and estimated for the 2023-2028 period in the absence of PSCs

Marseille	**Annual average (2016-2019, LM)**	**Annual average (2023-2028, LM)**	**Increase (%)**
Ajaccio	-	232 566	N.A.
Bastia	-	270 297	N.A.
Porto-Vecchio	-	47 371	N.A.
Propriano	-	-	N.A.
L'Île-Rousse	-	51 123	N.A.
Total Marseille	-	**601 357**	**N.A.**
Toulon	**Annual average (2016-2019, LM)**	**Annual average (2023-2028, LM)**	**%**
Ajaccio	163 611	1 172 434	617 %
Bastia	223 077	1 069 916	380 %
Porto-Vecchio	6 425	122 404	1 805 %
Propriano	-	-	N.A.
L'Île-Rousse	3 999	310 533	7 665 %
Total Toulon	**397 112**	**2 675 288**	**574 %**
Total Marseille and Toulon	**397 112**	**3 276 644**	**825 %**

Source: Corsica Ferries' response to the market test on maritime services between Corsica and the French mainland (22 February 2022).

(242) Corsica Ferries also stated that the proposed offer would be valid only in the absence of any public service contract between Corsica and the mainland.

3.4.3.2.2. Analysis of the market failure

(243) After analysing the (retrospective and prospective) capacity deployed by Corsica Ferries, the final report concluded that, in the absence of PSCs, market supply would not meet the entire user demand for non-towed and towed freight.

(244) *As regards non-towed freight*, the Gecodia report considered that Corsica Ferries' offer contradicted certain conclusions drawn in the report, in so far as Corsica Ferries proposed to transport non-towed freight on passenger-cargo vessels (Ro-Pax) from the port of Toulon five times a week on the Marseille-Ajaccio and Marseille-Bastia routes, and three times a week for the secondary Corsican ports. However, only (i) Toulon-Brégaillon (and not Toulon-Port de Commerce) has the necessary infrastructure to handle non-towed freight, and (ii) Toulon-Brégaillon can accommodate only Ro-Ro vessels, and for a single route at most (recital 210).

(245) In addition, the Gecodia report took the view that the offer proposed by Corsica Ferries was inadequate to meet user demand for maritime transport of non-towed freight because of the insufficient number of weekly frequencies offered between Marseille and Corsica. According to the Gecodia report, Corsica Ferries initially confined itself to offering two weekly round trips between the port of Marseille and the ports of Ajaccio and Bastia, whereas users required almost daily round trips to transport their non-towed freight. Furthermore, the Gecodia report noted that the proposed frequencies between the port of Marseille and the ports of L'Île-Rousse and Porto-Vecchio were limited to three monthly round trips, whereas users needed weekly maritime transport. Lastly, the Gecodia report found that Corsica Ferries did not propose any commercial service between the port of Marseille and the port of Propriano, despite the fact that users needed weekly maritime transport.

(246) *As regards towed freight*, the Gecodia report considered, for the same reasons set out in recitals 244 and 245, that Corsica Ferries proposed insufficient frequencies between the port of Marseille and the Corsican ports to meet the demand for towed freight that did not consider any alternative to the port of Marseille (i.e. 80 % of total towed freight traffic between Marseille and Corsica). The French authorities also pointed out that, in view of Var CCI's statements concerning the saturation level of its infrastructure and the difficulty for the Toulon-Port de Commerce terminal of increasing its current towed freight traffic, Corsica Ferries' offer, which also provided for an increase in its capacity from Toulon, seemed unrealistic.

3.4.3.3. Conclusion on the existence of a public service need for maritime freight transport

(247) On the basis of the above, the French authorities concluded that there is a need for a public service for the maritime transport of towed and non-towed freight corresponding to the estimated demand between 2023 and 2030 between Marseille and each of the five Corsican ports, as presented in Table 21.

Table 21

Public service need for maritime freight transport (in LM) from Marseille estimated for the 2023-2030 period

	Non-towed freight (Annual LM)		Towed freight - Marseille area (not substitutable) (Annual LM)		Total freight (Annual LM)	
	2023	2030	2023	2030	2023	2030
Ajaccio	565 647	663 246	99 848	117 076	**665 495**	**780 322**
Bastia	738 269	865 653	145 555	170 670	**883 824**	**1 036 323**
Porto-Vecchio	170 619	200 059	37 870	44 404	**208 489**	**244 463**
Propriano	59 317	69 552	15 764	18 484	**75 081**	**88 036**
L'Île-Rousse	93 345	109 451	23 550	27 613	**116 895**	**137 064**
Total	**1 627 197**	**1 907 961**	**322 587**	**378 247**	**1 949 784**	**2 286 208**

Source: Source: comments from the French authorities submitted on (05 April 2023).

3.5. **Necessity and proportionality of the PSCs**

(248) Having established the existence of several public service needs in the field of maritime freight and passenger transport, the French authorities sought to determine the necessary legal instrument and the appropriate public service obligations to meet those needs which least affected the essential freedoms for the proper functioning of the internal market (recital 92).

3.5.1. *Necessity and proportionality of the public service contract*

(249) The French authorities first examined the possibility of strengthening the 2019 PSO scheme (recital 62) for routes or users for which a need for a public maritime transport service had been identified. However, they felt that such an approach had several limitations.

(250) *Firstly*, the French authorities took the view that the 2019 PSO scheme did not make up for the lack of private supply to meet the demand identified. They considered that, in the absence of a public service contract, Corsica Ferries' proposed offer under the 2019 PSO scheme from the port of Marseille was already inadequate to meet all the needs identified by France (Sections 3.4.2.3 and 3.4.3.3) and that a strengthening of the 2019 PSO scheme would therefore have had no effect.

(251) *Secondly*, the French authorities found that the departure and arrival times of vessels between the French mainland and Corsica were important characteristics of the demand for maritime freight and passenger transport (recitals 112, 190, 191 and 208). According to France, the Cabotage Regulation did not allow Member States to set the arrival and departure times of vessels in a PSO scheme. According to Article 4(2) of the Regulation, in imposing public service obligations, Member States are limited to requirements concerning ports to be served, regularity, continuity, frequency, capacity to provide the service, rates to be charged and the manning of the vessel.

(252) *Finally*, the French authorities considered that such a scheme, if it were to be accompanied by compensation, would not allow the CdC to control the costs associated with the public service, since it would not be able to estimate those costs (which are compensated after the service has been provided) due to the uncertain number of crossings that would be made.

(253) For all these reasons, the French authorities considered that the conclusion of PSCs appeared necessary to establish the appropriate public maritime transport service requirements to meet the public service needs identified for each maritime route between the port of Marseille and the Corsican ports.

3.5.2. *Necessity and proportionality of the public service obligations imposed in the context of the PSCs*

(254) The French authorities considered that the public service needs identified required the conclusion of PSCs laying down the following public service obligations.

(255) *Firstly*, the French authorities decided to award a public service contract for each maritime route covered by an identified public service need. Each public service contract had to include the obligation to operate towed and non-towed maritime freight transport services, as well as passenger transport (drivers and medical passengers) between the port of Marseille and each of the Corsican ports, without intermediate stopovers. Furthermore, the public service contract for the Marseille-L'Île-Rousse route also had to include the obligation to carry dangerous goods (L'Île-Rousse being the only Corsican port authorised to receive such goods), while the Marseille-Propriano route had to include the obligation to transport resident and non-resident passengers, as well as medical passengers and drivers. The French authorities explained that these obligations resulted strictly from the market failures identified during the operator consultation.

(256) *Secondly*, the French authorities considered it necessary to impose specific timetables in each PSC, with evening departures to/from the Corsican ports and early morning arrivals in Corsica or Marseille. Those timetables would be fully in line with the user demand established through the user consultation (passengers/freight) and the conclusions of the Gecodia report on the organisation of the logistics chain between Corsica and the French mainland (recital 208). These obligations are presented for each route in Table 22.

Table 22

Timetable obligations for freight and passenger traffic in the PSCs in both directions (Marseille-Corsica and Corsica-Marseille)

Marseille	Ajaccio	Bastia	Porto-Vecchio	Propriano	L'Île-Rousse
Departure time	Between 6.30 p.m. and 8 p.m.				
Arrival time (next day)	Between 6 a.m. and 8 a.m.	Between 6 a.m. and 8 a.m.	Between 7 a.m. and 8 a.m.	Between 7 a.m. and 8 a.m.	Between 6 a.m. and 8 a.m.

Source: Comments from the French authorities submitted on 28 June 2023.

(257) *Thirdly*, the French authorities considered it necessary to lay down frequency obligations, the aim of which is to ensure the regularity of services in line with the needs identified (recitals 112 and 208) and sufficient flexibility in the supply of the public service in view of significant fluctuations in demand. The French authorities considered that the PSCs should include three frequency obligations for each maritime route concerned:

— an obligation to ensure a minimum number of weekly round trips;

— an obligation to ensure a minimum number of annual round trips;

— an obligation, in certain cases and for certain maritime routes, to ensure additional round trips within a limit set out by the PSCs.

(258) These frequency obligations for each PSC are set out in Table 23. These frequencies are, in particular, higher for the maritime routes of Bastia and Ajaccio, as these two ports account for a significant proportion of passenger and freight traffic to Corsica (recitals 54, 55 and 59).

Table 23

Frequency obligations for freight and passenger traffic in the PSCs

	Ajaccio	Bastia	Porto-Vecchio	Propriano	L'Île-Rousse
Minimum number of weekly round trips in low season [1] (basic traffic)	6	6	2-3	2-3	3
Minimum number of weekly round trips in high season [2] (basic traffic)	7	7	3	3	3
Minimum number of annual round trips (basic traffic)	365	365	156	156	156
Number of additional annual round trips	10	30	-	-	10

[1] Defined as running from November to March.
[2] Defined as running from April to October.
Source: Comments from the French authorities submitted on 28 June 2023.

(259) How these frequency obligations function can be illustrated by the following example. As shown in Table 23, the concession holder is required to operate six weekly round trips on the Marseille-Ajaccio route in low season and seven in high season. The minimum frequency of weekly round trips to be complied with thus involves 130 round trips in low season and 214 round trips in high season, making a total of 344 round trips. The operator is required to carry out 365 round trips per year: the difference between the 365 round trips required per year and the 344 round trips required on a weekly basis is the number of round trips (19 round trips) to be performed by the operator during the year (in addition to the minimum number of weekly round trips required) but which the operator is free to schedule on the days of the year it wishes. However, the special feature of these 19 round trips is that they can be rescheduled at the request of the French authorities ('**reschedulable round trips**'). Rescheduling could, for example, occur if the authorities find that, on a given day, demand would be very low and it would be appropriate to postpone the service to another day. These reschedulable round trips are thus characterised by their flexibility and provide the French authorities with a flexible tool to adapt public service supply to fluctuations in demand or unforeseen events.

(260) In other words, the French authorities set out a minimum number of annual round trips to be carried out in order to meet the quantitative and qualitative need for a public service (both passengers and freight), including the obligation for the operator (i) to carry out fixed and minimum weekly round trips to ensure the regularity of maritime transport services and (ii) reschedulable round trips to ensure the flexibility of services to meet the public service need.

(261) In addition, to complete the system, the French authorities deemed it necessary to introduce additional round trip obligations for certain maritime routes. These round trips correspond to the number of round trips that could be carried out in addition to the minimum number of round trips per year. The purpose of additional round trips is to respond to an exceptional peak in traffic. They would be organised at the sole request of the French authorities if they found that demand for freight on a given day (and only freight – additional round trips do not concern passengers) exceeded the maximum carrying capacity of the vessels made available on that day. The purpose of the additional round trips is thus to prevent goods being left at the quayside, which would lead to delays in delivery to Corsica. As shown in Table 23, the French authorities planned additional round trips for three routes (Ajaccio, Bastia and L'Île-Rousse), where the likelihood of organising such round trips is the highest.

(262) *Finally,* the French authorities considered it necessary to impose minimum carrying capacities for vessels per crossing. These obligations correspond to the minimum capacity per crossing that the operator must carry in order to meet the daily quantitative public service need estimated by the French authorities for the transport of passengers (residents and non-residents for the Marseille-Propriano maritime route, and medical passengers for all routes) and freight (towed and non-towed, including drivers).

(263) In order to obtain the minimum passenger capacities per crossing, the French authorities relied on the projected annual demand expected in 2030 for each category of passenger and route (Table 14 and Table 19), taking into account the number of crossings required per year (Table 23). In addition, for the transport of medical passengers and drivers, the French authorities considered that the journey is made every day except weekends for the main ports of Ajaccio and Bastia, and three days per week for the other Corsican ports. The final result (number of passengers per crossing) is presented in Table 24.

Table 24

Minimum capacity obligations for passenger traffic in the PSCs

	Ajaccio	Bastia	Porto-Vecchio	Propriano	L'Île-Rousse	Total
Medical passengers per crossing (basic traffic)	4	5	1	1	2	**13**
Drivers per crossing (basic traffic)	14	19	10	4	7	**54**
Passengers (excluding medical passengers and drivers) per crossing (basic traffic)	-	-	-	186	-	**186**

Source: Comments from the French authorities submitted on 28 June and 28 July 2023.

(264) Finally, in order to obtain the demand from medical passengers per crossing (including accompanying persons), they considered that the journey was made every day except weekends for the main ports of Ajaccio and Bastia, and three days a week for the other Corsican ports. The level chosen is adjusted for rounding. The final result (number of medical passengers per crossing and maritime route) is presented in Table 25.

Table 25

Estimated demand from medical passengers and their accompanying persons travelling by boat between Corsica and Marseille (passengers per crossing)

	2023-2030
Ajaccio	4
Bastia	5
Porto-Vecchio	1
Propriano	1
L'Île-Rousse	2

Source: Comments from the French authorities submitted on 27 July 2023.

(265) As regards the minimum carrying capacity for *freight* per crossing, the French authorities stated that they had set it as follows.

(266) To calculate the freight capacities required per week, the French authorities took as a reference the estimated weekly public service need for freight in July 2030 (which constitutes the peak in the public service need identified during the period covered by the measures in question). For the routes to Ajaccio and Bastia, the French authorities assumed that 90 % of freight transport is carried out on working days during the week, while this figure is increased to 100 % for routes to the other three Corsican ports. By combining the required weekly freight volume with the number of minimum weekly round trips imposed (i.e. six round trips per week during the winter period on the Marseille-Ajaccio and Marseille-Bastia routes, and three weekly round trips to the other ports), the French authorities obtained the required minimum capacity per freight crossing, as indicated in Table 26.

Table 26

Minimum capacity obligations for freight traffic in the PSCs

	Ajaccio	Bastia	Porto-Vecchio	Propriano	L'Île-Rousse
Minimum freight volume (LM) per crossing (basic traffic)	1 470	1 860	1 040	520	700

Source: Comments from the French authorities submitted on 28 June and 28 July 2023.

3.6. Procedure for awarding the PSCs

3.6.1. *Resolution No 22/050 of 28 April 2022*

(267) Following the identification of a public service need and given the need to use a public service contract to meet it properly, the CdC launched the tendering procedure for the PSCs on 28 April 2022.

(268) In the present case, by Corsican Assembly Resolution No 22/050 of 28 April 2022, the CdC decided to use 'route-by-route' PSCs for the operation of maritime transport services for freight (including dangerous goods) and passengers between the port of Marseille and the ports of Ajaccio (Lot 1), Bastia (Lot 2), Porto-Vecchio (Lot 3), Propriano (Lot 4) and L'Île-Rousse (Lot 5) for a period of 7 years (with the option of a maximum of 12 additional months, i.e. a maximum period of 8 years) between 1 January 2023 and 31 December 2030.

(269) The scope of the PSCs included all the public service obligations set out in Section 3.5.2 of this decision.

(270) Article 2.4 of the bidding rules ([128]) stipulated that 'the minimum characteristics of each contract are as follows: maximum fares applicable to residents of Corsica and the transport of goods, carrying capacity of vessels, timetables and service frequencies, duration of the contract, maximum amount of financial compensation paid by the OTC'.

(271) Article 9.2 of the bidding rules provided that 'each bid will be examined on the basis of criteria allowing the best bid to be determined in terms of overall economic benefit for the [CdC]. These capacities will be assessed as a whole for consortia.

Criteria	Analysis by criterion	Weighting
Criterion 1: Technical value of the tender		60 %
Sub-criterion 1	Technical quality of vessels: suitability of the fleet proposed by the candidate with regard to the following: — presentation of the fleet (number, assignment, certification and control of ships, classification, flag state, compliance with the various codes and conventions). Any charter contracts must be notified; — suitability for sea and sailing conditions and for port constraints (delivery year, type, number of bridges and engines, unit power, speed, speed in fail-safe mode).	20 %

([128]) The bidding rules were part of the documentation for the public call for tenders published on 6 May 2022 (recital 272).

Criteria	Analysis by criterion	Weighting
Sub-criterion 2	Frequencies and timetables: suitability of the candidate's fleet for frequencies and timetables with regard to the specifications in Annex 1: — minimum frequencies (passengers, drivers, cargo) — additional round trips — departure and arrival times	15 %
Sub-criterion 3	Adaptation of the fleet to users' needs (linear metres of freight, length, height, bridge strength, number of outlets for temperature-controlled containers for all routes and number of cabins and seats), PRM cabins and lifts	15 %
Sub-criterion 4	Quality of services for professional and private users: — user services (catering, hotel services, leisure facilities, conditions for persons with reduced mobility and more generally for persons travelling for medical reasons, information service for users, etc.) — freight services (processing and management, communication) — safety on board the fleet (safety instructions, emergencies) — continuity of public service (including the social and solidarity-based service ([1])): information plan in the event of disruption, management of complaints, compensation arrangements, etc.)	10 %
Criterion 2: Amount of financial compensation and robustness of the business plan		30 %
Sub-criterion 1: Total amount of financial compensation	This sub-criterion is analysed in terms of the total amount of financial compensation proposed by the candidate for providing the service over the duration of the contract. This compensation is divided into a component for operating costs, a component for investment costs and a component for fuel costs.	20 %
Sub-criterion 2: Robustness of the candidate's provisional business plan	Consistency of the costs and revenue presented in the provisional operating account (Annex 9 to the draft contract) with the operating assumptions used by the candidate, which they will have explained in the financial statement.	10 %
Criterion 3: Corporate Social Responsibility (CSR) The actions and level of commitment of the candidate will be presented, as well as the means of monitoring them in terms of corporate social responsibility: ethical, social and environmental performance.		10 %

([1]) The social and solidarity-based service, which concerns the route to Bastia, is defined in Article 25.3 of the PSC relating to that route as guaranteeing '*the maritime transport of up to 1 300 linear metres of goods per day*' and per single crossing (comments from the French authorities of 7 June 2022).

3.6.2. *Award procedure*

(272) The public call for tenders was published on 6 May 2022 ([129]), with a deadline for receipt of applications and bids of 25 July 2022.

(273) Before the deadline for submission of tenders, Corsica Ferries put a number of questions to the CdC with a view to obtaining clarification on several points of the bidding rules. As the CdC did not, or did not sufficiently, answer its questions, Corsica Ferries filed a request with the judge for pre-contractual interim relief at Bastia Administrative Court seeking to have the PSC award procedure annulled due to the CdC's breach of the publicity and competitive tendering obligations imposed on the contracting authority ([130]).

(274) By Order No 2200797 of 20 July 2022, the judge for interim relief at Bastia Administrative Court considered, for the most part, that the difficulties raised by Corsica Ferries did not fall within the court's remit. As to the remainder, the judge dismissed the breaches raised by Corsica Ferries on the grounds that, in the judge's opinion, it was possible for interested candidates to submit a bid complying with all the technical requirements laid down in the bidding documents. Corsica Ferries subsequently appealed against the judgment in question to the Council of State. In a judgment of 25 November 2022, the Council of State declared the appeal inadmissible (*Société Corsica Ferries*, No 466415).

(275) Corsica Ferries finally decided not to participate in the PSC tendering procedure, having in particular considered that it did not have vessels meeting all the technical requirements laid down by the CdC in the PSCs

(276) Three applications were received by the CdC:

— the Corsica Linea - La Méridionale consortium: Lot 1;

— Corsica Linea: Lots 2, 3, 4 and 5;

— La Méridionale: Lots 3 and 4.

(277) The public service delegation committee opened the tenders on 26 July 2022. Following the opinion of that committee, dated 2 August 2022, the three candidates were admitted to submit a bid. On 31 August 2022, after analysing their bids, the committee recommended the opening of the negotiated procedure with those candidates.

(278) According to France, the CdC conducted negotiations with the candidates as follows:

— the first round of negotiations took place on 6 and 7 September 2022: the candidates were then asked to comprehensively improve the financial aspects of their bids;

— the second round took place on 4, 5 and 6 October 2022: the candidates were then asked to identify additional ways of optimising the financial aspects;

— the third round took place on 18 and 19 October 2022 and was aimed at consolidating the candidates' financial bid and reviewing their proposals for amendments to the contract;

— the fourth round took place on 7 November 2022 with the aim of finalising the draft contract and consolidating the financial progress with a view to the submission of final bids by the candidates;

— on 10 November 2022, the candidates submitted their final bids.

([129]) Notice No 22-63447 in the Official Bulletin of Public Procurement Notices (BOAMP), published on 6 May 2022, https://www.boamp.fr/pages/avis/?q=idweb: %2222-63447 %22 and in TED under reference 2022/S 089-246001 on the same date, https://ted.europa.eu/udl?uri=TED:NOTICE:246001-2022:TEXT:FR:HTML.

([130]) Corsica Ferries argued in particular that the bidding documents contained numerous inaccuracies and contradictions concerning the duration of the PSCs, the nature of the investments to be borne by the future concession holder and the exact nature of the vessels assigned by the candidates. Corsica Ferries also criticised the unpredictability and lack of economic balance of the reschedulable and additional round trips, which required the mobilisation of two to three vessels per route without justification. Finally, it alleged that the criteria used for selecting tenders were imprecise and irrelevant.

(279) The public service delegation committee responsible for the submission of the final bids met on 23 November 2022.

3.6.3. *Resolution No 22/188 of 20 December 2022*

(280) By Resolution No 22/188 of 20 December 2022, the Corsican Assembly approved the choice of the Corsica Linea - La Méridionale consortium for Lot 1, Corsica Linea for Lots 2, 4 and 5, and La Méridionale for Lot 3. Table 27 presents the amount of financial compensation per lot.

Table 27

Total amount of financial compensation per PSC lot (EUR million)

Corsican ports	Financial compensation for 2023-2030	Annual financial compensation (average)
Lot 1: Ajaccio	245.9	30.7
Lot 2: Bastia	251.1	31.4
Lot 3: Porto-Vecchio	132.2	16.5
Lot 4: Propriano	122.6	15.3
Lot 5: L'Île-Rousse	101.8	12.7
Total	**853.6**	**106.6**

Source: Notification from the French authorities of 27 December 2022.

3.7. **Relevant provisions of the PSCs**

(281) The purpose of this section is to describe the contractual clauses of the PSCs. These clauses are broadly common to the five PSCs.

3.7.1. *Provisions on the public service obligations and their duration*

3.7.1.1. Content of the public service obligations

(282) Articles 1 and 2 of the five PSCs specify that, as part of territorial continuity between the Corsican ports and the port of Marseille, the concession holder is entrusted with the performance of service of general economic interest ('**SGEI**') obligations relating to:

— the transport of goods (including dangerous goods for the route to L'Île-Rousse) in the form of non-towed and towed freight; and

— the transport of (i) passengers travelling for medical reasons ([131]), (ii) passengers travelling as towed freight drivers, and (iii) for the route between Marseille and Propriano only, Corsican resident passengers and non-resident passengers.

(283) Article 1 also provides that any freight or passenger transport service provided by the concession holder which does not fall within the scope of the SGEI falls within the scope of the 'commercial or non-SGEI service'.

(284) Article 4 specifies that the contractual documents binding the parties are the contract and its annexes (and, on the basis of Article 1, any amendments thereto). In the event of contradiction, the contract takes precedence over the annexes.

([131]) Article 26.1 of the PSCs specifies that those passengers are Corsican residents travelling for medical reasons.

3.7.1.2. Arrangements for implementing the public service obligations

(285) Annex 1 to the five PSCs details the characteristics of the associated maritime services. These are described in Section 3.5.2 of this decision.

(286) Article 17 of the PSCs states that, as regards the transport of goods and for each crossing, the concession holder must not leave trailers at the quayside, unless the haulier so requests or the ship's capacity is particularly saturated, in order to ensure that the demand from professional users is met and to guarantee territorial continuity. That provision adds that 'in order to optimise the organisation of traffic, the contracting authority may reschedule round trips, in accordance with the total number of round trips per year set out in Annex 1 to the contract. This rescheduling will take place in the context of the technical committee referred to in Article 10.2' (see also recital 290).

(287) Article 18 of the contracts for the routes with Ajaccio, Bastia and L'Île-Rousse provides that 'in view of the need to provide the public service, the contracting authority may ask the concession holder to carry out additional round trips on an ad hoc basis, the maximum number and conditions of which are laid down in Annex 1. The implementation of these additional round trips will be examined by the technical committee provided for in Article 10.2'. In practice, according to the French authorities, these round trips will be organised only if, at the weekly meeting of the technical committee, the French authorities find that the vessels are at full capacity and there is additional demand for at least 40 trailers. Following the meeting of the technical committee, the concession holder will formalise by letter its proposals for additional round trips in accordance with the need expressed by the contracting authority and will receive confirmation by post of any additional round trips agreed. The minimum period of notice given by the contracting authority to the contractor is estimated 'in week' in order to be as close as possible to commitment patterns; the French authorities indicated that, in practice, the demand for freight transport is generally known at least 15 days in advance.

(288) Article 20 of the PSCs states that the concession holder may, subject to acceptance by the contracting authority, replace one vessel with another vessel made available by the concession holder to perform the contract, provided, in particular, that the replacement vessel complies with the provisions set out in Annex 1.

(289) Article 22 of the PSCs requires that the vessels used to implement the contract, as well as the services provided by the concession holder, comply with PRM accessibility standards. The reception conditions for these persons are set out in Annex 5 to the PSCs.

3.7.1.3. Monitoring compliance with public service obligations

(290) Article 10.2 of the PSCs provides that a technical monitoring committee, composed inter alia of representatives of the OTC, the concession holder, the port infrastructure manager and freight carriers, meets each week to monitor the performance of the service and any adjustments that may be required.

(291) Article 11.1 of the PSCs provides that, in the event of force majeure or unforeseen events, the parties will work together to identify measures intended to restore the economic balance of the PSCs.

3.7.1.4. Duration of the PSCs

(292) Article 3 of the PSCs states that the contract enters into force on 1 January 2023 and expires on 31 December 2029. It adds that the parties may agree on a possible extension for a maximum of 12 months, in particular in the absence of a new concession contract being awarded at the end of the contract. The maximum possible duration of the contract is therefore 8 years.

3.7.2. *Provisions relating to the compensation granted to the beneficiaries of the PSCs*

3.7.2.1. General parameters

(293) Article 30 of the PSCs lays down the general principles concerning compensation for the SGEI obligations. It states in particular that:

— the concession holder is paid from the revenue generated by the operation of the SGEI and bears the costs thereof. It is authorised to offer maritime freight or passenger transport services on a commercial basis to the extent that the conditions for the performance of the SGEI are fulfilled. Revenue from the operation of the commercial service is retained by the concession holder;

— the maximum financial compensation paid by the OTC to the concession holder for its SGEI obligations must not exceed what is necessary to cover the net cost of providing the SGEI, taking into account a reasonable profit (in compliance with the rules of the European Union Framework for State aid in the form of public service compensation ([132]) ('**SGEI Framework**'));

— the financial compensation is calculated on the basis of the cost allocation methodology, and represents the difference between the concession holder's expected costs and revenues related to the performance of the SGEI (as set out in Annex 9 to the PSCs containing the concession holder's projected operating account), subject to the provisions of Articles 35.1, 37.1 and 40 on the verification of any overcompensation;

— the costs of the SGEI to be taken into account for calculating the compensation include all the direct costs necessary to perform the SGEI and an appropriate contribution to the indirect costs common to both the SGEI and the commercial activities;

— the estimated costs and revenues are based on plausible and observable parameters;

— the concession holder's internal accounts must show separately the costs and revenues associated with the SGEI and those relating to the other services. The use of cost accounting and allocation keys is necessary to identify:

  — the costs relating to the SGEI activity and those relating to the commercial activity;

  — since the nature of the traffic does not exclude the use of Ro-Pax vessels, the breakdown, within the SGEI activity, between freight and passenger transport activities for the routes concerned.

(294) Article 31 of the PSCs requires the economic balance of each route to be set out in Annex 9 submitted by the concession holder, which determines the forecast performance of the PSCs, at the concession holder's own risk.

3.7.2.2. Parameters relating to the revenues and costs associated with the performance of the SGEI

3.7.2.2.1. Revenues

(295) Article 32 of the PSCs provides that the concession holder receives directly all the revenues resulting from the performance of the SGEI, in particular:

— revenue from the carriage of goods in accordance with the fare schedule set out in Article 33.2 of the PSCs;

([132]) Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) (OJ C 8, 11.1.2012, p. 15).

— revenue relating to the transport of Corsican resident passengers travelling for medical reasons in accordance with the fare schedule set out in Article 33.3 of the PSCs ([133]);

— ancillary revenue from, inter alia, the special services provided by the concession holder on its own initiative to freight drivers or to Corsican residents travelling for medical reasons (catering, luggage, games, etc.).

(296) Furthermore, Article 32 of the PSCs also provides that, for the 2023-2028 period, the surplus of the non-SGEI commercial result compared with Annex 9 must be used as a matter of priority by the concession holder to finance investments that favour technical solutions to reduce greenhouse gas emissions and, more generally, pursue the objectives of improving the environmental quality of the SGEI, as provided for in Article 11.2 of the PSCs. Surpluses not used in a specific financial year will be capitalised until the investments are made or until the end of the contract. Unused surpluses will be repaid in full to the contracting authority upon the normal or early expiry of the contract. The use of these surpluses will be reviewed by the environmental, economic and legal committee referred to in Article 10.1 of the PSCs.

(297) Article 33.2 of the PSCs specifies that the fare schedule for the carriage of goods under the SGEI is set out in Annex 8, which lays down the following fares and provides that, for towed freight, the crossing of the first driver is included in the fare schedule:

Table 28

Maximum fares applicable to the transport of goods under the PSCs

For a single journey	Freight fares (in euro, excluding taxes)
Linear metre of ro-ro or conventional freight	40
'Export' or 'Raw material' linear metre	20
'Export +' linear metre	15
Other type of freight	The fare is freely determined by the concession holder in compliance with the 2 019 PSO scheme.

Source: Comments from the French authorities submitted on 28 June 2023.

(298) Article 33.3 of the PSCs provides that the fare schedule for the transport of Corsican residents under the SGEI is the one resulting from the application of the 2019 PSO scheme. In addition, the fares applied to Corsican non-resident passengers under the SGEI are freely determined by the concession holder but must not exceed the maximum fares laid down in that scheme.

([133]) However, in their comments of 28 July 2023, the French authorities stated, as mentioned, that on the Propriano route residents and non-residents of Corsica are also included in the scope of the public service. Accordingly, the contractor also receives revenue from services related to the transport of those passengers. In addition, the contractor also receives revenue from services related to the transport of towed freight drivers.

Table 29

Fares applicable to passenger transport under the PSCs

Single trip per person (or unit)	Maximum fares for Corsican residents (in euro, excluding taxes)		Fares for non-residents of Corsica
Passenger	Adult Child	35 20	Fares are freely determined by the concession holder (but must not exceed the maximum fares laid down in Resolution No 19/128) ([1]).
Accommodation	Outside cabin Inside cabin Armchair	51 46 7	
Vehicle	Less than or equal to 4,5 m Between 4,5 m and 5 m Above 5 m.	46 51 56	

([1]) Cf. footnote 138.
Source: Comments from the French authorities submitted on 28 June 2023.

3.7.2.2.2. Costs and financial compensation

(299) Article 34.1 of the PSCs provides that the concession holder bears all non-fuel operating costs (including personnel, port charges, foodstuffs to be sold) and that a margin is to be applied to those operating costs as set out in Annex 9.

(300) Article 34.2 of the PSCs provides that the investment costs associated with the vessels are established on the basis of the fleet assigned by the concession holder to operate the routes covered by the PSCs.

(301) Article 35.1 of the PSCs provides that the financial compensation for operation and investment (‘**CFEI**’) paid annually by the OTC to the concession holder consists of two components:

— a component in respect of operating costs (‘**CFE**’), corresponding to the operating costs resulting from the provision of the SGEI (excluding fuel and investment costs), net of the revenue generated by the provision of the SGEI set out in Article 31 and Annex 9. CFE takes into account the efficiency gains expected by the concession holder over the term of the contract. In practice, the efficiency mechanism ensures that the CFE amount is calculated in such a way that increases in costs due to real inflation are not fully compensated;

— a component in respect of investment costs (‘**CFI**’) corresponding to depreciation and/or leasing charges and/or the cost of chartering the vessel assigned to perform the SGEI, as calculated in Annex 9.

(302) Article 35.3 of the PSCs provides that Annex 9 is updated annually to take account of changes in real inflation and describes the method for calculating that update, taking into account, in particular, efficiency gains.

(303) Article 36.2 of the PSCs provides that the cost of fuel necessary for the provision of maritime transport services (excluding additional round trips) is subject to a fuel hedging mechanism for a period of up to 24 months. Beyond this period, the concession holder will be responsible for negotiating a new hedging contract by requesting at least three quotations. The concession holder will send the quotations to the contracting authority and will indicate the service provider they wish to use. By way of derogation, the OTC may, upon expiry of the initial fuel hedging contract, decide to implement a mechanism allowing the sharing of fuel costs (under the conditions referred to in Article 11.1 of the PSCs). This mechanism will take the place of the new hedging contract to be concluded by the concession holder. In addition, variations in fuel costs are not reflected in the fare schedules. The unit fuel cost included in the provisional operating account (Annex 9) for the corresponding period and the associated mechanism are described in Annex 10.

(304) Article 37.1 of the PSCs stipulates that each year the OTC must pay the concession holder financial compensation for the fuel costs associated with the provision of the SGEI ('**CFC**'). The maximum CFC financial compensation is set out in Annex 9.

(305) Article 38.1 of the PSCs provides for the maximum flat-rate compensation for additional round trips ('**CFsup**'). This compensation consists of three components:

— an operating cost component ('**CFEsup**'), corresponding to the operating costs resulting from the performance of an additional round trip (excluding fuel charges), net of the revenue generated by an additional round trip. It takes account of operating costs and revenues within the scope of the SGEI, taking account of a reasonable profit as set out in Annex 9;

— an investment cost component ('**CFIsup**'), corresponding to depreciation and/or leasing charges and/or the cost of chartering the vessel used to carry out the additional round trips (as calculated in Annex 9);

— a fuel cost component ('**CFCsup**'), corresponding to the fuel costs borne by the concession holder for carrying out an additional round trip (the CFCsup amount is set out in Annex 9 for 2023, and will be adjusted for subsequent years in line with the price of fuel).

(306) In addition, Article 38.1 of the PSCs specifies that the compensation for an additional round trip, if carried out, is the lower of (i) the expected amount of compensation per round trip indicated in Annex 9 (provisional operating account), and (ii) the amount resulting from the updated operating account, which includes the actual net costs incurred in operating an additional round trip and is part of the annual report submitted by the contractors to the OTC (referred to in Article 46 of the PSCs).

3.7.2.3. Parameters relating to the allocation of costs associated with the provision of the SGEI

(307) Articles 35.1 and 37.1 of the PSCs also provide that, in so far as the concession holder uses the vessels to offer commercial activities outside the SGEI, the allocation key referred to in Annex 9 is used to establish the cost accounting and set the amount of flat-rate financial compensation. This allocation key is fixed for the duration of the contract and is binding on the parties.

(308) According to the information provided by the French authorities ([134]), the allocation of costs to the SGEI and the commercial service was carried out (and presented to bidders as part of the tendering procedure for the PSCs) on the basis of the following principles, which, according to France, have already been recognised by the Commission in previous cases ([135]):

— costs directly linked to the transport of passengers or freight are allocated to the SGEI on the basis of the number of passengers or volume of freight (in LM) that the concession holders are required to guarantee under the capacity obligations laid down in the PSCs;

— the common costs (e.g. personnel, maintenance, fuel, ship chartering cost, depreciation, etc.), which account for the majority of the concession holders' operating costs, are charged to the SGEI in proportion to the capacity (expressed in m^3 of volume) reserved on the vessel for SGEI activities ([136]).

([134]) Comments from the French authorities submitted on 5 April 2023.

([135]) Commission Decision 2011/98/EC of 28 October 2009 on the State aid C 16/08 (ex NN 105/05 and NN 35/07) implemented by the United Kingdom of Great Britain and Northern Ireland – Subsidies to CalMac and NorthLink for maritime transport services in Scotland (OJ L 45, 18.2.2011, p. 33, ELI: http://data.europa.eu/eli/dec/2011/98(1)/oj); and EFTA Surveillance Authority Decision No 070/17/COL of 29 March 2017 on the Coastal Agreement for Hurtigruten Maritime Services 2012-2019 (Norway) [2018/887] (OJ L 158, 21.6.2018, p. 19, ELI: http://data.europa.eu/eli/dec/2018/887/oj).

([136]) In order to estimate the amount of ex ante compensation, costs will be allocated on the basis of the reserved capacity. Ex post checks will be carried out on the capacity actually used. This means that if the reserved SGEI capacity is used for transport not related to the SGEI, the amount of compensation will be reduced accordingly. However, if the SGEI capacity remains unused, the operator will still receive compensation for making the capacity available.

(309) As indicated in Table 30, in the context of the PSCs, the concession holders allocated on average [60-75] % of operating costs to the SGEI activities, with the exception of the PSC concerning the Marseille-Propriano route, where 100 % of the costs were allocated to the SGEI.

Table 30

Share of costs allocated to the SGEI in the PSCs

Costs	Ajaccio	Bastia	Porto-Vecchio	Propriano	L'Île-Rousse
Crew ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Onshore personnel ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Commercial costs - passengers ([1])	[...] %	[...] %	[...] %	100 %	[...] %
Commercial costs - cars ([4])	[...] %	[...] %	[...] %	100 %	[...] %
Commercial costs - freight ([2])	[...] %	[...] %	[...] %	100 %	[...] %
Handling ([2]), ([5])	[...]%	[...] %	[...] %	100 %	[...] %
Port charges ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Passenger management ([1])	[...] %	[...] %	[...] %	100 %	[...] %
Foodstuffs (to be sold) ([1])	[...] %	[...] %	[...] %	100 %	[...] %
Foodstuffs for crew ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Supplies ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Communication ([4])	[...] %	[...] %	[...] %	100 %	[...] %
Insurance ([3])	[...] %	[...] %	[...] %	100 %	[...] %
IT[3]	[...] %	[...] %	[...] %	100 %	[...] %
Duties and taxes ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Structural costs of the company holding the concession ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Maintenance and servicing ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Cost of making vessels available ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Vessel chartering costs ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Fuel costs ([3])	[...] %	[...] %	[...] %	100 %	[...] %
Weighted average	[...] %	[...] %	[...] %	**100 %**	[...] %

([1]) Costs directly linked to the transport of passengers.
([2]) Costs directly linked to the transport of freight.
([3]) Common costs.
([4]) Costs directly linked to the commercial service (except for the Marseille-Propriano route).
([5]) Handling expenditure corresponds to the costs of the dockers responsible for handling trailers on departure and arrival during stopovers. By their nature, these costs are allocated in their entirety to freight activity.

Source: Comments from the French authorities submitted on 28 June 2023.

3.7.2.4. Parameters for the calculation of reasonable profit

(310) Article 39 of the PSCs provides that reasonable profit is determined in accordance with the SGEI Framework and corresponds to the following ratio (calculated in Annex 9 to the PSCs): current earnings from the SGEI before tax and interest / SGEI turnover (including financial compensation received by the contractor). For each route, the reasonable profit must not exceed 2,13 % for the duration of the contract, unless a further independent study, carried out in the event of market disruption, justifies a revision of this rate.

(311) The rate of 2,13 % is derived from the financial bids submitted by Corsica Linea and La Méridionale, which estimated for all routes, based on the projected profit and loss accounts, an operating margin for SGEI-related activities of between 0,69 % (Lot 4: Propriano) and 2,13 % (Lot 3: Porto-Vecchio). In addition, the French authorities provided the Commission with the results of an external study commissioned by France ([137]), which estimated, on the basis of a sample of shipping companies comparable to Corsica Linea and La Méridionale ([138]), a reference operating margin of 7,8 %.

3.7.2.5. Parameters for monitoring the absence of overcompensation

(312) Article 7 of the PSCs provides for the contracting authority (i.e. the OTC and the CdC) to check that the amount of compensation paid to the concession holder under the contract does not lead to any overcompensation, and to order the concession holder to repay any overcompensation, plus default interest, in accordance with Articles 35.1, 37.1 and 40.

(313) In accordance with Article 46 of the PSCs, the concession holder must submit to the OTC in its annual report an operating account in the same format as the provisional operating account. A comparison of the provisional and final accounts must be accompanied by an explanatory note on the differences found. The compensation actually paid must be reimbursed by the concession holder if the analysis carried out by the OTC demonstrates that it is higher than that necessary to cover the net cost of the public service obligations, taking into account a reasonable profit, in accordance with Articles 35.1, 37.1, 39 and 40 of the PSCs.

(314) Articles 35.1, 37.1 and 40 of the PSCs provide that, in order to avoid the risk of overcompensation, the OTC will carry out an annual check of the compensation calculation based on an annual report on the services in order to assess any difference between the calculation based on the allocation key referred to in Annex 9 and the calculation based on an allocation key which would result from the actual operation (actual costs and revenues, actual operation of the vessels, etc.). In the event of a difference between the calculation resulting from the actual operation and that referred to in the provisional operating account (Annex 9), half of any surplus compensation paid may be retained by the concession holder up to a maximum of 5 % of the compensation, and the surplus will be returned to the OTC in accordance with arrangements it decides on, plus default interest. In any event, the compensation must not exceed the amount resulting from Annex 9.

(315) Articles 35.2 and 37.2 of the PSCs state that the failure to make a crossing, whatever the cause, results in a reduction of compensation corresponding to the savings made by the concession holder on CFEI and CFC as a result of the non-provision of the SGEI. The amount of the reduction cannot be negative.

(316) If the replacement of a vessel provided for in Article 20 of the PSCs (recital 288) leads to an increase in the costs initially determined in the provisional operating account constituting Annex 9, that increase will be borne by the concession holder. If the replacement leads to a reduction in those costs, the contracting authority and the concession holder will make the necessary financial adjustments following submission of the annual report referred to in Article 46 of the PSCs.

([137]) Comments from the French authorities submitted on 5 April 2023 ('Maritime transport profitability benchmark produced as part of the procedure for awarding the maritime PSC between Corsica and the French mainland', OTC, 20 November 2022).

([138]) The sample comprises the following companies: Brittany Ferries, Condor Ferries, Corsica Ferries, DFDS, Irish Ferries, P&O Ferries, Stena Lines, Grimaldi Group, Finnlines, Fjord Line, Tallink and Viking Line. Where data was available, the comparative study covers the years 2017-2019.

(317) Article 38 of the PSCs adds that, in its annual report, the concession holder 'must indicate the actual cost of each additional round trip, corresponding to the difference between the actual costs and revenues of that round trip. The contracting authority will pay compensation known as actual compensation for crossing i [('**Cri**')] corresponding to the minimum amount between the actual cost of this additional round trip and the maximum compensation per additional round trip in the period when the crossing is made'.

3.8. Complaint from Corsica Ferries

(318) On 23 March 2023 Corsica Ferries lodged a complaint with the Commission against the measures granted to la Méridionale and Corsica Linea.

(319) In its complaint, Corsica Ferries maintained that the measures at issue constituted State aid within the meaning of Article 107(1) TFEU. The complaint places particular emphasis on the fact that the measures at issue confer an advantage on those companies, in that they do not comply with any of the four criteria established by the Altmark case-law ([139]). Corsica Ferries also argued that the measures were incompatible with the internal market, as they breached the provisions of Directive 2014/23/EU of the European Parliament and of the Council ([140]) on the award of concession contracts ('**Concessions Directive**'), 'taken together with Articles 49 and 56 TFEU'.

(320) By letters of 13 October and 20 December 2023, Corsica Ferries provided additional information on the complaint demonstrating, in its view, that there was no public service need and that the service obligations imposed in the context of the PSCs were disproportionate. This additional information, taken together with the complaint of 23 March 2023, will be referred to as '**the complaint**' in this decision.

(321) The letter of 13 October 2023 refers to information relating to crossings made outside and within the framework of the PSCs by Corsica Linea in the summer of 2023.

(322) In its letter of 20 December 2023, Corsica Ferries provided the results of a study dated 14 December 2023, which it commissioned from Berkeley Research Group ('**the BRG 1 study**').

(323) The BRG 1 study states that its purpose is to assess the appropriateness of including in the scope of the PSCs on the routes to Ajaccio and Bastia a public service need for the transport of more than 12 passengers per crossing. The BRG 1 study discusses only the need to transport drivers assessed by France, excluding any other public service needs identified by France.

(324) Furthermore, the BRG 1 study states that, in light of the lack of information provided by the French authorities on the assessment of the public service need in the context of the PSCs, the study relied on reports and studies relating to previous PSCs in order to reconstruct the methodology which appeared to have been used by France.

(325) In its comments submitted to the Commission in the context of the formal investigation procedure, Corsica Ferries largely repeated the content of the complaint. The content of the complaint is therefore set out in the section presenting those comments (Section 5.1).

3.9. Grounds for initiating the formal investigation procedure

(326) *Firstly*, the Commission took the preliminary view that the PSCs constituted State aid under Article 107(1) TFEU.

(327) The Commission considered that the PSCs conferred, inter alia, an advantage on the concession holders which they would not have obtained under normal market conditions. More specifically, the PSCs at issue did not meet all the criteria laid down in the Altmark case-law for excluding such an advantage.

([139]) Judgment of the Court of 24 July 2003, *Altmark Trans GmbH*, C-280/00, ECLI:EU:C:2003:415.

([140]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1, ELI: http://data.europa.eu/eli/dir/2014/23/oj).

(328) First of all, the Commission expressed doubts as to whether the PSCs fulfil a genuine public service need in relation to the maritime transport of towed freight (first Altmark criterion).

(329) The Commission considered that the French authorities had not a priori sufficiently established that the ports of Marseille and Toulon were only partially substitutable as regards the maritime transport of towed freight (recitals 310 to 312 of the opening decision).

(330) The Commission noted that the French authorities had relied solely on general statements made by market participants in order to quantify that partial substitutability (recital 227). In its opening decision, the Commission expressed doubts about that assessment, since the French authorities had not verified the underlying data supporting it. The Commission asked the French authorities to provide more conclusive evidence to justify the assessment of this specific demand for the port of Marseille from some of the users of maritime towed freight transport.

(331) Furthermore, the Commission expressed doubts as to the proportionality and necessity of certain public service obligations imposed by the PSCs for meeting the public service needs identified (recitals 337 to 340 of the opening decision). The Commission took the view that the minimum (towed and non-towed) freight carrying capacity required by the French authorities and the obligation for the beneficiaries of the measures to operate a minimum number of annual round trips did not seem sufficiently justified in view of the public service needs identified in the Gecodia report. The Commission had concerns that these obligations could lead to the freight capacity offered by concession holders being significantly higher than the quantitative public service need.

(332) The Commission also took the preliminary view that the measures did not satisfy the fourth Altmark criterion. It considered that the PSC award procedure conducted by the French authorities was not sufficiently competitive to ensure that the compensation granted to the PSC beneficiaries constituted the lowest cost to the community. It also took the view that the amount of that compensation had not been set in relation to the costs incurred by a typical, well-run company with adequate means to fulfil the public service obligations assigned.

(333) The Commission also took the preliminary view that the measures were imputable to the state and financed through state resources. The measures were also selectively in favour of the beneficiaries and constituted a barrier to intra-EU trade and a distortion of competition in a liberalised market.

(334) *Secondly*, the Commission noted that the French authorities had not provided sufficient evidence to demonstrate the compatibility of the PSCs with the SGEI Framework. In addition to the doubts expressed by the Commission on the scope of the PSCs, the Commission also questioned the conformity of the procedure for awarding the PSCs with EU law on concessions.

4. **COMMENTS FROM FRANCE**

(335) The French authorities submitted their comments by letter of 27 March 2024. The comments concern (i) the assessment of the existence of a public service need and (ii) compliance with the Concessions Directive.

4.1. **Existence of a public service need**

(336) In response to the Commission's preliminary examination of the existence of a genuine public service need, the French authorities commented on five points.

4.1.1. *France correctly estimated the specific quantitative demand from towed freight users for the port of Marseille*

(337) As indicated in recital 227, the French authorities estimated that the share of towed freight transport users who do not consider any alternative to the port of Marseille for travel to Corsica represented 80 % of the total historical demand for towed freight between Marseille and Corsica.

(338) In the light of the doubts expressed by the Commission in recital 329 of the opening decision, the French authorities carried out more detailed analyses, conducted by the firm Gecodia, in order to provide quantitative evidence of the level of substitutability between the ports of Marseille and Toulon as regards the demand for maritime transport of towed freight.

(339) *Firstly*, according to the French authorities, an analysis of the location of the head offices, warehouses and logistics bases of the hauliers representing 80,8 % of the volume of towed freight transported on the routes between Marseille and Corsica shows that their facilities are in the immediate vicinity of the port of Marseille, which justifies their preference for that port.

(340) *Secondly*, Gecodia analysed the towed freight flows of 122 customers of Corsica Linea (representing 85 % of its towed freight traffic) and 62 of La Méridionale's customers (representing 78 % of its towed freight traffic). The analysis shows that 83 % (Corsica Linea) and 88 % (La Méridionale) of these flows can be traced to logistics bases near the port of Marseille, which implies a preference for that port.

(341) *Thirdly*, Gecodia analysed operations by 32 towed freight hauliers (some of which have several logistics bases near Marseille or Toulon) between Corsica and the French mainland using the port of Marseille and/or the port of Toulon, representing approximately 65 % of the volume of towed freight between Corsica and the ports of Marseille and Toulon in 2017-2019 and 2021 ([141]).

(342) To obtain these data, the French authorities sent the shipping companies a request for information regarding a list of their main customers and the associated volumes of towed freight (in LM). These data were aggregated to obtain a representative number of main hauliers in the entire Marseille and Toulon area. In order to link flows as accurately as possible to a logistics base of departure, the French authorities used the information collected during the interviews carried out in the user consultation.

(343) The list drawn up in this way shows, for each customer, the location of the logistics base, the distance between the logistics base and the ports of Toulon and Marseille, and the annual volume of towed freight (in LM) transported in each port during the 2017-2021 period. The type of goods transported is also specified for some customers (e.g. transport of military equipment, perishable products, construction materials or dangerous goods). The French authorities also collected additional qualitative information specific to individual hauliers and relevant for the assessment of the substitutability of the two ports. For example, some users indicated that they had used the port of Toulon in the past due to capacity constraints at the port of Marseille.

(344) Analysis of these data reveals, according to the French authorities, that the majority of hauliers use only the port closest to their logistics base (22 hauliers out of 32). The analysis shows that, despite having a logistics base closer to Marseille, the other ten hauliers used the port of Toulon exclusively or very often. The French authorities explained that some hauliers reported using the port of Toulon because they had motorway links to Toulon that allowed them to avoid the Marseille metropolitan area (northern bypass), while others had moved their base/warehouse from the Marseille region to the Toulon region, which resulted in a shift of transport flows to the port of Toulon.

(345) According to the French authorities, the analysis of the information gathered shows that a user's choice of port is very much influenced by the proximity of the port to the haulier's logistics base by road. According to the authorities, it is mainly supply constraints that lead users with bases closer to Marseille to shift their traffic to Toulon.

(346) According to the French authorities, all of this information confirms (i) that the port for the transport of towed freight is primarily chosen on the basis of the location of the hauliers' logistics bases and (ii) that more than 80 % of the volume of towed freight transported by the contractor companies can be linked to a logistics base located within the Marseille area. Users therefore have a genuine preference for the port of Marseille and, for these users, the port of Marseille is not substitutable with Toulon.

([141]) Excluding 2020 due to the impact of the COVID-19 pandemic on trade flows.

4.1.2. *The public service obligations relating to the minimum volume of freight to be transported were proportionate to the public service need identified by France*

(347) The French authorities state that the minimum capacity imposed in the PSCs for freight transport is not disproportionate to the public service need identified. They provide three reasons for this.

(348) *Firstly*, according to France, it is not possible to use an approach based on traffic averages, given the high volatility of demand.

(349) The French authorities point out that the minimum carrying capacity per crossing set out in the PSCs takes account of (i) comments from the user consultation (regular saturation on certain routes), (ii) the spread of the public service need over crossings, days and months (recorded on the basis of historical data for 2019 and the 2023-2030 forecasts) and (iii) the forecast distribution of the public service need per month (used to calculate the minimum weekly capacity and the minimum capacity per crossing to absorb traffic satisfactorily). France also points out that meeting the public service need is mandatory so that trailers are not left at the quayside, thereby guaranteeing traffic fluidity (no saturation), quality (no haulier penalties for delays or supply disruptions for companies in Corsica) and security (no goods left at the quayside which might be stolen or spoiled).

(350) In this regard, the French authorities noted during the user consultation that the difficulties encountered by freight transport users in relation to the saturated capacity of vessels had been increasing in recent years, especially on routes to Bastia and Ajaccio. According to France, this saturation means that not all demand from hauliers can be met on all crossings. In this regard, the French authorities note that the concession holders' reservation data for the 2021-2022 PSCs confirmed that goods were left on the quayside. Loading was refused for more than 35 % of goods on the Marseille-Bastia route and for more than 20 % of goods on the Marseille-Ajaccio route.

(351) The approach taken by the French authorities is therefore designed to ensure that the services put in place can absorb freight demand in an acceptable and proportionate manner.

(352) In that regard, the French authorities underline that, contrary to what is stated in recital 338 of the opening decision, the minimum capacity required for each crossing was not established 'in such a way that the public service can respond at any time to the peak in demand observed in the historical data (in the context of previous PSCs)'.

(353) On the contrary, according to the French authorities, the information sent to the Commission shows that, almost every month, the historical traffic peak observed exceeds the minimum capacity imposed in the PSCs. For example, on the Marseille-Bastia route, the minimum capacity is set at 1 860 LM per crossing. However, an analysis of historical data from 2019 shows that this volume is exceeded at least once a month for eight months of the year, while projections show that this capacity would be systematically exceeded in 2025. The French authorities explain, moreover, that in 2023, in the first year of implementation of the PSCs, the volume required for minimum capacity was exceeded at least once a month, except in December.

(354) According to France, the spread of traffic throughout the year thus prevents minimum capacity from being determined on the basis of the average annual volumes anticipated for the 2023-2030 period in the Gecodia study. Such an approach could lead to a situation where vessels might be regularly under capacity to absorb freight demand.

(355) Table 31 reproduces the number of crossings for which demand would be higher than the average minimum capacity in 2019 and 2030, where this capacity has been established on the basis of the average annual volumes anticipated for the 2023-2030 period in the Gecodia report. It appears that, on the routes between Marseille and Ajaccio, Bastia and Porto Vecchio, demand would exceed the required minimum capacity on one crossing in every two, where demand exceeding the minimum required capacity would be recorded (one crossing in every four for the routes between Marseille and Propriano and L'Île-Rousse).

Table 31

Number of crossings with demand above the average minimum capacity established on the basis of the average annual volumes anticipated for the 2023-2030 period in the Gecodia study

	Number of annual crossings planned in the PSCs	Average minimum capacity per crossing (LM) [1]	Number of crossings with demand above the average minimum capacity			
			2019		2030	
			Number of crossings	% of annual crossings	Number of crossings	% of annual crossings
Bastia	730	1 420	299	41%	414	57%
Ajaccio	730	1 069	301	41%	402	55%
Porto Vecchio	312	784	79	25%	143	46%
Propriano	312	282	79	25%	125	40%
L'Île-Rousse	312	439	62	20%	112	36%

[1] The average minimum capacity per crossing, anticipated for the 2023-2030 period, is calculated as the annual public service need (Table 21) divided by the annual round trips provided for in the PSCs (Table 23).
Source: Comments from the French authorities submitted on 4 February 2024.

(356) *Secondly*, the mobilisation of a fleet with a higher capacity than the average traffic observed during the year constitutes normal market practice according to France. [142] The French authorities state that they carried out an analysis of the organisation of the fleets providing regular maritime services in Europe. In Sardinia and the Balearic Islands, the nominal capacity of vessels varies between 1 500 LM and 1 900 LM, which is perfectly consistent with the capacity of vessels operating on services to Corsica under the PSCs.

(357) *Thirdly*, to the knowledge of the French authorities, there are no cases in the western Mediterranean where two smaller vessels are mobilised for the same round trip instead of a larger vessel, in the context of either public service delegations or the free market.

4.1.3. *The ports of Ajaccio and Propriano are not substitutable*

(358) The French authorities consider that Corsica Ferries does not provide any serious evidence in its complaint to support its claim that the ports of Propriano and Ajaccio are substitutable. According to France, the following factors show the opposite.

(359) First of all, the mere road distance between the two ports is not a sufficient indicator of any substitutability: given the absence of expressways and the topography of the route between Ajaccio and Propriano, the duration of the journey by road between the two ports is almost 1 hour 30 minutes, and more than 2 hours in the event of congestion. France refers in this regard to the data it provided on distances and journey times between Corsican ports, presented in Section 2.2.

[142] The French authorities refer in particular to examples of public service contracts concluded in Italy and Norway.

(360) In addition, the infrastructure at the port of Ajaccio is already close to saturation point, and there are no handling areas big enough to centralise freight flows larger than those forecast for the 2023-2029 period.

(361) In any event, the French authorities point out that Corsica's road infrastructure is very saturated, particularly at peak times and during the tourist season, and that there is a high level of road deaths in Corsica (see Section 2.1). Organising the public maritime transport service in such a way as to increase road traffic would be contrary to the safety mandate imposed on the CdC.

4.1.4. *The services offered by Corsica Linea and La Méridionale outside the framework of the PSCs comply with the PSO scheme and do not call into question the public service need identified by France*

(362) The French authorities affirm that, contrary to Corsica Ferries' claims in its complaint, it is necessary to distinguish between additional round trips, the principle and terms of which are set out in the PSCs, and commercial crossings freely offered (outside the PSCs) by one or other of the concession holders under the 2019 PSO scheme.

(363) According to France, the commercial crossings in question are not covered by the PSCs or prohibited by them and do not call into question France's assessment of the public service.

(364) France states that the commercial crossings operated by Corsica Linea in 2023 and 2024 from the port of Marseille were (i) seasonal crossings offered during the school spring and summer holidays; (ii) crossings carrying only passengers, excluding freight; and (iii) were not compensated, as they were made outside the PSCs. As regards the crossings operated by La Méridionale from the port of Toulon in 2024, France points out that (i) those crossings were proposed following the change in the company's shareholding in 2023; (ii) they carried only passengers, excluding freight; and (iii) were not compensated, as they were made outside the PSCs.

4.1.5. *There was no methodological bias in the user consultation*

(365) The French authorities consider that, contrary to what the Commission suggests in the opening decision, there was no methodological bias in the public user consultation.

(366) They point out, first of all, that the user consultation was widely publicised in the local and specialised press (*Le Marin* newspaper), on the CdC website and on social networks.

(367) They also believe that the questions asked did not create a bias in favour of the port of Marseille.

(368) With regard to the user consultation for maritime passenger transport, the questions asked focused on the objective of identifying possible substitutability between the mainland ports from the users' point of view. The Gecodia report also concluded that the ports of Marseille and Toulon were substitutable from the point of view of demand from resident and non-resident passengers in Corsica.

(369) As regards the user consultation for maritime freight transport, the questions asked systematically covered all routes from Marseille *and* Toulon.

4.2. **The PSCs comply with the Concessions Directive**

4.2.1. *The time that elapsed between the award of the various lots to the concession holders and the entry into force of the PSCs had no foreclosure effect*

(370) As a preliminary point, the French authorities point out that neither the Concessions Directive nor French law provide for a strict period between the award of a concession and the entry into force of that concession.

(371) In any event, they consider that the short period in question had no foreclosure effect for three reasons.

(372) *Firstly*, the initial timetable drawn up by France, published in the notice of invitation to tender of 6 May 2022 for the award of the PSCs, provided for a period of two months between the award and the entry into force ([143]). That period was therefore longer than that laid down for awarding the PSCs in the *SNCM II* case-law (23 days) ([144]).

(373) *Secondly*, on receipt of the applications and bids on 25 July 2022, the French authorities found that the candidates who had submitted an application and a tender within the prescribed time limits were the outgoing concession holders of the 2021-2022 PSCs, namely La Méridionale and Corsica Linea. Since no new entrants had applied for the PSCs, a period shorter than the two months (initially provided for in the invitation to tender) between the award of the PSCs and the start of operations could not have a foreclosure effect.

(374) *Thirdly,* as the entry into force of the PSCs immediately followed the expiry of the 2021-2022 PSCs, those time limits were brought to the attention of all interested economic operators as soon as the procedure was launched, by means of the user and operator bidding documents. All operators were therefore aware of the expected start date of the measures. The French authorities note, moreover, that following the publication of the call for tenders on 6 May 2022, none of the potential candidates came forward to request a change in the timetable, even though, in their view, this is common practice in the award of concession contracts.

4.2.2. *The duration of the award procedure did not result in any unequal treatment between the candidates*

(375) In response to the doubts expressed by the Commission in recital 424 of the opening decision ([145]), the French authorities made the following comments.

(376) Firstly, Article 39(3) and (5) of the Concessions Directive require a minimum period of 30 days for the receipt of applications and tenders from the date on which the concession notice was sent; this may be reduced to 25 days where tenders can be submitted electronically. Subject to compliance with these minimum time limits, the contracting authority is free to determine the time limits for submitting applications and tenders.

(377) Secondly, the French authorities point out that, following the publication of the call for tenders on 6 May 2022, none of the potential candidates came forward to request a change in the timetable.

4.2.3. *The minimum requirements were not changed during the tender procedure and the signed PSCs comply with the minimum requirements*

(378) Firstly, the French authorities wished to clarify the scope of the minimum requirements applicable in this case to the PSCs. Secondly, they explained that the minimum requirements set out were not changed during the tender procedure. Thirdly, they reiterated that the signed PSCs comply with the minimum requirements.

([143]) The award of the PSCs was initially scheduled to take place on 28 October 2022.

([144]) Judgment of 1 March 2017, *SNCM II*, T-454/13, ECLI:EU:T:2017:134.

([145]) To recap, recital 424 of the opening decision states: '[...] The Commission considers that the French authorities did not provide all the necessary clarifications to conclude that the PSCs comply with the principles of equal treatment, non-discrimination and transparency. It invites all interested parties to submit their comments on this matter, in particular to clarify whether the obligation to mobilise vessels with a minimum passenger transport and cabin capacity within the time limits of the call for tenders constitutes a breach of equal treatment.'

4.2.3.1. Scope of the minimum requirements

(379) The French authorities state that, in the present case, the minimum requirements were set out in Article 2.4 of the bidding rules (recital 270). According to them, the content of the minimum requirements was as follows:

(a) 'Maximum fares for Corsican residents and for the transport of goods: refers to the fares presented in connection with Corsican Assembly Resolution AC No 19-128 amending the system of public service obligations for the maritime transport of passengers and goods between the ports of Marseille, Toulon, Nice and the Corsican ports;

(b) Carrying capacity of vessels: refers to the loading capacity of vessels;

(c) Timetables and service frequencies: refers to the timetables scheduled by the CdC and OTC and the minimum frequencies imposed on operators by the CdC and OTC;

(d) Duration of the contract: refers to the duration of the PSCs provided for in Article 2 of each contract 'the contract enters into force on 1 January 2023 and expires on 31 December 2029', with the possibility of an extension of a maximum of 12 months, in particular in the absence of a new concession contract being awarded on expiry of the contract;

(e) Maximum amount of financial compensation paid by the OTC: refers to the financial compensation mentioned in Article 2.5 of the bidding rules ([146]).'

(380) Furthermore, the minimum requirements relating to (i) the carrying capacity of vessels and (ii) timetables and service frequencies were set out in Annex 1 to the PSCs.

(381) According to the French authorities, Article 2.4 of the bidding rules should thus be read in the light of Annex 1 only in relation to these two minimum requirements, it being specified that:

— minimum frequencies referred to the frequency of services;

— timetables referred to the timetables scheduled by France, on the understanding that candidates remained free to propose departure and arrival times provided that they complied with the time slots imposed by France;

— minimum passenger and freight capacity referred to the carrying capacity of vessels.

(382) The French authorities therefore conclude that only the five elements listed in Article 2.4 of the bidding rules, two of which were specified in Annex 1, constituted the minimum requirements under Article 37 of the Concessions Directive, excluding any other characteristic.

4.2.3.2. Annex 1 to the PSCs was not in its entirety a minimum requirement

(383) In their comments, the French authorities maintain that Annex 1 to the PSCs was not referred to in Article 2.4 of the bidding rules and could not therefore in its entirety constitute a minimum requirement. While that annex set out the minimum characteristics relating to (i) the carrying capacity of vessels and (ii) the timetables and service frequencies, it also included numerous technical requirements which were not minimum requirements under Article 2.4 of the bidding rules ([147]).

([146]) Comments from the French authorities submitted on 27 March 2024.

([147]) The French authorities state that this was the case, in particular, for the number of annual round trips, additional round trips and the number of PRM cabins per vessel.

(384) The French authorities also explain that, during the award procedure, the OTC wished to ensure that all the technical requirements set out in Annex 1 were complied with. This is why, for example, the OTC obtained commitments from Corsica Linea to remedy the absence of a PRM cabin on the vessel Paglia Orba ([148]).

4.2.4. *The existence of additional and reschedulable round trips did not breach the principle of equal treatment of candidates*

4.2.4.1. Additional and reschedulable round trips were not a minimum requirement

(385) With regard to additional round trips, the French authorities point out that these are round trips that the contracting authority can introduce in view of the need to provide the public service on each route. They are therefore intended to meet a public service need greater than the minimum capacity imposed and to prevent goods from remaining on the quayside. Their implementation is governed by Article 18 of the PSCs. They did not therefore constitute a minimum requirement under Article 2.4 of the bidding rules.

(386) As regards reschedulable round trips, the French authorities point out that their sole purpose was to optimise the organisation of traffic. Their implementation is governed by Article 17 of the PSCs. They did not therefore constitute a minimum requirement under Article 2.4 of the bidding rules.

4.2.4.2. The acceptance of a candidate's proposals setting the dates for additional and reschedulable round trips did not lead to a breach of equal treatment between the candidates

(387) The French authorities point out that, in accordance with Articles 17 and 18 of the PSCs, the implementation of additional and reschedulable round trips requires a meeting of the technical committee provided for in Article 10.2 of the PSCs. The technical committee allows the concession holder concerned by the implementation of these round trips to report any difficulties that would result from them. France therefore considers that there is a process of consultation between the CdC, the OTC and the concession holder enabling the concession holder, prior to the implementation of the reschedulable and additional round trips, to present any difficulties it might have with regard, in particular, to the vessel(s) to be mobilised.

(388) Furthermore, the French authorities state that the notice period is calculated in week for additional round trips (Article 18 of the PSCs), which allows the concession holder, if necessary, to meet the additional demand in view of its commitment patterns.

(389) It follows, according to the French authorities, that the principle initially set out in the PSCs was not changed: additional and reschedulable round trips are decided by the OTC and not by the concession holders. The proposals made by the holders in no way bind the OTC in implementing these round trips. In this respect, France gives the example of the Marseille-Bastia route, where in 2023, during the first year of PSC implementation, the OTC decided to modify five of the additional round trips proposed by Corsica Linea in its provisional programme, by scheduling three of them on other dates and cancelling the other two, since there was no need for freight transport on the dates proposed by Corsica Linea.

([148]) The French authorities explain that Corsica Linea's bid proposed a vessel, Paglia Orba, which had only one PRM cabin, instead of the two required by Annex 1. Nevertheless, this point was discussed with the candidate during the negotiation phases, at the end of which it undertook to replace the vessel with one of the seven vessels potentially assigned to the services if two PRM cabins were required in view of the public service need (in accordance with Article 20 of the PSCs, which authorises the replacement of a ship in the course of performance) and to carry out works to install a second PRM cabin. Furthermore, the French authorities point out that Paglia Orba is a replacement vessel used on an ad hoc basis, in particular when the principal vessel used is withdrawn from service for technical reasons (comments from the French authorities submitted on 27 July 2023). According to France, these proposals, which are limited in scope and do not distort the conditions of competition, were considered to be capable of meeting the technical and functional specifications laid down. In their view, they did not, in any event, contravene a minimum requirement as laid down in Article 2.4 of the bidding rules.

5. COMMENTS FROM INTERESTED PARTIES

(390) Four interested parties submitted their comments during the formal investigation procedure: Corsica Ferries, Corsica Linea, La Méridionale and the Stef Group.

5.1. Comments from Corsica Ferries

(391) The subsections below set out the content of the comments submitted by Corsica Ferries in the context of the formal investigation procedure. As stated in recital 325, these comments largely reiterate the content of the complaint. The subsections below will therefore also refer, where appropriate, to the complaint.

5.1.1. *Factual considerations*

(392) By way of introduction, Corsica Ferries makes two comments on the description of the data relating to towed freight transport set out in the opening decision ([149]).

(393) *Firstly*, it considers that the factual description of towed freight completely omits the distinction between accompanied and unaccompanied towed freight. According to Corsica Ferries, only accompanied towed freight involves a driver boarding the vessel, and thus the existence of potential demand for passenger transport (recitals 447 to 449).

(394) *Secondly*, Corsica Ferries notes that the Commission analysed changes in the freight transport market between Corsica and the mainland on the basis of historical data covering the period from 2016 to 2021. Taking such a period for analysis provides misleading indications of the real market dynamics. According to Corsica Ferries, 2016 marked the arrival on the market of Corsica Linea, which is indirectly owned by a consortium of Corsican entrepreneurs, including the 15 main players in the Corsican supply chain. Corsica Ferries claims that, since 2016, it has lost goods traffic each year to Corsica Linea ([150]). Corsica Ferries notes that the data for the 2013-2019 period thus show the annual decrease in freight traffic from the port of Toulon compared with the port of Marseille. According to Corsica Ferries, this shows in particular that, given the identity of its shareholders, Corsica Linea is in a position to shift part of the demand for freight transport away from Toulon towards Marseille.

5.1.2. *Failure to comply with the first Altmark criterion*

5.1.2.1. On the identification of user demand

5.1.2.1.1. On the methodology used by the French authorities to identify user demand

(395) Corsica Ferries disputes the Commission's preliminary assessment that the methodology used by the French authorities to identify the existence of user demand is not subject to any manifest error of assessment.

(396) *Firstly,* Corsica Ferries points out that the results of the user consultation and the Gecodia report, which France used as a basis to conclude the PSCs, have still not been made public or communicated to Corsica Ferries. Corsica Ferries notes in this regard that the commission for access to administrative documents ('**CADA**') commented on

([149]) Section 2.1.1 – Maritime goods transport.

([150]) According to Corsica Ferries, its freight traffic departing from the port of Toulon decreased by 15,58 % in 2016, 7,49 % in 2017 and 6,09 % in 2018, while Corsica Linea saw its traffic increase by 15,91 % in 2016, 16,31 % in 2017 and 3,10 % in 2018.

the manifestly excessive nature of the redactions made by the CdC ([151]). Given the blatant lack of transparency on the part of France, Corsica Ferries cannot be criticised for basing all or part of its comments on the market studies carried out in 2018, 2019 and 2020, as well as on the BRG 1 study.

(397) *Secondly*, Corsica Ferries points out that the burden of proof under the first Altmark criterion lies with the Member State. It is therefore for the French authorities to provide objective, verifiable and sufficiently plausible evidence likely to overturn the conclusions and findings made by the administrative and European courts, as well as by the French competition authority, in the context of disputes relating to the previous public service contracts.

(398) The Commission could not therefore, as it did in the opening decision, simply reject the criticisms made by Corsica Ferries on the sole ground that they were based, in part, on market studies and decisions made in relation to previous public service contracts concluded for maritime services to Corsica. The Commission would thereby be disregarding the principle of good administration, as imposed by Article 41(1) of the Charter of Fundamental Rights of the European Union.

(399) *Thirdly*, Corsica Ferries criticises the methodology and use of the data obtained from the user consultation.

(400) Corsica Ferries notes, first of all, that the questionnaires published related only to routes between Marseille and Corsica. They were therefore necessarily skewed, leading to an irremediable methodological bias. The only questions referring to routes other than Marseille were purely comparative, with a view to explaining the respondent's choice of a Marseille-Corsica route rather than a link with another mainland port. Corsica Ferries observes in that regard that the Commission, which nevertheless noted this possible methodological bias in the opening decision (recital 283), did not draw the necessary conclusions in failing to find a manifest error of assessment.

(401) Corsica Ferries also points out that the answers were restrictive, thus directing the users' response and not allowing them to respond freely. The responses received could not therefore help to characterise a public service need.

(402) In addition, Corsica Ferries considers that the number of replies received was insufficient (987 usable replies from passengers out of almost 3 million passengers per year, 42 replies from medical passengers and 5 replies from maritime freight transport users). As regards the initiatives undertaken by the French authorities to consult maritime freight transport users directly by telephone, Corsica Ferries notes that no document was communicated or made public. According to Corsica Ferries, it was necessary to examine the identity of the hauliers contacted and the questions put to them.

([151]) Corsica Ferries provided two CADA opinions dated 15 February 2024 and 11 January 2024 respectively as Annexes 3 and 4 to its comments. Annex 3 concerns Corsica Ferries' request to the OTC for access to the Gecodia report. The OTC provided Corsica Ferries with a non-confidential version of that report. In its opinion of 15 February 2024, CADA considers that, although the Gecodia report does contain a certain amount of confidential information, the disclosure of which could undermine business confidentiality (e.g., the shipping companies' responses to the operator consultation), the non-confidential version sent to Corsica Ferries was excessively redacted. Annex 4 concerned Corsica Ferries' request for access to the five PSCs and their annexes, the non-confidential versions of which were sent to it by the CdC. In its opinion of 11 January 2024, CADA took the view that certain redactions of the content of the PSCs (contractual information relating to the financial compensation paid by the OTC in the absence of a crossing, provisions relating to the calculation of reasonable profit) and certain annexes (annex relating to the provisional operating account) could be provided, but others could not (Annexes 1, 2, 3, 10 and 12).

(403) Finally, Corsica Ferries stated that there was evidence of an attempt by Corsica Linea to manipulate the questionnaires put online by the French authorities, as Corsica Linea had sent its employees explicit instructions (i) asking them to take part in huge numbers in the user consultation and (ii) indicating the answers that had to be ticked ([152]). The results of the user consultation could therefore not be regarded as usable.

5.1.2.1.2. On the identification of user demand for maritime passenger transport

5.1.2.1.2.1. On the identification of qualitative passenger demand

(404) In the complaint, Corsica Ferries pointed out that, in terms of passenger transport to Corsica, the ports of Marseille and Toulon are entirely substitutable from the point of view of passengers, as the European Commission ([153]), the General Court of the European Union ([154]), the French competition authority ([155]), Marseille Administrative Court of Appeal ([156]) and Bastia Administrative Court ([157]) had ruled.

(405) In its comments on the opening decision, Corsica Ferries considers that the French authorities made two errors in identifying passenger demand.

5.1.2.1.2.1.1. The ports of Marseille and Toulon are substitutable from the point of view of medical passengers

(406) Corsica Ferries considers that the conclusion that the ports of Toulon and Marseille are not substitutable as regards medical passengers is vitiated by a manifest error of assessment for three reasons.

(407) *Firstly,* Corsica Ferries considers that the concept of 'medical passenger' should be interpreted strictly. It considers that the French authorities identified specific demand from medical passengers solely on account of the existence of the legal framework governing the coverage of patients' transport costs, which limits passengers' choice of mode of transport.

(408) Corsica Ferries understands this to mean that, for the purpose of identifying the need for a public transport service, only the demand for the transport of medical passengers whose journeys are eligible for reimbursement by the social security system must be taken into account. However, according to Corsica Ferries, there are many cases in which a resident may travel to the French mainland for medical reasons, but whose travel is not eligible for reimbursement. In those cases, according to Corsica Ferries, there is no legal constraint on the mode of transport to be used.

([152]) Corsica Ferries provided several documents in Annex 5 to its comments:
- an anonymous handwritten letter addressed to the president of Corsica Ferries describing the attempt by Corsica Linea's management to ask its employees to 'pretend to be residents' in order to reply to the user consultation;
- an internal communication from Corsica Linea ('monthly update December 2021') addressing several topics relating to Corsica Linea's commercial strategy, including an update on the PSCs discussing the OTC's timetable for launching public consultations and the invitation to tender for the PSCs, and noting that Corsica Ferries had lodged complaints with the Commission;
- a letter from trade union representatives addressed to the presidents of Corsica Linea and La Méridionale informing them of a strike notice against the alleged opposition by the French state and the Commission to the public service for maritime transport to Corsica in the name of free movement of services;
- an internal email from a Corsica Linea employee sharing an internet link to the user consultation, with 'suggested' answers justifying continuation of a public service.

([153]) Decision 2013/435/EU, recital 160.

([154]) Judgments of 1 March 2017, *SNCM I*, T-366/13, ECLI:EU:T:2017:135, and *SNCM II*, *ibid*.

([155]) French competition authority opinion No 12-A-05 of 17 February 2012 on maritime transport between Corsica and the mainland.

([156]) Judgment No 17MA01582 of Marseille Administrative Court of Appeal of 22 February 2021.

([157]) Judgment of Bastia Administrative Court No 1100533 of 7 April 2015, *SNCM*.

(409) However, according to Corsica Ferries, the French authorities did not limit the public service need in the PSCs solely to medical passengers whose transport costs were eligible for reimbursement by the social security system. The need also includes medical passengers in general, even though some of them, whose travel costs are not eligible for reimbursement by the health insurance scheme, are not restricted by the mode of transport to be used or the port of arrival on the mainland.

(410) *Secondly*, Corsica Ferries points out that the French authorities relied on the legislation in force to demonstrate that there was no substitutability as regards medical passengers' demand between the ports of Marseille and Toulon ([158]). Such a conclusion would be manifestly incorrect.

(411) Corsica Ferries maintains that, contrary to what the French authorities claim, no legal or regulatory requirement makes reimbursement of transport costs dependent on the distance between the port of arrival and the healthcare centre.

(412) Corsica Ferries refers to Article L. 322-5 of the CSS, which provides: 'transport costs are reimbursed on the basis of a medical prescription […] The medical prescription must specify the mode of transport most suited to the patient's condition and whether that condition is incompatible with shared transport, understood as the carriage of at least two patients together. In line with the prescription, transport costs are covered on the basis of the cheapest journey, taking into account the transport conditions and the number of patients transported.'

(413) Corsica Ferries also considers that the French authorities misinterpreted Article R. 310-10-5 of the CSS (recital 139). Although, according to Corsica Ferries, that provision does provide for the reimbursement of travel expenses to be calculated on the basis of the distance between the patient's home and the treatment facility prescribed by the doctor, it applies only to certain types of travel (namely, those referred to in paragraph 1(a)-(f) of Article R. 322-10 of the CSS, as indicated in recital 139). According to Corsica Ferries, this does not include travel by scheduled boat or plane. Consequently, Article R. 310-10-5 of the CSS does not concern travel by scheduled boat or plane, or the question of the distance between the patient's port or airport of arrival and the treatment facility.

(414) Thus, according to Corsica Ferries, although the mode of transport (plane or boat) may indeed be restricted by the medical prescription, as may the place of treatment itself, there is no constraint on the port or airport of arrival where transport by scheduled plane or boat is involved, nor is the port or airport of arrival imposed by the medical prescription.

(415) By contrast, the condition laid down in Article L. 322-5 of the CSS, according to which travel expenses are reimbursed on the basis of the least expensive journey, applies to all journeys and modes of transport.

(416) As a result, according to Corsica Ferries, even medical passengers for whom maritime transport has been prescribed by a doctor remain free to choose a route arriving in Toulon or Marseille; the choice having to be made on the basis of price and not the distance of the port of arrival from the treatment facility. This conclusion is also confirmed by the information on the official form that must be completed by the prescribing doctor for reimbursement of the costs of the planned transport. ([159])

(417) In any event, and as stated in its complaint, Corsica Ferries considers that the substitutability of the ports of Marseille and Toulon from the point of view of medical passengers is confirmed by the circumstances following the outbreak of COVID-19, during which the national authorities drastically limited passenger transport between Corsica and the mainland by authorising only the transport of certain persons (care workers, military personnel, fire fighters and technicians). Corsica Ferries claims to have been the only operator during that period to carry passengers authorised to travel between Toulon and Corsica, since the concession holders Corsica Linea and La Méridionale had decided to operate only maritime freight services between Marseille and Corsica.

([158]) Opening decision, recital 296.

([159]) In Annex 6 to its comments, Corsica Ferries provided a model form for requesting prior authorisation for transport equivalent to a medical prescription. This form contains a notice providing information to prescribers on the rules governing the coverage of transport costs.

(418) *Thirdly*, Corsica Ferries explains that, since the legislation on the reimbursement of transport costs incurred for medical reasons does not force medical passengers to choose a crossing to the port of Marseille, there are no disadvantages for passengers of travelling to the port of Toulon rather than to the port of Marseille for their medical needs. Corsica Ferries considers that it is irrelevant for medical passengers travelling with their vehicle (who have therefore already made a 12-hour boat crossing) whether they arrive in Marseille or Toulon, since those two cities are 45 minutes apart by car.

5.1.2.1.2.1.2. The ports of Ajaccio and Propriano are substitutable from the point of view of passengers

(419) Corsica Ferries considers that the conclusion that the ports of Ajaccio and Propriano are not substitutable from the point of view of passengers is vitiated by a manifest error of assessment for three reasons.

(420) *Firstly*, the distance between Ajaccio and Propriano is only 70 km, meaning there is no significant difference for passengers making a crossing with their car (i.e., according to Corsica Ferries, 92 % of passengers) whether they travel from the ports of Ajaccio or Propriano.

(421) *Secondly*, as regards the duration of the journey, Corsica Ferries submits that it is incorrect to consider that a journey time of approximately one hour would prevent the two ports from being substitutable.

(422) Corsica Ferries points out that the French authorities consider that the ports of Nice and Toulon are substitutable (despite a journey time of approximately 1 hour 30 minutes), as are the ports of Marseille and Nice (for non-resident passengers, despite a journey time of almost 2 hours 20 minutes). The same principle should apply to the distance between Ajaccio and Propriano.

(423) Corsica Ferries also considers that Ajaccio and Propriano have common a catchment area, taking as an example the situation of the residents in Grosseto-Prugna, for whom Ajaccio is 32 km away (a 40-minute journey) and Propriano 35 km (a 45-minute journey).

(424) Corsica Ferries refers, moreover, to the complaint, in which it explained that the substitutability between the ports of Ajaccio and Propriano is confirmed by the frequency obligations imposed under the PSCs. While the concession holders are required to operate a daily route between Marseille and Ajaccio, they are required to operate only three weekly round trips between Marseille and Propriano. According to Corsica Ferries, passengers who usually board at Propriano must therefore travel to Ajaccio on days when there is no round trip available at the port of Propriano.

(425) *Finally*, Corsica Ferries refers to the information presented in the complaint concerning the existence of legal precedents characterising the substitutability of the two ports. It pointed out in the complaint that the national authorities themselves had recognised the substitutability of the two ports in the context of the expert report ordered by Marseille Administrative Court of Appeal in its preliminary ruling No 17MA01582-17MA01583 of 12 February 2018, in order to determine the amount of compensation payable by the CdC for the damage suffered by Corsica Ferries as a result of the unlawful aid paid under the 2007-2013 PSC ([160]).

(426) In its comments on the opening decision, Corsica Ferries challenges the Commission's position on this point that those precedents are not relevant as they do not relate to the present case, pointing out that (i) the precedents all concerned maritime services to Corsica and similar public service obligations and (ii) concerned a recent period during which the market for maritime services did not undergo substantial changes such as to call those conclusions into question.

([160]) Corsica Ferries states that the judicial expert appointed by the national court to assess the damage suffered by Corsica Ferries concluded that the ports of Ajaccio and Propriano were substitutable, without this being disputed by the parties in question (namely the CdC and Corsica Ferries). Corsica Ferries attaches as Annex 8 to its comments a letter from the judicial expert in question to Corsica Ferries informing it of the status of the expert's investigation. The letter reminds the parties in particular of the points on which they agreed, including the substitutability of the ports of Propriano and Ajaccio, and points out that the expert expected to collect daily data on the additional service relating to 2007-2009 (for the port of Ajaccio) and 2007-2013 (for the port of Propriano).

(427) Corsica Ferries points out that the French authorities did not carry out an analysis of the substitutability of the Corsican ports under the PSCs, and that the burden of proof therefore lies with France to demonstrate, on the basis of objective and verifiable data, that Ajaccio and Propriano were no longer substitutable in 2023.

5.1.2.1.2.2. On the identification of quantitative passenger demand

(428) Corsica Ferries disputes the way in which the French authorities quantified the demand from medical passengers for two reasons.

(429) *Firstly*, Corsica Ferries considers that the assumption made by France concerning the number of accompanying persons (that any medical passenger under the age of 19 or over the age of 75 is systematically accompanied) is not based on any objective and verifiable data. According to Corsica Ferries, this would mean that one third of the demand from medical passengers comes from accompanying persons and not from medical passengers.

(430) Above all, this hypothesis is based on an assumption that is inconsistent with the rules governing the coverage of medical travel by the health insurance scheme. Article R. 322-10-7 of the CSS provides that 'the public transport costs incurred by a person accompanying an insured person or beneficiary are covered where the latter's condition requires the assistance of a third party or where they are less than sixteen years of age'.

(431) *Secondly*, Corsica Ferries considers that the rate of 10 % for transport by boat used by the French authorities appears to be greatly overestimated in the light of the only objective data provided by the French authorities, based on the sample of 8 000 requests for prior approval sent to CPAM 2A (recital 158). These data show that only 4 % of the requests relate to maritime transport. Therefore, according to Corsica Ferries, the estimated volumes of transport demand from medical passengers must be reduced by more than half, by applying the rate of 4 % rather than the 10 % used by the French authorities.

5.1.2.1.3. On the identification of user demand for maritime transport of towed freight where no alternative is seen to the port of Marseille

5.1.2.1.3.1. On the identification of the qualitative user demand for towed freight

(432) Corsica Ferries considers that the French authorities made a manifest error of assessment in assessing that there was only partial substitutability between the ports of Toulon and Marseille.

(433) In the complaint, Corsica Ferries took the view that the ports of Marseille and Toulon are perfectly substitutable as regards the transport of drivers. It is thus irrelevant for a driver travelling with a tractor and semi-trailer, and whose logistics hubs are located in the Marseille region or the Rhône corridor (Miramas, Salon, Avignon), whether they have to go to Marseille or Toulon, which are 45 minutes apart. The situation of a driver travelling with a tractor and semi-trailer is therefore identical to that of a passenger travelling by car.

(434) Corsica Ferries also stated in the complaint that it was transporting as many drivers from Toulon as Corsica Linea and La Méridionale do from Marseille ([161]).

(435) In its comments, Corsica Ferries disputes, in particular, two points discussed in the opening decision: the risk of saturating capacity at the port of Toulon; and the lack of substitutability revealed during the user consultation.

5.1.2.1.3.1.1. No risk of saturating towed freight capacity at the port of Toulon

(436) Corsica Ferries puts forward two arguments in that regard.

([161]) For example, Corsica Ferries states that it transported 5 947 drivers in 2020 (4 984 in 2021) between Toulon and Ajaccio, compared with 5 232 between Marseille and Ajaccio (6 973 in 2021).

(437) First of all, the alleged saturation of Toulon port's capacity is, in its view, inconsistent with the reality of the port's capacity observed in the past. Corsica Ferries reports that between 2013 and 2015 the port of Toulon handled 50 % more freight than today. Furthermore, the strikes that affected the port of Marseille in June 2019 and January 2020 led to a sharp increase in freight traffic at the port of Toulon in those two months, without any problem of saturation.

(438) Secondly, and above all, according to Corsica Ferries, the Toulon port authority disputes the alleged saturation of the port. Corsica Ferries states that it asked Var CCI for information on the actual towed freight capacity of the port of Toulon. According to Corsica Ferries, the port of Toulon stated in its response that it had available capacity at three of its terminals, assuming constant supply from Corsica Ferries ([162]). In addition, according to Corsica Ferries, Var CCI confirmed that Toulon-Port de Commerce handled up to 42 008 trailers for loading and unloading in 2014, i.e. the equivalent of 600 000LM ([163]). Given that the port of Toulon handled 320 000 LM in 2022, Corsica Ferries estimates that the port is able to accommodate almost 280 000 additional LM from throughout France ([164]).

5.1.2.1.3.1.2. The user consultation is not sufficient evidence to identify demand for towed freight where no alternative is seen to the port of Marseille

(439) Corsica Ferries notes that, according to the French authorities, it is apparent from the user consultation that, as regards towed freight, hauliers do not consider an alternative route when planning their journeys. Corsica Ferries makes the following comments on this claim.

(440) First of all, according to Corsica Ferries, this is a general and unsubstantiated statement, based on statements made by a few players from a sample of uncertain statistical representativeness.

(441) Secondly, Corsica Ferries points out that the hauliers consulted are in a situation of conflict of interest as shareholders of Corsica Linea (recital 394). That situation affects the analysis of the substitutability of the ports of Toulon and Marseille, in so far as the users of maritime towed freight transport do not act as rational economic operators whose choice is guided by comparing offers. Rather, they choose on the basis of their interest as shareholders in Corsica Linea, which is why they do not even consider an alternative.

(442) Furthermore, Corsica Ferries disputes that the proximity of the port of Marseille is one of the hauliers' main reasons for choosing that port rather than the port of Toulon. Corsica Ferries believes that the French authorities produced no evidence to support their assertion that the logistics bases of the hauliers and customers of the maritime services to Corsica are geographically closer to Marseille than to Toulon. A substantial part of towed freight traffic used the port of Toulon before being diverted to the port of Marseille, when Corsica Linea entered the market in 2016. According to Corsica Ferries, given the proximity of the motorway network and the location of the port of Toulon, its catchment area cannot be reduced to the department of Var alone, since the port deals with towed freight from the whole region and from the Rhône valley.

([162]) In its reply to Corsica Ferries (provided as Annex 10 to Corsica Ferries' comments), Var CCI explains that the Toulon Côte-d'Azur terminal can accommodate up to 80 trailers a day in winter and around 20 in summer; 120 trailers at the Brégaillon-South terminal (but only for Ro-Ro vessels); while the Seyne-sur-Mer cruise terminal does not have a Ro-Ro quay. The latter would require improvements (construction of a Ro-Ro quay or addition of a floating pontoon) allowing it to accommodate up to 50 trailers.

([163]) In its response to Corsica Ferries, Var CCI states that 'at the [Toulon-Port de Commerce] terminal, the maximum number of trailers over the last fifteen years was reached in 2014 with 42 008 trailers loaded and unloaded. As flows are balanced, this corresponds to approximately 21 000 trailers loaded a year'.

([164]) In response to Corsica Ferries' question asking it to confirm that the catchment area of the port of Toulon (in terms of its accessibility and location) was not limited to the hinterland of Toulon or the department of Var, but extended to all the other neighbouring departments (Annex 9 to Corsica Ferries' comments), Var CCI stated that 'the port of Toulon is accessible via the A50, A57 and A570 motorways providing connections from east to west and from north to south. [...]. The port now deals with freight volumes from the southern region and more generally from French territory. [...]' (Annex 10 to Corsica Ferries' comments).

(443) Finally, even considering that some hauliers incur additional road costs because of the greater distance between their base and the port of Toulon, this criterion alone is not relevant: Corsica Ferries considers that the overall cost of transport to the final destination is the key criterion (i.e. the road cost and the cost of maritime transport). Corsica Ferries disputes in any event the additional cost of 17 % of the overall cost of the journey, which it considers to be an overestimate. A new study by BRG submitted by Corsica Ferries ('**the BRG 2 study**') shows that the additional cost does not exceed more than 5-6 % of the carrier's total production cost, which is itself offset by the lower prices of maritime towed freight services at the port of Toulon compared with Marseille ([165]).

5.1.2.1.3.2. On the identification of the quantitative user demand for maritime transport of towed freight where no alternative is seen to the port of Marseille

5.1.2.1.3.2.1. Inconsistency in the estimated quantitative demand for towed freight where no alternative is seen to the port of Marseille

(444) Corsica Ferries shares the Commission's doubts about the quantification of captive towed freight demand at the port of Marseille, estimated at 80 % of historical towed freight demand between Marseille and Corsica, pointing out that this rate is not based on any objective, verifiable data.

(445) In addition, Corsica Ferries draws attention to the fact that, in the previous market test carried out in October 2020, the French authorities had reached exactly the opposite conclusion, namely (i) a substitutability rate of 80% for the demand for towed freight transport between Toulon and Marseille and (ii) a rate of 20% for the demand for non-substitutable freight transport ([166]). Such a significant difference between the previous public service contracts and the PSCs raises doubts, according to Corsica Ferries, as to the soundness of the French authorities' estimates, especially since there was no substantial change in the market between the two periods.

5.1.2.1.3.2.2. Error in the quantification of the demand for the transport of drivers accompanying towed freight

(446) Corsica Ferries disputes the method used by the French authorities to estimate the number of drivers, based on the single ratio of driver / LM of towed freight applied to the total demand for towed freight in 2030. It puts forward four arguments in that regard.

(447) *Firstly*, according to Corsica Ferries, France did not take into account the difference within the towed freight category between accompanied and unaccompanied towed freight. The alleged need for a public service for drivers is thus based on an unjustified assumption. Corsica Ferries refers in this regard to the BRG 1 study provided in the complaint.

([165]) Corsica Ferries provides in Annex 2 to its comments the BRG 2 study on the CdC's assessment of a public service need for maritime services to Corsica, dated 21 April 2024 and carried out on behalf of Corsica Ferries. The additional road cost is estimated for an average journey from the logistics areas located in the PACA region to the port of Marseille for a 12 LM lorry, with an assumed daily rate of EUR 191 and hourly, kilometric and daily costs provided by the national road committee for the category 'regional articulated vehicle – diesel'. As regards maritime transport fares, the study uses a fare of EUR 32,4/LM observed on average in 2023 at Toulon, compared with EUR 42,5/LM at the port of Marseille (corresponding to the maximum fare set by the 2019 PSO scheme on Marseille-Corsica routes).

([166]) Corsica Ferries provides as Annex 11 to its comments an analytical memo on the maritime transport market between Corsica and the French mainland annexed to Corsican Assembly Resolution No 20/166 of 5 November 2020 approving the use of public service contracts for the 2021-2022 period. The memo in question was drawn up by Gecodia, following the same model as the Gecodia report. The memo assessed the substitutability of the ports of Toulon, Marseille and Nice for towed freight to/from Corsica from the point of view of demand on the basis of two criteria (the capacity of the ports to accept the traffic in question and the additional cost of passing through one port or another). On page 36 of the memo, Gecodia concludes as follows: 'any need for a public service will be calculated for [towed freight] as follows: while 20 % of towed freight traffic in the port of Marseille is structurally linked to that port, this does not prevent a possible finding of partial substitutability between the mainland ports for this market segment if evidence is produced to that effect, in particular through a wider public consultation with shippers and hauliers. The rest of the traffic is aggregated at the ports of Marseille and Toulon'.

(448) The BRG 1 study considers that a distinction should be drawn for towed freight, as it can be either accompanied (i.e. the driver boards the vessel with their lorry) or unaccompanied (the driver loads the lorry onto the vessel and another driver collects it at the port of arrival). In other words, accompanied towed freight involves the maritime transport of the driver, unlike unaccompanied towed freight. According to the BRG 1 study, demand for unaccompanied freight transport comes from regular customers with significant needs and structured logistics allowing them to repatriate drivers leaving lorries on board vessels and/or to transport drivers who need to collect lorries when vessels arrive. Conversely, demand for accompanied towed freight comes from customers with more ad hoc needs.

(449) According to the BRG 1 study, these differences in customer profiles and needs mean that the two flows have to be analysed separately from a demand perspective. Accompanied towed freight can easily be transferred from one port to another; in other words the ports of Marseille and Toulon are perfectly substitutable from the point of view of users for accommodating this traffic, which is not the case for unaccompanied towed freight ([167]).

(450) However, the French authorities did not make such a distinction. According to the BRG 1 study, France conducted an overall analysis of the geographical substitutability of the mainland ports for towed freight. There was therefore no assessment of the public service need for the transport of drivers based on a substitution analysis specific to accompanied towed freight.

(451) *Secondly*, according to Corsica Ferries, by applying the ratio of driver to LM of towed freight to the estimated demand for 2030, which is the year where the demand is estimated to be the highest, the French authorities necessarily overestimated the actual demand for driver transport in the preceding years.

(452) *Thirdly*, according to Corsica Ferries, the driver / LM of towed freight ratio is incorrect. Corsica Ferries refers in this regard to the BRG 2 study, which indicates that, contrary to what is stated in recital 115 of the opening decision, the French authorities do not base that ratio on the average value observed for the 2018-2021 period. The ratio used by the French authorities is significantly higher than that shown in the historical data ([168]), which leads to an overestimation of the alleged driver need of around 11 % on the route between Marseille and Ajaccio and 7 % on the route between Marseille and Bastia.

(453) *Fourthly*, the French authorities made a methodological error in applying a single growth rate of 2,3 % per year for all the routes covered by the PSCs, whereas the analysis of the public service need should have been carried out on a route-by-route basis, according to the specific characteristics of each route.

(454) Corsica Ferries points out in that regard that, on the basis of Table 16 in the opening decision, towed freight traffic on the Marseille-Ajaccio and Marseille-Bastia routes decreased steadily between 2018 and 2023, while it stagnated on routes between Marseille and the other three Corsican ports between 2018 and 2023. More broadly, official data on the Corsica-French mainland flows (all ports combined) show an overall stagnation in freight traffic since 2010. The rate of 2,3 % is therefore not based on the most recent objective data, leading to an overestimation of the transport needs of drivers by almost 22 %.

([167]) The BRG 1 study points out that unaccompanied towed freight imposes significant logistics constraints on the haulier, as it needs to provide an additional vehicle/lorry to collect the driver who has left the lorry on board the vessel or come to collect it. As a result, this type of towed freight cannot easily be transferred from one port to another, unlike accompanied towed freight, which does not involve such constraints.

([168]) The BRG 2 study considers that, on the basis of Tables 16 and 17 presented in the opening decision, the average ratios of driver / LM of towed freight over the 2018-2020 period are 0,054 for the route between Marseille and Ajaccio (compared with 0,060 used by the French authorities); 0,056 for the route between Marseille and Bastia (compared with 0,060 used by the French authorities); 0,065 for the route between Marseille and Porto-Vecchio (compared with 0,070 used by the French authorities); 0,082 for the route between Marseille and Propriano (compared with 0,1 used by the French authorities) and 0,081 for the route between Marseille and L'Île-Rousse (compared with 0,080 used by the French authorities).

5.1.2.2. On the analysis of market failure

(455) Corsica Ferries considers that the French authorities committed a manifest error of assessment in the examination of the market failure justifying the conclusion of the PSCs. It raises four points in that regard.

(456) *Firstly*, in general terms, Corsica Ferries points out that the characterisation of a public service need requires the prior establishment of a counterfactual scenario in order to analyse the level of private supply that would be proposed, and then to determine whether that supply would be sufficient to meet demand. According to Corsica Ferries, in a counterfactual scenario, private supply is not limited to that observed *ex ante* on the market, but must be assessed dynamically, by anticipating what the private supply would be in the absence of a public service contract.

(457) Corsica Ferries also points out that the counterfactual scenario must be transparent, objective and based on credible assumptions. In that regard, the burden of proof lies with the public authorities, which must produce sufficiently convincing and plausible evidence.

(458) Correspondingly, according to Corsica Ferries, the Commission is under an obligation to carry out a diligent and impartial examination of the information provided by the public authorities, involving a thorough and careful analysis of that information ([169]). The review carried out by the Commission may, and must where the circumstances of the case so require, include a prospective analysis ([170]).

(459) In the present case, Corsica Ferries considers that the French authorities did not establish a counterfactual scenario and that the Commission does not appear to have fully reviewed as required the robustness, plausibility and sufficiency of the information provided concerning the private supply which would be offered in the absence of PSCs.

(460) *Secondly*, Corsica Ferries considers that the questionnaires submitted during the operator consultation were skewed.

(461) First of all, the questionnaires merely invited operators to describe how the maritime transport services which they offered or intended to offer could fulfil the requirements of Corsica's territorial continuity, without ever defining the requirements in question.

(462) In addition, Corsica Ferries points to the existence of a conflict of interest distorting the responses given in the context of the operator consultation for freight transport. Corsica Linea responded to the operator consultation even though its shareholders, made up of the main customers of Corsica's maritime freight services, had an interest in maintaining the subsidised public service (recital 394). In this regard, Corsica Ferries notes that the existence of a conflict of interest prevents a person in such a situation from participating or intervening in the administrative decision-making process under Articles 101 and 102 TFEU and Article 14 of Directive 2006/123/EC on services in the internal market ([171]).

([169]) Corsica Ferries refers to the judgments of 18 January 2017 in Case T-92/11 RENV., *Andersen* v *Commission*, ECLI:EU:T:2017:14, paragraph 57; of 22 October 2008 in Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04, *TV2/Denmark and others* v *Commission*, ECLI:EU:T:2008:457, paragraph 183; and of 3 December 2014 in Case T-57/11, *Castelnou Energía* v *Commission*, ECLI:EU:T:2014:1021, paragraph 136.

([170]) Judgment of 3 December 2014 in Case T-57/11, *Castelnou Energía* v *Commission*, ECLI:EU:T:2014:1021, paragraph 34.

([171]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36, ELI: http://data.europa.eu/eli/dir/2006/123/oj). In particular, Article 14 provides that 'Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following: [...] the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; this prohibition shall not concern the consultation of organisations, such as chambers of commerce or social partners, on matters other than individual applications for authorisation, or a consultation of the public at large'.

(463) Corsica Ferries considers that, by analogy with the rules applicable to public procurement ([172]), the burden of proof to that effect lay with the French authorities, which must actively engage in the prevention and detection of conflicts of interest in any administrative procedure, including advisory procedures. In order to demonstrate the existence of a public service need, France was therefore required to rely on sufficiently plausible and verifiable objective information, and to prevent any interference by operators placed in a situation of conflict of interest.

(464) *Thirdly*, Corsica Ferries considers that Corsica Linea's and La Méridionale's responses to the operator consultation are essentially not credible. It explains that it is unreasonable to consider that, in the absence of the PSCs, those two companies would simply cease all maritime services to Corsica. It refers in particular to the competition authority opinion ([173]) and also points out that Corsica Linea and La Méridionale have a fleet of 9 and 4 vessels respectively and employ more than 1 100 and 600 employees respectively.

(465) Such a cessation of activity would be all the less plausible given that the concession holders already offer a commercial service operated entirely outside the PSCs. Corsica Ferries gives the examples of Corsica Linea ([174]) and La Méridionale ([175]). It also notes the evidence submitted to the Commission in the context of the complaint, and more specifically the BRG 1 study. The study noted that in June 2022 Corsica Linea had submitted a transport plan expressing its intention to make a number of crossings under the PSO scheme in 2023, from the port of Marseille to Propriano ([176]), Ajaccio ([177]) and L'Île-Rousse ([178]). That intention, announced in the summer of 2022, shows that France is mistaken in assuming that no private capacity from Marseille would have been offered in the absence of a PSC.

(466) Corsica Ferries also takes the view that the fact that the concession holders' responses to the operator consultation are identical (i) demonstrates the conflict of interest affecting them, both having a clear interest in reducing future private supply in order to ensure the continuation of the subsidised PSC system, and (ii) raises concerns about coordination between these two companies prior to their reply to the operator consultation.

(467) Finally, Corsica Ferries notes that it is inconsistent for the Commission to consider that general and unsubstantiated statements by maritime operators are insufficient to justify certain conclusions (i.e. concerning the estimated volume of captive towed freight provided by Corsica Linea at the port of Marseille, questioned by the Commission in recital 311 of the opening decision), but sufficient when it comes to assessing prospective private supply.

([172]) Corsica Ferries refers to the judgment of the Court of 12 March 2015 in Case C-538/13, *eVigilo Ltd* v *Lithuania*, ECLI:EU:C:2015:166, paragraphs 33-43 and 47.

([173]) Corsica Ferries underlines that the competition authority noted, in point 369 of its opinion, that it is '[...] difficult to believe that the shipping companies currently entrusted with the public service, Corsica Linea and La Méridionale, would not be able, with the analytical accounting tools available to them to assess their costs under the PSC, to propose an objective estimate of the capacity they could offer if they were to operate those same routes under a PSO or without a PSO'.

([174]) Corsica Ferries provides a letter from the OTC dated 31 July 2023 (Annex 12 to its comments) confirming the completion of 41 non-PSC crossings on the Marseille-Propriano route in the summer of 2023 for the transport of passengers and 28 non-PSC crossings on the Marseille-Ajaccio (12 crossings) and Marseille-L'Île-Rousse routes (16 crossings). Corsica Ferries states that no fewer than 114 crossings were launched by Corsica Linea in 2024 outside the PSCs.

([175]) According to Corsica Ferries, La Méridionale decided to operate three night-time services per week between Toulon and L'Île-Rousse from April 2024. La Méridionale also expanded its services outside the PSCs by planning 12 additional crossings between Marseille and Ajaccio in July and August 2024.

([176]) 19 round trips.

([177]) Five round trips.

([178]) Ten round trips.

(468) *Finally,* Corsica Ferries refutes the Commission's assertion in recital 326 of the opening decision concerning the maritime services provided by Corsica Linea and La Méridionale outside the PSCs ([179]). Corsica Ferries takes the view that the requirement for a credible counterfactual scenario imposed by case-law does not mean that only the potential private supply meeting the conditions of the PSCs should be accounted for. On the contrary, the requirement for a credible counterfactual scenario involves analysing the entire private supply that would reasonably be offered in the absence of the PSCs, in order to then compare it with the estimated demand.

5.1.2.3. On the necessity and proportionality of the PSCs

(469) Corsica Ferries agrees with the Commission's preliminary view that the minimum carrying capacity set in the PSCs appears disproportionate to the public service need (recital 331).

(470) Corsica Ferries refers to the content of the complaint on this point. The complaint noted that the existence of reschedulable and additional round trips infringed the Cabotage Regulation and did not meet a public service need. The Regulation prohibits Member States from modifying, as they see fit and without justification, the scope of the public service contract. In the present case, however, France was unable to identify a public service need, since it failed to set out (i) the period during which those reschedulable and additional round trips were to be carried out and (ii) the exact number of additional round trips to be carried out (those round trips being optional).

(471) In addition, Corsica Ferries pointed out in the complaint that, for each of the five routes concerned by the measures at issue, the scheduled round trips were largely sufficient to cover the public service need estimated by France over the 2023-2030 period, such that the reschedulable and additional round trips appeared to be superfluous. Corsica Ferries also added that, in their tenders submitted to the Corsican authorities, Corsica Linea and La Méridionale had, themselves, already identified the days on which reschedulable and additional round trips would be carried out, for the entire duration of the PSCs, such that those round trips did not meet a public service need previously identified by France. Moreover, these crossings would be made exclusively during the summer period, and would be offered primarily at weekends, i.e. for tourists (since lorry drivers are prohibited from travelling on Sundays).

(472) Finally, Corsica Ferries had doubts in the complaint as to whether the concession holders were able to comply with the public service obligations contained in the PSCs. In its email of 13 October 2023, Corsica Ferries states that, in order to operate crossings in July and August 2023, Corsica Linea chartered a vessel belonging to La Méridionale, the Kalliste, which La Méridionale was nevertheless required to make available to the OTC at its request for additional round trips under the PSCs relating to maritime services to Porto-Vecchio and Bastia. However, without that vessel, La Méridionale would not have been able to respond to the OTC's contractual instructions, if such additional crossings had become necessary between July and August 2023.

(473) In its comments on the opening decision, Corsica Ferries considers, however, that in that decision the Commission did not draw all the conclusions from its own findings.

(474) *Firstly*, the minimum capacity imposed for freight and passenger transport was set on the basis of the maximum estimated peak demand by 2030, such that the intention is for capacity to meet the projected demand for 2030 by 2023. The capacity therefore appears disproportionate to the public service need assessed for the years prior to 2030. According to Corsica Ferries, the minimum capacity of the PSC should have been set to meet the estimated average demand between 2023 and 2030.

([179]) To recap, recital 326 of the opening decision states: 'Moreover, the mere fact that one of the contractors, Corsica Linea, offered ancillary commercial services outside the framework of the PSCs between July and September 2023 (recital 205) does not constitute evidence that that operator would clearly have provided commercial services under the same conditions as those imposed by the French authorities under the PSCs in the absence of those contracts, or that those services would actually have been provided under the same conditions as those imposed in the context of the PSC'.

(475) *Secondly*, according to Corsica Ferries, the Commission did not take into account the additional round trips when analysing the capacities introduced by the PSCs with regard to the public service need. Since these additional round trips are intended to meet peak demand, they should have been taken into account in determining the minimum carrying capacity per crossing imposed under the PSCs.

(476) *Thirdly,* Corsica Ferries disputes the Commission's preliminary assessment of the absence of an obligation in the PSCs to use Ro-Pax vessels ([180]).

(477) Corsica Ferries states that the number of 12 passengers is the dividing line between (i) passenger vessels which may also carry goods (Ro-Pax) and (ii) freight vessels (Ro-Ro), whose passenger capacity is limited to 12 ([181]).

(478) Corsica Ferries takes the view that, although the obligation to mobilise Ro-Pax vessels is not expressly provided for by the PSCs, it necessarily resulted from the minimum capacities imposed under Annex 1 to the PSCs, which had to be complied with for each crossing. However, by imposing a minimum capacity of 18 passengers for the Marseille - Ajaccio route (4 medical passengers and 14 drivers) and 24 passengers for the Marseille - Bastia route (5 medical passengers and 19 drivers), the French authorities in effect imposed the mobilisation of Ro-Pax and excluded the use of Ro-Ro.

(479) Thus, the obligation imposed on the concession holders to be able to systematically accommodate more than 12 passengers per crossing, excluding the use of Ro-Ro vessels, is not justified and is disproportionate according to Corsica Ferries.

5.1.3. *Failure to comply with the second Altmark criterion*

(480) According to Corsica Ferries, the second Altmark criterion, the purpose of which is to ensure that the calculation of compensation is reliable and verifiable, means complying, in particular, with two requirements: (i) the parameters for calculating compensation must be established according to a transparent procedure, and (ii) they must be objective in nature.

(481) Corsica Ferries notes, *firstly*, that the compensation parameters were not established in a transparent manner.

(482) It observes that the procedure for awarding the PSCs gave candidates full freedom to determine the allocation keys for calculating the financial compensation, and that Annex 9 to the PSCs, which contains a specific scale indicating, for each item of concession holder expenditure, the percentage allocated to the SGEI activity, was not publicised at all. It is therefore materially impossible for Corsica Ferries, in the absence of sufficient transparency on the part of France, to be able to effectively check and criticise the allocation keys used.

(483) Similarly, Corsica Ferries criticises the lack of transparency in the analysis carried out by the French authorities on the keys proposed by the concession holders, including in the opening decision. According to Corsica Ferries, this lack of transparency raises a serious problem with regard to the adversarial principle, preventing interested parties from being able to effectively put forward their comments.

(484) *Secondly*, Corsica Ferries takes the view that the parameters used to calculate the compensation are not objective.

([180]) To recap, the Commission noted in recital 343 of the opening decision that 'the need to use Ro-Pax vessels (i.e. vessels able to accommodate more than 12 passengers) is not an obligation included in the PSCs, which on the contrary make it possible to operate the service using a fleet combining Ro-Pax and Ro-Ro. The fact that the use of Ro-Pax vessels might be more expensive in terms of capital and operating costs than Ro-Ro vessels is irrelevant if the need for a public freight transport service results in a number of passengers (including drivers) that makes the use of Ro-Pax vessels necessary.'

([181]) According to Regulation 2 of the International Convention for the Safety of Life at Sea of 1 November 1974 (the 'Solas' Convention), a passenger ship is one which carries more than 12 passengers, while a cargo ship is one which is not a passenger ship, i.e. with a carrying capacity of less than 12 passengers.

(485) Corsica Ferries notes, first of all, that it is apparent from the information in the opening decision that the allocation keys used by the concession holders vary, for each cost item, according to the maritime routes concerned. However, according to Corsica Ferries, those variations do not make sense since (i) the public service obligations imposed in each PSC are of the same nature (only their extent varies according to the ports) and (ii) they involve the mobilisation of the same type of vessel (in this case Ro-Pax).

(486) Corsica Ferries refers in this regard to the study of 21 April 2024 conducted by BRG on behalf of Corsica Ferries relating to the economic analysis of the arrangements for determining compensation payments under the PSCs ('**BRG 3 study**'). That study points out that, in the initial bids submitted by the concession holders, the allocation keys differed from one candidate to another, even though the same route was involved and the public service need to be met was the same in both cases. Conversely, the BRG 3 study points out that Corsica Linea, in its initial bids, broadly used the same allocation keys for all routes, even though the volume of activity relating to the SGEI and commercial services varied greatly from one route to another. Those fluctuations thus show that the allocation keys used do not reflect, or at least do not systematically reflect, the contribution of the SGEI and the commercial activities to the concession holders' costs.

(487) The BRG 3 study explains more generally that, while it is possible to allocate costs in accounting terms, such allocations are partly arbitrary and do not reflect economic reality. In any event, cost allocation assumptions must *at the very least* be accompanied by analyses to certify their validity.

(488) In addition, Corsica Ferries specifically criticises the allocation keys used for the PSCs concerning the Marseille-Propriano, Marseille-Porto-Vecchio and Marseille-L'Île-Rousse routes.

(489) As regards the Marseille-Propriano route, Corsica Ferries considers that it is not possible to regard as sufficiently justified and reasonable a key for allocating 100% of the costs to the SGEIs when the vessels used by Corsica Linea systematically exceed the minimum passenger carrying capacity per crossing. In other words, 100% of the operating costs of those vessels are compensated by the public subsidies paid by France, whereas only a minor part of the capacity offered corresponds to the public service need.

(490) The same applies to the other two routes, for which the concession holders utilised Ro-Pax with a very high excess passenger capacity, even though the minimum capacity imposed of 9 (L'Île-Rousse) and 11 (Porto-Vecchio) passengers per crossing normally should have led to the use of a Ro-Ro. According to Corsica Ferries, the Commission could not have been unaware that the mobilisation of Ro-Pax vessels, rather than Ro-Ro vessels, substantially increases capital and operating costs, which leads to an overestimation of the amount of public service compensation payable to the concession holders. In both cases, Corsica Ferries also notes that the allocation keys used are between 60 % and 75 % for each cost, which would appear clearly disproportionate and unjustified in view of the public service obligations imposed on those routes.

(491) Finally, Corsica Ferries disputes the objective and reasonable nature of the method used by the French authorities to allocate indirect costs, which, according to their assertions, consists in allocating indirect costs to the SGEI 'only in proportion to the capacity (expressed in m^3 of volume) reserved on the vessel for SGEI activities'. In that regard, Corsica Ferries questions the exclusive use of capacity expressed in m^3 to determine the allocation method, when the public service obligations also relate to passenger transport. In order to ensure that only the costs directly linked to the provision of the SGEI can be taken into account, the allocation keys must necessarily reflect the actual proportion of capacity required for passenger transport in relation to the total capacity provided by the vessels used by the concession holders.

5.1.4. *Failure to comply with the third Altmark criterion*

(492) Corsica Ferries considers that the PSCs overcompensate their beneficiaries for four reasons.

5.1.4.1. The cost allocation methodology to calculate compensation under the PSCs is unjustified in the present case

(493) Corsica Ferries disputes the choice made by the French authorities concerning the cost allocation methodology for assessing the costs directly linked to the performance of the SGEI. It considers that this choice is not justified by France, nor is it analysed in the opening decision.

(494) *Firstly,* Corsica Ferries points out that, in principle, SGEI compensation must be calculated on the basis of the net avoided cost methodology; it is only where the use of that method is impossible or inappropriate that the cost allocation methodology can be used. The impossibility or inappropriateness of the net avoided cost methodology must be duly justified by the national authorities and verified by the Commission.

(495) In the present case, Corsica Ferries considers that no justification was provided by the French authorities. Similarly, the opening decision does not question the appropriateness of the cost allocation methodology and the justifications for not using the net avoided cost methodology. That shortcoming alone constitutes a manifest error of assessment by the French authorities and an error of law on the part of the Commission.

(496) *Secondly*, Corsica Ferries considers that the use of the net avoided cost methodology was necessary in the present case since it was not inappropriate. According to Corsica Ferries, only that method would have made it possible to ensure that there was no overcompensation of the PSC beneficiaries, for the following reasons:

— the net avoided cost methodology does not require an allocation of costs between public service obligations and the concession holder's other activities, thus avoiding the arbitrariness associated with the need to carry out such an allocation;

— the net avoided cost methodology does not require *ex ante* estimates of the volumes of SGEI and non-SGEI activity needed to allocate costs in the cost allocation methodology, and does not entail the risk of incorrect estimates of such allocations, which could lead to an overestimation of the costs to be compensated;

— the net avoided cost methodology is based on an overall assessment of all the (SGEI and non-SGEI) activities carried out by the concession holder, such that the concession holder cannot make strategic choices to maximise its efficiency gains in the non-SGEI area.

(497) The net avoided cost methodology was all the more necessary since the cost allocation methodology does not take into account additional profits made outside the scope of the SGEI, even if they are generated by the provision of that SGEI. Corsica Ferries points out that the beneficiaries of the PSCs state that, in the absence of the PSCs, they are not willing to offer any commercial services, such that all the commercial activities carried out under the PSCs by those beneficiaries would not have been carried out in the absence of an SGEI. The revenues from these activities are thus generated by the granting of the PSCs, and the use of the net avoided cost methodology would have allowed them to be taken into account in the compensation calculation, without any disproportionate advantage for the beneficiaries of the PSCs.

(498) Finally, according to Corsica Ferries, the net avoided cost methodology was necessary in view of the disproportionate public service obligations set out in the PSCs, requiring PSC beneficiaries to offer oversized capacity with regard to the public service need.

5.1.4.2. In any event, the cost allocation methodology had to take into account the profits made on the non-SGEI activities of the PSC beneficiaries

(499) Corsica Ferries points out that paragraph 32 of the SGEI Framework requires excessive profits generated from special or exclusive rights, even if linked to other activities, to be taken into account.

(500) According to Corsica Ferries, although the PSCs do not provide for exclusive rights for their beneficiaries, they nevertheless confer de facto exclusivity, for three reasons:

— the public service obligations set out in the PSCs are not proportionate to the actual public service needs;

— the beneficiaries of the PSCs receive significant public subsidies, while other maritime operators operating under the PSO scheme do not receive any such subsidies;

— the PSO scheme discourages shipping companies wishing to provide maritime services between the port of Marseille and the Corsican ports in competition with the beneficiaries of the PSCs.

(501) Corsica Ferries points out in this regard that this de facto exclusivity has been noted on several occasions by: the competition council in its decision No 06-MC-03 of 11 December 2006; the competition authority in its opinion No 12-A-07 of 17 February 2012; the Commission in its decision SA.22843 of 2 May 2013, and reiterated in the competition authority opinion of 17 November 2020 ([182]). Corsica Ferries considers that those findings are still valid, and points out that, since the market for maritime services to Corsica was opened up to competition in 1996, no competing offer to that of the incumbent concession holders has emerged on the Marseille-Corsica routes.

(502) Thus, according to Corsica Ferries, one of the following two conclusions must be drawn:

— the absence of any effective competition for 30 years on routes with the port of Marseille is proof that the PSCs constitute barriers to entry, giving their beneficiaries exclusive rights to operate maritime routes between Corsica and Marseille, including the commercial activities generated. It was therefore necessary to take those activities into account in the cost allocation methodology;

— competition on the Marseille-Corsica routes has developed via the Toulon-Corsica routes, in which case it must be concluded that the maritime services operated from the ports of Toulon and Marseille form one and the same market, and that there is therefore no public service need.

5.1.4.3. The PSC clauses are insufficient to exclude any risk of overcompensation

(503) *Firstly*, Corsica Ferries takes the view that Article 40 of the PSCs, which is designed to ensure reimbursement by the concession holders of any overcompensation in excess of reasonable profit, is insufficient since it is limited solely to the scope of the SGEI and excludes margins made on the commercial activities generated.

(504) *Secondly*, Corsica Ferries refers to the BRG 3 study, which disputes the Commission's preliminary position approving the calculation of reasonable profit on the basis of current pre-tax income rather than the rate of return on capital for the beneficiaries, on the ground that current pre-tax income would be easier to observe in the accounting data than the rate of return on capital. However, the BRG 3 study considers that the data relating to SGEI costs are not easily observable in the beneficiaries' profit and loss accounts, but require a questionable allocation of the different cost items between SGEI and non-SGEI activities.

([182]) Corsica Ferries cites paragraph 348 of the competition authority opinion of 17 November 2020, which states: 'the persistence of certain factors explains why the significant competitive advantage enjoyed by the public service contractors may contribute to giving them de facto exclusivity on routes between Marseille and Corsica.'

(505) *Thirdly*, Article 35.1 of the PSCs, which provides that the allocation keys are fixed for the duration of the contracts, subject to an ex post check revealing a difference (to be reimbursed) with the keys that would result from operations, is manifestly insufficient since (i) the concept of 'key resulting from operations' is not defined ([183]) and (ii) it does not allow the windfall effects resulting from the allocation key mechanism itself to be fully neutralised. Indeed, the BRG 3 study points out in this regard that Article 35.1 of the PSCs provides that the PSC beneficiaries will be allowed to keep half of the difference between the compensation calculated ex ante and ex post (up to a maximum of 5 % of the initial compensation).

(506) *Fourthly*, Corsica Ferries takes the view that Article 32 of the PSCs, which is intended to earmark the profits made in the course of the commercial activities generated, does not prevent all overcompensation, since the profits generated may be used to finance investments made by the beneficiaries of the PSCs. PSC beneficiaries would thus receive an advantage, in the form of investment aid equal to the amount of the profits generated that were invested, which would constitute unlawful State aid distinct from the compensation paid under the PSCs.

(507) *Lastly*, Corsica Ferries considers that no clause in the PSCs takes account of the additional remuneration likely to be received by the beneficiaries in respect of the capital gain on their vessels, either in the calculation of compensation or in the method of verifying reasonable profit.

(508) Corsica Ferries refers in this regard to the BRG 3 study, which makes two observations.

(509) First, the compensation received by the PSC beneficiaries far exceeds the economic depreciation of the vessels. The subsidy paid to the concession holders includes an investment cost component, which corresponds to the depreciation and/or leasing charges and/or chartering costs of the vessel assigned to perform the SGEI. However, according to the BRG 3 study, the economic life of ships far exceeds the depreciation period or the standard lease period ([184]). Consequently, the compensation received by the PSC beneficiaries under CFI would exceed the recorded loss in economic value each year.

(510) Second, the BRG 3 study states that the PSCs do not provide for any mechanism to monitor the capital gains that the PSC beneficiaries could make on the vessels. While Article 51 of the PSCs does provide for the possibility of the CdC buying back the ships at a price below their market value (to take account of the subsidies already paid), it does not impose such an acquisition. Furthermore, since vessels are regarded in the PSCs as the property of the PSC beneficiaries, they are not obliged to sell their vessels should the CdC offer to purchase them.

(511) All of this poses a real risk that, at the end of the PSCs, the beneficiaries would receive, through the increased value of their vessels (in whole or in part financed by public compensation), remuneration in addition to that derived from the operation of the PSCs that was not taken into account in the calculation of reasonable profit (Article 39 of the PSCs) or covered by the reasonable profit verification clause in Article 40 of the PSCs.

5.1.4.4. The CFE indexation formula is manifestly incorrect

(512) Corsica Ferries refers to the BRG 3 study pointing to an error in the indexation formula used by the French authorities to calculate the annual amount of CFE (recital 301).

([183]) The BRG 3 study states that, in order for this clause to avoid windfall effects and overcompensation, it would have to lead to an ex post increase in the costs allocated to commercial activities so as to bring commercial profit back to the level of reasonable profit.

([184]) For example, the BRG 3 study indicates that Corsica Ferries' fleet includes vessels put into service more than 50 years ago and that worldwide 31 % of Ro-Pax vessels are more than 40 years old and 17 % more than 50 years old, according to Corsica Ferries' data. By contrast, the BRG 3 study points out that the depreciation period of vessels and the standard leasing period are much shorter. La Méridionale's 2022 accounts thus show a 20-year depreciation of vessels and a 15-year lease for one of the vessels in its fleet.

(513) According to the BRG 3 study, the annual amount of CFE is not calculated separately for each year on the basis of a specific cost allocation key, but is calculated for 2023 and subsequently indexed to the consumer price index. The BRG 3 study considers this formula to be incorrect as it implies that the increase in CFE between years N and N + 1 is not equal to 85 % of the price increase between these two years, as suggested by the PSCs, but to 85 % of the total cumulative price increase between 2023 and year N + 1. It considers that, between 2029 and 2030, the increase in CFE resulting from the application of the formula does not reflect the price increase observed between those two years but the total price increase between 2023 and 2030, i.e. over seven years ([185]).

5.1.5. *Failure to comply with the fourth Altmark criterion*

(514) In its comments on the opening decision, Corsica Ferries refers in full to the complaint, in which it considered that the measures did not comply with the fourth Altmark criterion. Corsica Ferries maintained that the tendering procedure for the PSCs had not made it possible to select, under transparent and non-discriminatory conditions, the candidates capable of providing the service at the lowest cost, in particular for three reasons.

(515) *Firstly*, Corsica Ferries argued that there were several 'barriers to entry' tending to favour outgoing concession holders and preventing it from effectively submitting a bid. Corsica Ferries noted the existence of two barriers to entry in the present case.

(516) First of all, it pointed to the very short period which elapsed between the date of award of the PSCs (21 December 2022) and the start date of the services (1 January 2023), whereas it is clear that, in the case of maritime transport, a period of at least six months between those two dates is necessary to be able to open bookings sufficiently in advance and to redeploy the fleet to meet the public service requirements. According to Corsica Ferries, such a short period between the date on which the PSCs were awarded and the start of services could only favour the outgoing concession holders and restrict the participation of other competitors.

(517) Secondly, Corsica Ferries pointed to the existence of technical requirements not justified by the public service needs, such as to limit the number of candidates participating in the tendering procedure. Corsica Ferries referred to the fact that it was impossible for candidates to propose Ro-Ro vessels instead of Ro-Pax vessels. In addition, and above all, the tendering procedure for the PSCs required candidates, according to Corsica Ferries, to use one or two additional vessels per lot ([186]) to meet the requirements of reschedulable and additional round trips; those round trips being carried out during the execution of the PSCs, at the request of the contracting authority and within a minimum of one week's notice period. According to Corsica Ferries, this meant that, for all lots, the candidates had to permanently mobilise seven additional vessels throughout the performance of the PSCs, with no predictability or guarantee of use and without the operator being able to use those vessels for other services (since the vessels had to be available to be mobilised at any time to guarantee round trips). That constraint is the main reason why Corsica Ferries did not participate in the tendering procedure for the PSCs.

(518) *Secondly*, Corsica Ferries took the view that the award criteria for the tenders did not make it possible to select the candidate capable of providing the service at the lowest cost. Corsica Ferries noted that the award criterion relating to financial compensation was weighted at only 20 %, such that the tendering procedure was not, in its opinion, based on the price of the most economically advantageous tender.

(519) *Finally*, Corsica Ferries considered that the small number of candidates participating in the tendering procedure for the PSCs (one or two candidates per lot) showed that there was no real competition.

([185]) The BRG 3 suggests replacing CFE(n) with CFE 2023 or replacing I(2023) with I(n) in the formula in the PSCs.

([186]) Corsica Ferries states that each of the five lots required the mobilisation of two vessels to carry out the fixed round trips provided for in the PSCs, as well as one or two additional vessels (depending on the lots) to be able to carry out, at any time, the reschedulable and additional round trips at the request of the CdC.

(520) Secondly, Corsica Ferries took the view that France had not carried out any prior analysis of the costs that a typical, well-run and adequately resourced undertaking would have incurred in providing the service, with a view to determining the amount of compensation.

5.1.6. *Failure to comply with the rules of the Concessions Directive*

(521) Corsica Ferries points out that, in the complaint, it considered that the measures could not be declared compatible because they infringed the provisions of the Concessions Directive. Corsica Ferries alleged two breaches: a breach of the principles of equal treatment, non-discrimination and transparency, and the excessive duration of the PSCs.

(522) As regards the first breach, Corsica Ferries claimed, first of all, to have faced two obstacles which made it impossible for it to apply (recitals 516 and 517). Secondly, it considered that the French authorities had amended the minimum characteristics of the tendering procedure for each lot in order to select tenders which did not comply with the technical requirements of Annex 1 to the PSCs.

(523) As regards the second breach, Corsica Ferries maintained that the duration of the PSCs was not justified in view of the lack of investments made by the beneficiaries of the PSCs.

(524) In its comments on the opening decision, Corsica Ferries reacted to two points, namely (i) the possible amendment of the minimum requirements of the tendering procedure by the French authorities during that procedure, and (ii) the duration of the PSCs, which they claimed was excessive

5.1.6.1. On the amendment of the minimum characteristics during the procedure, the selection of irregular bids and the discriminatory nature of the procedure for awarding the PSCs

(525) In the complaint, Corsica Ferries pointed out that Article 37 of the Concessions Directive requires that, where a contracting authority lays down minimum requirements in the context of a tendering procedure, candidates must comply with them. The contracting authority, for its part, must reject any tender which does not comply with those minimum requirements.

(526) Corsica Ferries explained that Annex 1 to the PSCs listed the technical requirements that candidates had to comply with in full. These technical requirements included the number of reschedulable and additional round trips to be carried out by the concession holder at the request of the CdC. These reschedulable and additional round trips could be combined on the same day, on the same route and on several routes at the same time, and had to comply with all the technical requirements of Annex 1 to the PSCs, including timetables and carrying capacities of vessels. Corsica Ferries considers that candidates therefore had to have a fleet simultaneously fulfilling all the requirements of Annex 1 to the PSCs, including reschedulable and additional round trips, for each of the lots for which they had submitted a tender.

(527) However, according to Corsica Ferries, the concession holders did not have all the vessels enabling them to operate all the routes for which they, alone or in a group, had submitted a tender. That observation stemmed from a reading of France's report analysing the initial bids. According to Corsica Ferries, the report stated that the candidates had themselves fixed the day on which the reschedulable and additional round trips would be carried out and, moreover, that they had reduced the number of such round trips. They had also changed the crossing times on Sundays and Mondays in winter. Lastly, they mobilised vessels for reschedulable and additional round trips which did not comply with all the requirements of Annex 1 to the PSCs.

(528) According to Corsica Ferries, the French authorities nevertheless agreed to amend the minimum characteristics of the bidding rules during the negotiations, in breach of the principles of equal treatment of candidates and transparency. Such an amendment was not permitted, according to Corsica Ferries since, in accordance with the case-law of the Court of Justice, only in exceptional circumstances may the contracting authority correct or supplement the minimum characteristics, i.e. where they 'require mere clarification, or to correct obvious material errors, provided that all the tenderers are informed ([187])'. However, that was not the case here. Furthermore, and in any event, it argues that it is also clear from the case-law of the Court of Justice that, if amendments were to be accepted, they could be made only before the tenders were submitted by the tenderers, which, again, was not the case here.

(529) According to Corsica Ferries, those amendments were all the more harmful for it as it had asked the OTC specific questions relating to the technical requirements laid down in Annex 1 to the PSCs (carrying capacity, timetables, PRM cabins) and the operational and economic arrangements for carrying out reschedulable and additional round trips. According to Corsica Ferries, the OTC had replied that the technical requirements laid down in Annex 1 to the PSCs were a minimum characteristic excluded from the negotiation and that it was imperative for candidates to submit a tender complying with all the technical requirements of Annex 1.

(530) It is, moreover, the cumulative effect of those minimum characteristics imposed on the candidates which discouraged Corsica Ferries from submitting a tender since compliance with them entailed (i) the mobilisation of one or even two additional vessels per route with a view to carrying out the reschedulable and additional round trips, (ii) without any certainty as to the actual completion of those additional round trips, or any visibility as to the date on which they should be carried out, (iii) it being specified that only the additional round trips actually requested by the CdC and carried out by the concession holder would give rise to financial compensation.

(531) In its comments on the opening decision, Corsica Ferries considers that the information provided by France and set out in the opening decision ([188]) is incorrect.

(532) Corsica Ferries maintains that Annex 1 to the PSCs could not be amended under the bidding rules. Candidates were therefore not allowed to amend the technical requirements set out in that annex. Corsica Ferries points out in this connection that the bidding rules (Article 2.4 on minimum characteristics and Article 4.1 on bidding documents) were drafted in the same way as those for the award of the 2019-2020 PSCs. However, in a dispute involving those PSCs, the Council of State ruled that 'the technical annex on services in Annex 1 to the draft contract should be considered, in light of the terms of Article 4.1 of the bidding rules, as forming part of the bidding documents and consequently as setting out the minimum characteristics expected ([189])'.

5.1.6.2. On the excessive duration of the PSCs

(533) In the complaint, Corsica Ferries considered that the PSCs did not provide for any investment to be borne by the successful candidates, such that their duration (more than five years) is contrary to the provisions of Article 18 of the Concessions Directive. This point was confirmed, in particular, by the obligation imposed on candidates, according to Corsica Ferries, to have at their full and complete disposal the vessels assigned to the operation of each of the PSC routes as soon as they submitted their applications.

(534) In its comments on the opening decision, Corsica Ferries disputes the Commission's preliminary view that the duration of the PSCs appears to be justified in light of the fact that (i) the PSCs require concession holders to mobilise vessels representing a significant capital burden, and (ii) durations of more than six years exist under other maritime public service contracts in Europe.

([187]) Judgment of the Court of 29 March 2012, *SAG ELV Slovensko*, C-599/10, ECLI:EU:C:2012:191, paragraph 40.
([188]) Recitals 419 and 423 of the opening decision.
([189]) Council of State, 24 June 2019, *La Méridionale*, No 429407.

(535) *On the first point*, Corsica Ferries considers that it is apparent from recital 52 and Article 18 of the Concessions Directive that a concession period of more than five years can be justified only if the concession holder is required to make investments by the contracting authority itself. Where the concession holder bears the cost of the investments necessary for the public service being granted, the duration of the concession must be determined on the basis of the period for recouping those investments. Conversely, according to Corsica Ferries, neither the Concessions Directive nor the case-law of the Court of Justice has accepted that the duration of a concession exceeding five years may be justified by anything other than investments imposed by the contracting authority.

(536) Furthermore, Corsica Ferries considers that the aforementioned provisions of the Concessions Directive are linked to the fact that, in principle, the investments thus imposed and made by the concession holder revert to the contracting authority at the end of the concession. Thus, the investments required under a concession on the part of the concession holder do not constitute the concession holder's own assets which remain its property or under its control at the end of the concession. In that context, the duration of the concession is calculated to allow the concession holder to recoup the investments imposed on it and which it will be forced to abandon at the end of the contract.

(537) However, this is not the case for the PSCs, as the vessels mobilised by the beneficiaries to implement them (i) do not result from an investment obligation imposed by the French authorities and (ii) are the property of the PSC beneficiaries, who retain ownership/use of them at the end of the PSCs. In these circumstances and since no investment is imposed on the PSC beneficiaries, the duration of the PSCs is not justified.

(538) Corsica Ferries notes that, in any event, the PSCs allow their beneficiaries to write off the investment costs associated with the vessels in the PSC accounts, by including a reasonable return on the capital invested. However, in the present case, it is clear according to Corsica Ferries that the compensation parameters did not take account of the post-PSC residual value of the vessels, which will remain at the free disposal of the PSC beneficiaries.

(539) *On the second point*, Corsica Ferries takes the view that the examples given by France of maritime concession periods in Europe exceeding six years are not applicable to the present case. As regards the Norwegian case on which France relies, in which ten-year concession contracts were concluded, Corsica Ferries considers that that period was justified by the obligation imposed on the concession holder to invest in new vessels. The situation is therefore different as regards the PSCs since France and the Commission acknowledge that no investment is imposed on the PSC beneficiaries.

5.2. **Comments from Corsica Linea**

(540) Corsica Linea commented on three points: (i) the existence of a public service need, (ii) the compliance of the PSC tendering procedure with EU law on concessions and (iii) the absence of any advantage granted to the PSC beneficiaries or, in any event, the compliance of the PSCs with the Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest ('**SGEI Decision**') ([190]).

5.2.1. *Existence of a public service need*

(541) In its comments on the opening decision, Corsica Linea responded to three points relating to the examination of the existence of a public service need:

— the assessment of the quantitative demand for the transport of non-substitutable towed freight from the port of Marseille, estimated at 80 % of the historical traffic observed from that port;

— the definition of public service obligations relating to the minimum freight transport capacity per crossing, expressed in terms of volume, imposed on concession holders under the PSCs;

— the substitutability of the ports of Ajaccio and Propriano.

([190]) OJ L 7, 11.1.2012, p. 3.

(542) Corsica Linea states that, on those three points, it commissioned an economic study conducted by the Analysis Group ('**the Analysis study**'), containing, in its view, all the factual and economic information from which it could be concluded that France did not commit any manifest error in demonstrating a public service need.

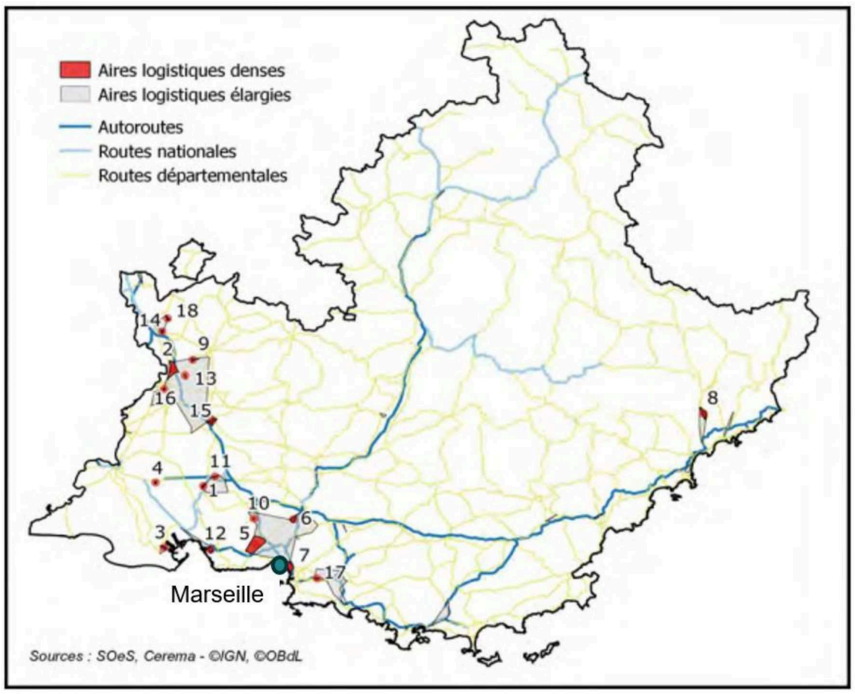
5.2.1.1. There is no manifest error of assessment in estimating the share of demand for towed freight for which no alternative to the port of Marseille is considered

(543) Corsica Linea considers that the location of the logistics bases of hauliers transporting freight to Corsica is almost the single determining factor in choosing the mainland port of departure.

(544) Corsica Linea relies in particular on the Analysis study, which looked at the location of the 18 most concentrated logistics areas in the PACA region ([191]). Of these 18 areas, only one was located in a municipality where the nearest port is not Marseille. The Analysis study thus indicates that the disappearance of freight services transiting through the port of Marseille would force the vast majority of hauliers to travel to a more distant port, and would lead to a significant increase in transport costs, which the study puts at 11 % on average.

Figure 2

Location of logistics areas in Provence-Alpes-Côte d'Azur



Source: https://www.statistiques.developpement-durable.gouv.fr/atlas-des-entrepots-et-des-aires-logistiques-en-france-en-2015, page 87.

Key: *Aires logistiques denses* – Concentrated logistics areas

Aires logistiques élargies – Extended logistics areas

Autoroutes – Motorways

([191]) The Analysis study used as a source page 87 of the 2015 atlas of warehouses and logistics areas in France, available online at: https://www.statistiques.developpement-durable.gouv.fr/atlas-des-entrepots-et-des-aires-logistiques-en-france-en-2015 (accessed on 18 October 2024).

Routes nationales – Main roads

Routes départementales – Subsidiary roads

Chaque aire logistique est repérée par un numéro – Each logistics area is identified by a number

(545) To establish this 11 % estimate, the Analysis study compared a road journey between Salon-de-Provence ([192]) and Marseille, on the one hand, and Salon-de-Provence and Toulon, on the other ([193]). It concluded that a road journey through Toulon represented an additional road cost of EUR 75 for a haulier ([194]), which was mainly due to (i) two tolls charged between Salon-de-Provence and Toulon (resulting in a cost of EUR 35,10 to Toulon instead of EUR 6,90 to Marseille) and (ii) the increase in fuel costs ([195]).

5.2.1.2. France correctly determined the minimum freight carrying capacities in the PSCs

(546) Corsica Linea states that no manifest error can be validly attributed to France as regards the determination of minimum freight carrying capacities in the PSCs, in so far as the statistics for 2023 show, on the contrary, that those minimum capacities were regularly exceeded from the first year of implementation of the PSCs.

(547) Corsica Linea refers on this point to the Analysis study, which analysed the actual quantities of freight transported each month from Marseille to the ports of Ajaccio and Bastia in 2023. These analyses show that the minimum capacity threshold is very often lower than the actual volumes transported by Corsica Linea ([196]).

5.2.1.3. The ports of Ajaccio and Propriano are not substitutable

(548) Corsica Linea believes that Corsica Ferries' assertion that the ports of Ajaccio and Propriano are entirely substitutable is unfounded. According to Corsica Linea, the analysis of journey times is the key factor chosen by the competition authorities to define a 'catchment area' and therefore to determine possible substitutability between two competing services within that catchment area.

(549) On the basis of the information provided by the Analysis study for many Corsican municipalities located in the catchment area of the port of Propriano, longer times for passengers to travel to the port of Ajaccio rather than to the port of Propriano would significantly increase their costs ([197]).

([192]) According to the Analysis study, the town of Salon-de-Provence is the geographical centre (average coordinates) of all 18 concentrated logistics areas studied.

([193]) To calculate the road journey, the Analysis study used the reference values from the cost simulator of the French national road committee (for the calculation of road costs) and the Mappy website (for the calculation of distances). The Analysis study takes into account (i) the cost of fuel (the estimated fuel consumption cost of EUR 0,319/km); (ii) the driver's wage costs (driving personnel costs per hour of service time allocated to the vehicle amount to EUR 17,39/hour); (iii) the cost of tolls, (iv) the cost of wear and tear, i.e. maintenance and repair costs (vehicle maintenance and repair costs are EUR 0,083/km); and (v) the tyre repair cost (the cost of tyre repair is EUR 0,025/km).

([194]) The cost of transporting towed freight from the geographical centre of the PACA region (Salon-de-Provence) is EUR 116 to the port of Toulon compared with EUR 41,14 to the port of Marseille. Transiting through Toulon rather than Marseille therefore multiplies the costs of land transport by 2,8 on average, according to the Analysis study.

([195]) The Analysis study also included in its calculations the cost of maritime transport, but considered that the price of maritime transport was the same from Toulon and Marseille, i.e. EUR 40 per linear metre quay to quay (EUR 640 per lorry, assuming an average lorry length of 16 metres). The cost of maritime transport is therefore zero for this analysis.

([196]) The Analysis study notes that the threshold used in the PSCs is often lower than the maximum volume of non-substitutable freight transported each month by Corsica Linea: this is the case for six of the twelve months of 2023 for the Marseille-Bastia route, and five of the twelve months of 2023 for the Marseille-Ajaccio route.

([197]) According to the Analysis study, a one-way journey from Propriano or its surroundings to the port of Ajaccio would incur estimated additional road costs of approximately EUR 8,00, with fuel costs of EUR 1,99 per litre for a small car consuming 5,2 litres/100 km.

5.2.2. *Compliance with EU rules on concessions*

5.2.2.1. The short time available to mobilise vessels following the call for tenders did not constitute a barrier to Corsica Ferries' application

(550) Corsica Linea considers that the short period which elapsed between the date on which the PSCs were awarded and the start of the services could not have prevented Corsica Ferries from applying for the PSC award procedure.

(551) *Firstly*, Corsica Linea considers that the public call for tenders published in the *Official Journal of the European Union* on 6 May 2022 informed potential candidates that the services provided for in the PSCs were to start on 1 January 2023. Potential candidates were therefore informed eight months in advance of the start date of the services in question. In addition, the entry into force of the PSCs on 1 January 2023 had also been announced as soon as the operator consultation was launched by the French authorities on 22 January 2022. Thus, according to Corsica Linea, all shipping companies likely to bid were informed from January 2022, and by 6 May 2022 at the latest, of the start date of the PSCs.

(552) *Secondly*, Corsica Linea points out that the bidding rules published on 6 May 2022 announced that candidates had to submit their applications and bids by 25 July 2022 and that any negotiation meetings would provisionally start in August 2022. Therefore, a candidate who submitted a serious bid in July 2022 and anticipated being able to win the tender had almost five months to prepare to deploy its fleet on the routes for which it was bidding.

(553) *Lastly*, as the French authorities knew, on expiry of the deadline for submitting bids (25 July 2022), that only Corsica Linea and La Méridionale had applied and submitted tenders, they were able, without infringing the rules of the Concessions Directive, to decide to extend the duration of the negotiations and to shorten the period between the date on which the PSCs were awarded and the date on which they entered into force. Since Corsica Ferries was not a candidate for the PSCs, the actual duration of the negotiation phase could not infringe the Concessions Directive.

5.2.2.2. The scope of the minimum requirements did not include reschedulable and additional round trips

5.2.2.2.1. The scope of the minimum requirements did not cover reschedulable and additional round trips

(554) Corsica Linea points out that, under Article 37 of the Concessions Directive, a contracting authority is free to set minimum requirements and, in doing so, is free to determine their scope and content. Minimum requirements, as set by the contracting authority in the bidding documents, can only be understood within the strict limits of their wording.

(555) In the present case, Corsica Linea points out that those requirements were set out in Article 2.4 of the bidding rules. Thus, according to Corsica Linea, although it was necessary to refer to Annex 1 to the PSCs to understand the precise scope of some of those minimum requirements, Annex 1 could not constitute, in its entirety, a minimum requirement.

(556) According to Corsica Linea, this conclusion leads to the following findings.

(557) As regards the additional round trips, Corsica Linea notes, first of all, that they are not mentioned in Article 2.4 of the bidding rules. Only 'timetables' and 'service frequencies' are covered. Furthermore, the additional round trips are only presented, in Annex 1 to the PSCs, as a possibility, the implementation of which is left to the discretion of the French authorities. Those references do not therefore show any characteristic as to the 'timetables' of the additional round trips or their 'frequency' within the meaning of the minimum requirement laid down in Article 2.4 of the bidding rules. Moreover, according to Corsica Linea, it is impossible to equate the expression by a contracting authority of a possibility arising during the performance of the contract with a minimum requirement under the terms of Article 37 of the Concessions Directive, i.e. with 'conditions and characteristics (particularly technical, physical, functional and legal) that any tender should meet or possess.'

(558) As regards reschedulable round trips, Corsica Linea observes that neither Article 2.4 of the bidding rules nor Annex 1 mentions reschedulable round trips. It cannot therefore be inferred from those provisions that there is any specific feature concerning reschedulable round trips in connection with timetables or frequencies, which alone constitute a minimum requirement.

(559) Given that neither additional round trips nor reschedulable round trips constituted a minimum requirement, the bidding rules could not require the possession of a fleet for such round trips that had to be specially assigned to them, contrary to Corsica Ferries' arguments. According to Corsica Linea, two additional reasons confirm this point.

(560) Firstly, according to Articles 17 and 18 of the PSCs (recitals 285-287), although it is for the OTC to decide on the implementation of reschedulable and additional round trips, this option does not come with any obligation to mobilise one or more ships to respond to them ([198]).

(561) Secondly, to accept, as Corsica Ferries does, that the contracting authorities would have required possession of an additional vessel to respond promptly to the possibility of a few additional or reschedulable round trips would have made no economic sense, given the significant amounts of additional compensation that would have been necessary to cover the costs of immobilising vessels, which would have been essentially inactive.

5.2.2.2.2. Corsica Linea's bids complied with the bidding rules

(562) *Firstly*, Corsica Linea observes that, as regards reschedulable and additional round trips, its final bids did not make any changes to Annex 1 or to Articles 16 and 17 of the draft PSCs. The Annexes 1 submitted in support of Corsica Linea's final bids for Lots 1, 3 and 5 merely suggested where additional round trips could be placed, based on its knowledge of maritime services.

(563) *Secondly*, as regards the carrying capacity of vessels (passengers and freight), Corsica Linea considers that the capacity offered by the vessels that it allocated to the various lots is consistent with the minimum capacity for carrying freight and passengers. Corsica Linea also maintains that all of its vessels comply with the minimum number of PRM cabins ([199]).

5.2.2.3. The duration of the PSCs complies with EU law

(564) Corsica Linea agrees with the Commission's preliminary analysis of the justified duration of the PSCs. It submitted two additional comments on this point.

(565) *Firstly,* Corsica Linea considers that the duration of the PSCs is consistent with the standards set out in EU law. Corsica Linea refers in this regard to the Commission's decision-making practice concerning maritime public service contracts in Croatia ([200]) and Norway ([201]), which have a term of almost ten years.

(566) *Secondly*, the performance of the PSCs requires investment by the concession holders, contrary to Corsica Ferries' assertions.

([198]) On this point, Corsica Linea emphasises that, as provided for in Articles 17 and 18 of the PSCs, the technical monitoring committees are responsible for taking into account the occurrence of a specific need that would justify the implementation of these tools to adapt maritime services in the form of reschedulable and additional round trips, and any conflicts in the use of the contractor's fleet.

([199]) Corsica Linea mentions that the vessel Paglia Orba initially had one PRM cabin. However, in line with the commitment made by Corsica Linea during the tendering procedure, this vessel (i) was to be replaced by one of the seven other vessels in the fleet assigned to the service in the event that two PRM cabins were required for the public service in accordance with Article 20 of the PSCs and (ii) was quickly equipped with a second PRM cabin through refurbishment. Corsica Linea refers in that regard to Bastia Administrative Court judgment of 19 March 2019 (*Société La Méridionale,* No 1900289), which recognised the possibility of making 'a commitment to comply' to implement the contract. This compliance has now been achieved, with the result that the Paglia Orba now has two PRM cabins.

([200]) Commission Decisions of 12 July 2018 in cases SA.48119 – Croatia – *Croatian Ferries PSO* (OJ C 339, 21.9.2018, p. 1) and SA.49523 – Croatia – *Croatian Ferries PSO 3* (OJ C 339, 21.9.2018, p. 2).

([201]) See footnote 25.

(567) Corsica Linea points out that a distinction should be made between service concession contracts (such as PSCs), which concern the operation of a service, and concession contracts for infrastructure construction/modernisation, which concern the construction of infrastructure and require heavy investment. In the second case, since the creation of the infrastructure is the very object of the contract, the investments made by the concession holder must be precisely described in the concession contract. The same is not true of service contracts, where it is for the concession holder to decide, under the supervision of the contracting authority, what investments are necessary to ensure that the material means required to properly provide the service and ensure it is carried out are always available.

(568) Corsica Linea points out that, in the present case, the candidates had to provide the service using their own vessels and have to maintain a dedicated, high-performance fleet throughout the execution of the PSCs, while complying with the applicable environmental requirements.

(569) Corsica Linea describes the evolution of the applicable legal framework, in particular Directive (EU) 2023/959 of the European Parliament and of the Council ([202]) and Regulation (EU) 2023/1805 of the European Parliament and of the Council ([203]).

(570) According to Corsica Linea, Directive (EU) 2023/959 provides that the quota allocation system and the surrender requirements for maritime transport activities apply to 100 % of emissions from ships, based on a progressive timetable (40 % from 2024 and 100 % from 2026). In addition, Regulation (EU) 2023/1805 provides for measures to reduce the intensity of greenhouse gas emissions from fuels used by the transport sector (from 2 % in 2025 to 80 % by 2050).

(571) Corsica Linea explains that the application of these rules requires investment in less polluting ships in order to avoid high taxation. Corsica Linea estimates the cost of bringing these vessels into line with environmental standards at EUR 12 million. Similarly, it mentions that it made an investment of EUR 145 million in a new liquefied natural gas ship, which is expected to be delivered in 2026 and could be assigned to the PSCs.

(572) Corsica Linea finally notes that, in so far as the amount of compensation is contractually capped by the provisional operating accounts submitted in the bids and which have full contractual force (Annex 9 to the PSCs), these investment decisions have no effect on the amount of compensation. In its view, it is therefore necessary for concession holders to have visibility over the revenue generated by the operation of services over a sufficiently long period.

5.2.3. *The PSCs do not constitute State aid, or at least are exempt from notification under the SGEI Decision*

(573) Corsica Linea considers that the measures do not constitute State aid under Article 107(1) TFEU, since the four Altmark criteria, and in particular the fourth, are fulfilled. In any event, the measures fulfil all the criteria laid down in the SGEI Decision and were therefore exempt from the obligation to be notified to the Commission.

5.2.3.1. The PSCs fulfil the fourth Altmark criterion

(574) Contrary to the Commission's preliminary analysis in the opening decision, Corsica Linea considers that there was indeed genuine competitive pressure in the procedure for awarding the PSCs, which made it possible to select the tender that was most economically advantageous for the community.

([202]) Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (OJ L130, 16.5.2023, p. 134, ELI: http://data.europa.eu/eli/dir/2023/959/oj).

([203]) Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC (OJ L 234, 22.9.2023, p. 48, ELI: http://data.europa.eu/eli/reg/2023/1805/oj).

(575) *Firstly*, Corsica Linea points out that no French or foreign maritime operator, other than Corsica Ferries, Corsica Linea and La Méridionale, has expressed any interest in the Corsican market, either by responding to the various calls for tender or public consultations launched by France, or by operating routes under the PSO scheme.

(576) *Secondly*, Corsica Linea points out that, as regards the PSC for the maritime service to Propriano, for which Corsica Linea had proven to be in competition with La Méridionale, sufficient competition was observed for the regional authority to select the most advantageous economic offer. As regards the other lots awarded to Corsica Linea (Bastia, L'Île-Rousse and Ajaccio), the absence of a competing bid does not, in principle, completely rule out the existence of sufficient competitive pressure to consider the fourth Altmark criterion to be met ([204]).

(577) *Thirdly*, according to Corsica Linea, there was significant competitive pressure since it was common knowledge that three operators were likely to apply for the award procedures for the PSCs (Corsica Linea, La Méridionale and Corsica Ferries).

(578) *Fourthly*, the negotiation procedure conducted by the OTC and the CdC led to a substantial reduction in the amount of compensation requested between Corsica Linea's initial and final bids, for the lots for which it was designated the successful bidder, thus demonstrating the existence of genuine bargaining power on the part of the French authorities.

(579) *Finally*, in any event, even though only one final bid was received for some lots, the French authorities were under no obligation to accept them if they were deemed too expensive.

5.2.3.2. The PSCs in any event comply with the SGEI Decision

(580) Corsica Linea considers that the measures in question meet all the criteria of the SGEI Decision, contrary to what the Commission states in recitals 395 to 398 of the opening decision. It believes that (i) the SGEI Decision applies to the present case; (ii) certain maritime routes do not exceed the notification exemption threshold; and (iii) the PSCs comply with all other criteria of the SGEI Decision.

5.2.3.2.1. The SGEI Decision applies to combined services (freight/passengers)

(581) Corsica Linea disputes the Commission's preliminary view that the SGEI Decision applies only to maritime passenger transport because, in particular, the SGEI Decision sets a threshold only in terms of passengers transported.

(582) According to Corsica Linea, the interpretation proposed by the Commission is clearly contrary to the wording of the text itself and its purpose, as clarified by recital 24 of the SGEI Decision. It is apparent from that recital that all maritime transport (including freight transport) falls within the scope of the SGEI Decision. If the Commission's interpretation were accepted, no maritime freight service could benefit from the SGEI Decision, which would be contrary to the principle of equal treatment.

(583) Corsica Linea notes in that regard that the Commission's decision-making practice allows the SGEI Decision to be applied to combined services for which the passenger traffic threshold laid down in the SGEI Decision was not exceeded ([205]).

(584) In addition, Corsica Linea considers that the reference in the SGEI Decision to a single threshold in terms of passengers is justified by the mere fact that passenger traffic is at most an overall indicator of the economic importance of a given route. In Corsica Linea's view, it is difficult to imagine that freight volumes that are not commensurate with passenger traffic could be carried on the same route.

([204]) Judgment of 16 September 2013, *Iliad*, T-325/10, ECLI:EU:T:2013:472, paragraphs 240-254.

([205]) Corsica Linea refers to the Commission Decision (EU) 2022/1328 of 30 September 2021 on the measures SA.32014, SA.32015, SA.32016 (2011/C) (ex 2011/NN) implemented by Italy and the Region of Lazio for Laziomar and its acquirer CLN (OJ L 200, 29.7.2022, p. 154, ELI: http://data.europa.eu/eli/dec/2022/1328/oj), paragraphs 484 et seq.

5.2.3.2.2. All the conditions laid down in the SGEI Decision are met

(585) Corsica Linea considers that the PSCs comply with Article 4 of the SGEI Decision: it points out that there is indeed an entrustment in this case, containing all the requirements imposed by that article, as the Commission notes in recital 275 et seq. of the opening decision ([206]).

(586) Corsica Linea also considers that the PSCs comply with Articles 5 and 6 of the SGEI Decision, in the light of the fact that the methods for calculating the compensation and verifying that there is no overcompensation are established in the PSCs, as noted by the Commission in the opening decision (recitals 345 to 377).

(587) Lastly, Corsica Linea considers that the PSCs meet the conditions laid down in Article 7 of the SGEI Decision, in that the French authorities published on the TED platform (which lists all the contracts and concessions in the Member States that exceed the thresholds requiring publication at EU level) a concession award notice relating to the PSCs, which contains all the information required by Article 7 of the SGEI Decision ([207]).

5.3. **Comments from La Méridionale**

(588) La Méridionale first maintains in its comments that the PSCs do not constitute State aid under Article 107(1) TFEU. In any event, the PSCs comply with the conditions of the SGEI Decision and are exempted from any prior notification to the Commission. At the very least, the PSCs comply with the SGEI Framework ([208]).

5.3.1. *The PSCs do not constitute State aid*

(589) La Méridionale considers that the PSCs did not grant it any advantage, since they comply with all the Altmark criteria, including the first and fourth criteria.

5.3.1.1. The PSCs comply with the first Altmark criterion

(590) La Méridionale considers that the scope of the PSCs meets a public service need. It states that the French authorities correctly identified (i) demand from users for the transport of towed freight (ii) and a market failure. Finally, it took the view that France had defined the PSCs in a manner proportionate to the public service need (iii).

5.3.1.1.1. France correctly identified user demand

(591) La Méridionale considers that France correctly identified the demand from users of maritime freight and passenger transport. This is particularly the case for the maritime transport of towed freight, on which La Méridionale made a number of comments.

(592) La Méridionale states that it commissioned two economic analyses carried out by Deloitte (the '**Deloitte report**'), relating in particular to (i) the lack of substitutability between the ports of Toulon and Marseille for the maritime transport of towed freight. La Méridionale maintains that the Deloitte report confirms the French authorities' analyses, according to which the substitutability between the port of Marseille and the port of Toulon is very low for the transport of towed freight.

(593) *Firstly*, from a qualitative point of view, the evidence collected shows that hauliers who wish to minimise their costs do not consider Toulon as an alternative to Marseille for the following reasons:

— the port of Marseille is strategically located at the mouth of the Rhône valley, close to the many logistics bases spread throughout the valley;

([206]) Corsica Linea notes in this regard that Article 2 of the PSCs expressly refers to the SGEI Decision.
([207]) Service concession award notice, OJ S 15/2023.
([208]) La Méridionale specifies that its comments apply only to the PSCs awarded to it individually or together with Corsica Linea.

— it offers operators a multimodal network and is at the crossroads of two major European freight corridors (the Mediterranean axis and the North Sea-Mediterranean axis);

— Marseille has a catchment area covering the whole south-eastern quarter of France ([209]), while the port of Toulon is much more local, comprising only three business parks ([210]);

— dangerous goods cannot be transported to Toulon because they are banned in the port due to its proximity to military facilities.

(594) *Secondly*, from a quantitative point of view, La Méridionale points out that the Deloitte report confirms the very low substitutability of the ports of Marseille and Toulon for towed freight. The Deloitte report estimated that less than 20 % of hauliers would choose the port of Toulon rather than the port of Marseille in the event of a 5-10 % price increase in Marseille.

(595) To reach this conclusion, the Deloitte report first used two databases, namely (i) the public database listing concentrated logistics areas ([211]) and extended logistics areas ([212]) in France in 2015 ([213]), and (ii) a database provided by La Méridionale listing the warehouses on the French mainland of its towed freight haulier customers in 2021. After locating the various warehouses on the basis of those databases, the Deloitte report then determined the total cost of freight transport to Corsica, using a maritime fare of EUR 35/LM for the ports of Toulon and Marseille, and a road cost per kilometre of EUR 1,13 ([214]).

(596) According to the Deloitte report, the results show that in the event of a 10% price increase of a crossing from the port of Marseille, it would still be economically rational for the vast majority of hauliers to continue to pass through the port of Marseille. Only 4,7 % of hauliers on average would benefit from switching to the port of Toulon. The Deloitte report concludes that the estimate of 80% captive demand for towed freight in Marseille was conservative.

([209]) The Deloitte report refers to maps from the website of Upply (a company specialising in freight transport, particularly by road), dated 4 July 2019 and available at: market-insights.upply.com/en/the-real-map-of-the-major-hinterlands-for-container-shipping (accessed on 18 October 2024), and from the Marseille Urban Planning Agency from the report *Logistics in the PACA Region – Diagnostics and Challenges* (January 2019), available at: https://doc.agam.org/doc_num.php?explnum_id=9580 (p. 16) (accessed on 18 October 2024).

([210]) La Méridionale refers (i) to the report by the Marseille Urban Planning Agency *Logistics in the PACA Region – Diagnostics and Challenges* (January 2019), available at: https://doc.agam.org/doc_num.php?explnum_id=9580 (accessed on 18 October 2024) and (ii) to a study dated 18 June 2020 conducted by a consultant on behalf of Var CCI, as part of a mission to study energy flows in the ports around Toulon bay and its hinterland, which indicates that the catchment area of the port of Toulon is limited to the area between the towns of Bandol, Signes and Hyères (study available at: 0acf6059-3ee3-be1e-1214-59847ece5a39 (interreg-maritime.eu) (accessed on 18 October 2024). According to La Méridionale, the figure on p. 5 of the second study clearly shows that the port of Toulon's catchment area includes only the three main business parks close to the port, namely: Signes business park, Toulon West business hub and Toulon East business park.

([211]) According to the Deloitte report, a concentrated logistics area is one in which each component warehouse or logistics platform of more than 5 000 m^2 is less than two kilometres from another. Each logistics area consists of at least three warehouses or logistics platforms of more than 5 000 m^2.

([212]) According to the Deloitte report, an extended logistics area is one in which each warehouse or logistics platform of more than 5 000 m^2 is less than six kilometres away from another. Each logistics area consists of at least three warehouses or logistics platforms of more than 5 000 m^2.

([213]) Atlas of warehouses and logistics areas in France in 2015, available at: https://www.statistiques.developpement-durable.gouv.fr/atlas-des-entrepots-et-des-aires-logistiques-en-france-en-2015 (accessed on 18 October 2024).

([214]) The Deloitte report refers to data from the national road committee for 2019, according to which the annual cost of a 40-tonne long-haul lorry is EUR 1,13/km. This includes the cost of a driver, the cost of owning and financing the vehicle, the cost of fuel, tyres, maintenance, tolls and vignettes, and insurance costs and vehicle taxes.

5.3.1.1.2. France correctly analysed the market failure

5.3.1.1.2.1. Corsica Ferries' private supply in the absence of the PSCs is not credible

(597) La Méridionale considers that the French authorities correctly analysed the market failure characterising the existence of a need for a public maritime transport service between Corsica and the port of Marseille.

(598) It points out in that regard that Corsica Ferries' offer submitted during the operator consultation could not be considered credible, since the capacity which Corsica Ferries would deploy in the absence of the PSCs was inconsistent with the capacity of the port of Toulon. According to the Deloitte report, the capacity declared by Corsica Ferries in the absence of a PSC ([215]) was based on an occupancy rate of 539 % at the port of Toulon in the 2023-2028 period ([216]), i.e. a freight volume of more than five times the current capacity of the port.

5.3.1.1.2.2. The launch of the Toulon-L'Île-Rousse route by La Méridionale in 2024 under the PSO scheme does not call into question the existence of a market failure

(599) La Méridionale states that it opened a new route, from 2024, between Toulon and Livorno (Italy), with a stopover at L'Île-Rousse. However, it points out that this initiative in no way affects the conclusions of the French authorities regarding the existence of a market failure justifying the conclusion of the PSCs.

(600) La Méridionale reiterates that, under the PSO scheme applicable between Corsica and the French mainland, it is free to offer new services outside the PSCs. In this respect, it points out that the change in its shareholding and management from June 2023 led to it formulating a new commercial strategy, with an opening up to international routes. The new route to Italy directly meets this objective.

(601) *Firstly*, La Méridionale states that this route involves only passenger transport, and is primarily aimed at tourists. Thus, it does not involve the transport of freight or medical passengers.

(602) *Secondly*, La Méridionale states that the operating accounts of the Toulon-L'Île-Rousse route and of the Kalliste vessel assigned to it are kept separately from those of the Marseille-Ajaccio and Marseille-Porto-Vecchio routes operated under the PSCs, thus ensuring that there is no cross-subsidy in respect of the depreciation and operating costs of the vessels.

(603) In that regard, La Méridionale rejects Corsica Ferries' criticisms set out in recital 216 of the opening decision relating to Corsica Linea's use of the Kalliste vessel, which could have prevented La Méridionale from fulfilling its obligations under the PSCs.

(604) La Méridionale explains that, although the Kalliste was indeed used by Corsica Linea in July and August 2023, this was in response to the exceptional situation of a fire on one of Corsica Linea's vessels (Monte d'Oro), putting it out of service for several months, following which Corsica Linea expressly asked La Méridionale if it could charter the Kalliste to operate its routes on a temporary basis.

(605) In addition, La Méridionale states that, although in Annex 2 to the PSCs (service programme), the Kalliste is indeed assigned to Lot 3 (Marseille-Porto-Vecchio) and that the provisional operating accounts (Annex 9 to the PSCs) are based on this, it is possible to assign it to other routes under the vessel replacement mechanism provided for in Article 20 of the PSCs or to carry out an additional round trip decided by the French authorities.

([215]) According to the Deloitte report, Corsica Ferries indicated that, in the absence of a PSC, it would significantly increase its activities in Toulon from 397 112 LM per year on average over the 2016-2019 period to 2 675 288 LM per year on average over the 2023-2028 period, i.e. a 574 % increase in its offer.

([216]) The Deloitte report calculates this occupancy rate on the basis of the annual average number of linear metres transported by Corsica Ferries between 2016 and 2019 (397 112 LM), which corresponds to a current occupancy rate of 80% for the port of Toulon according to Var CCI, and the annual average declared by Corsica Ferries between 2023 and 2028 (2 675 288 LM), which corresponds to a 539 % occupancy of the port of Toulon.

5.3.1.1.3. The French authorities defined proportionate public service obligations

5.3.1.1.3.1. The minimum freight carrying capacity obligations are proportionate to the public service need identified

(606) La Méridionale disputes the Commission's preliminary position that the minimum freight carrying capacities were set out in the PSCs in such a way that the public service could at any time meet the maximum peak in demand observed in the historical data.

(607) La Méridionale explains that the French authorities established the minimum capacity required for freight traffic on the basis of the average per crossing in July 2030, which is higher than the average per crossing in the other months of 2030. Given the differences in traffic depending on the day of the week and the month, this monthly average does not allow the maximum observed peak in demand to be met at all times. According to La Méridionale, the monthly average in July 2030, as well as the other monthly averages, includes crossings where demand exceeds the minimum capacities selected.

(608) La Méridionale emphasises in this regard that the analysis of freight volumes on vessels in 2021 and 2022 on the routes served by La Méridionale shows that the minimum capacities set out in the PSCs for freight transport are not excessive since they were exceeded on a significant proportion of crossings ([217]). Analyses by month and day show that the minimum capacities were regularly exceeded every month of the year and every day of the week in 2021 and 2022. The capacities in the PSCs cannot therefore be considered disproportionate.

(609) Lastly, La Méridionale explains that the setting of minimum capacities at the level estimated for July 2030 is consistent with the constraints faced by the companies in managing their fleet. It was not therefore feasible to set minimum capacities on a month-by-month or even annual basis, given the economic constraints of fleet management and the depreciation periods for vessels. La Méridionale explains that, given the value of the vessels, it is difficult for operators to change vessels in the course of the contract, from both an economic and an operational point of view. By contrast, the public service obligations laid down in the PSCs make it possible to put into service vessels that are able to provide the public service for the entire duration of the PSCs and manage the maximum peaks.

5.3.1.1.3.2. The minimum capacity obligations for the number of drivers carried per crossing are proportionate to the public service need

(610) La Méridionale argues that, contrary to what Corsica Ferries claims in its complaint, the minimum capacity for carrying drivers set out in the PSCs is not disproportionate.

(611) On the basis of the data submitted by La Méridionale, the Deloitte report assessed the actual number of drivers who accompanied their goods on La Méridionale vessels in 2021 and 2022. The report establishes that the minimum capacities set out in the PSCs for the number of drivers are not excessive as they were already exceeded or reached on a significant proportion of crossings in 2021 and 2022 ([218]).

5.3.1.2. The PSCs comply with the fourth Altmark criterion

(612) *Firstly*, according to La Méridionale, the criteria for awarding the contracts did not affect France's ability to select the candidate capable of providing the service at the lowest cost to the community. La Méridionale considers that, on the Porto-Vecchio (Lot 3) and Propriano (Lot 4) routes, Corsica Linea and La Méridionale submitted competing bids. In both cases, the French authorities accepted the lowest bid.

([217]) The Deloitte report shows that, in 2021, almost a third of the crossings operated by La Méridionale between Marseille and Ajaccio already exceeded the minimum freight carrying capacities set out in the PSCs. In 2022, this was the case for 40 % of the crossings operated by La Méridionale between Marseille and Ajaccio.

([218]) According to the Deloitte report, the minimum capacity for towed freight drivers set out in the PSCs was reached or exceeded on 40% of the crossings operated by La Méridionale in 2021 and 43 % in 2022 between Marseille and Ajaccio.

(613) *Secondly*, La Méridionale states that three shipping companies (Corsica Ferries, Corsica Linea and La Méridionale) replied to the operator consultation and, as a result, the number of candidates (two) was consistent with the number of replies to the operator consultation. Moreover, the fact that there were no other shipping companies applying tends to confirm the market's lack of appetite for low-profitability routes such as those to Corsica.

5.3.2. *The PSCs are compatible with the SGEI Decision*

5.3.2.1. The SGEI Decision applies to the PSCs

(614) La Méridionale disputes the Commission's preliminary view that the SGEI Decision is applicable only to passenger transport routes, excluding any other maritime transport service (in particular freight). It considers, firstly, that the SGEI Decision does not specify that it is inapplicable to combined services, and that the Commission cannot make such a restrictive interpretation; secondly, and in any event, it considers that such an interpretation is consistent with the Commission's decision-making practice ([219]).

5.3.2.2. The PSCs comply with the SGEI Decision

(615) La Méridionale considers that the PSCs comply with Article 4 of the SGEI Decision: it points out that there is indeed an entrustment in this case, containing all the requirements imposed by that article, as the Commission notes in recital 275 et seq. of the opening decision ([220]). It also points out that the duration of the PSCs is less than 10 years, in accordance with the SGEI Decision.

(616) Corsica Linea also considers that the PSCs comply with Articles 5 and 6 of the SGEI Decision, in view of the fact that the methods for calculating compensation and verifying that there is no overcompensation are set out in the PSCs, as noted by the Commission in the opening decision (recitals 345 to 377).

(617) Finally, Corsica Linea believes the PSCs fulfil the conditions laid down in Article 7 of the SGEI Decision, in that the French authorities published all the information required by that article.

5.3.3. *The PSCs are compatible with the SGEI Framework*

(618) La Méridionale considers that, in any event, the measures are compatible with the SGEI Framework. It submitted comments on two points: the duration of the entrustment and the compliance of the PSCs with EU law on concessions.

5.3.3.1. The duration of the PSCs complies with the SGEI Framework

(619) La Méridionale considers that the seven-year duration of the PSCs is consistent with the standards laid down by EU law. La Méridionale considers this period to be reasonable and justified in view of the investments made or to be made to discharge the PSCs, in particular with regard to the depreciation costs for the vessels mobilised, and costs related to additional equipment or compliance with environmental requirements. In this regard, it refers to the Commission's decision-making practice on maritime public service contracts in Italy ([221]) and Norway ([222]) with terms of close to or more than ten years.

([219]) La Méridionale refers to the Decision (EU) 2022/132, paragraphs 484 et seq.

([220]) La Méridionale notes in that regard that Article 2 of the PSCs expressly refers to the SGEI Decision.

([221]) Commission Decision (EU) 2022/448 of 17 June 2021 on the measures SA.32014, SA.32015, SA.32016 (2011/C) (ex 2011/NN) implemented by Italy for Siremar and its acquirer Società Navigazione Siciliana (OJ L 97, 24.3.2022, p. 1, ELI: http://data.europa.eu/eli/dec/2022/448/oj).

([222]) See footnote 141.

5.3.3.2. The PSCs comply with EU public procurement law

5.3.3.2.1. The time that elapsed between the date of award of the PSCs and the start date of the services did not have any foreclosure effect

(620) La Méridionale considers that the short period between the date of award of the PSCs and the start date of the services did not raise any difficulties under EU law on concessions.

(621) *Firstly*, it considers that the circumstances are different from those referred to in the *SNCM II* judgment, which the Commission mentions in its opening decision. Indeed, according to La Méridionale, the public call for tenders published in the *Official Journal of the European Union* on 6 May 2022 indicated to potential candidates that the services provided for in the PSCs were to start on 1 January 2023. Potential candidates were therefore informed eight months in advance of the start date of the services in question. In addition, the entry into force of the PSCs on 1 January 2023 had also been announced when the operator consultation was launched by the French authorities on 22 January 2022, which Corsica Ferries replied to, i.e. almost a year earlier.

(622) *Secondly*, La Méridionale points out that the bidding rules published on 6 May 2022 announced that candidates were required to submit their applications and bids by 25 July 2022 and that any negotiation meetings would provisionally start in August 2022. Given the unchangeable deadlines in the negotiation and award of contracts as complex as the PSCs, all the economic operators concerned were thus informed from the outset that a period of approximately two or three months, between autumn 2022 and 1 January 2023, would separate the award of the PSCs from their entry into force. Such a period was sufficient to allow all interested economic operators to take their fleet out of service and redeploy it.

(623) In that regard, La Méridionale maintains that Corsica Ferries' claims that bookings in the field of maritime transport must be opened at least six months in advance are unfounded. It states that, in freight transport (which is the main purpose of the PSCs), bookings are made in practice a few days in advance, whereas the passenger transport services were to start in the low season, with less traffic (1 January).

(624) *Thirdly*, as the French authorities knew, on expiry of the deadline for submitting bids (25 July 2022), that only Corsica Linea and La Méridionale had applied for the tendering procedure, they were able, without infringing the Concessions Directive, to decide to extend the duration of the negotiations and shorten the period between the date on which the PSCs were awarded and the date on which they entered into force. As Corsica Ferries did not bid for the PSCs for reasons relating to a lack of clarity in the technical requirements (and not because of the short period of time between the award and entry into force), the actual duration of the negotiation phase could not constitute a breach of the Concessions Directive.

5.3.3.2.2. The scope of the minimum requirements did not include reschedulable and additional round trips

(625) La Méridionale reiterates that the minimum requirements under Article 37 of the Concessions Directive were set out in Article 2.4 of the bidding rules. Thus, according to La Méridionale, although it was necessary to refer to Annex 1 to the PSCs to understand the precise scope of some of those minimum requirements, Annex 1 did not constitute, in its entirety, a minimum requirement.

(626) According to La Méridionale, that conclusion leads to the following findings.

(627) As regards the additional round trips, La Méridionale first notes that they are not mentioned in Article 2.4 of the bidding rules. Only 'timetables' and 'service frequencies' are covered. Furthermore, the additional round trips are only presented, in Annex 1 to the PSCs, as a possibility, the implementation of which is left to the discretion of the French authorities. Those references do not therefore reveal any characteristics of the 'timetables' of the additional round trips or their 'frequency' within the meaning of the minimum requirement strictly set out in Article 2.4 of the bidding rules.

(628) As regards reschedulable round trips, La Méridionale observes that neither Article 2.4 of the bidding rules nor Annex 1 mention them.

(629) It follows, according to La Méridionale, that the reschedulable and additional round trips were not part of the minimum characteristics of the PSCs.

5.3.3.2.3. The reschedulable and additional round trips comply with the principles of equal treatment, non-discrimination and transparency

(630) As regards reschedulable round trips, La Méridionale points out that they are not additional round trips that would be added to the minimum number of round trips per year. The sole purpose of these round trips is to optimise traffic in a limited and ad hoc manner. Above all, La Méridionale claims that these round trips are left to the discretion of the French authorities, subject to compliance with Article 17 of the PSCs. Lastly, La Méridionale notes that a round trip is postponed by the technical committee set up for that purpose, in order to reschedule it to a date that addresses both the real needs of the public service and the operator's constraints.

(631) As regards additional round trips, La Méridionale argues that such round trips are also an option at the discretion of the contracting authority, in the event of a peak in demand for maritime freight transport that scheduled round trips could not absorb. According to La Méridionale, this is a flexible instrument in the PSCs to enable the public service to be adapted to the actual demand of its users over a period of 7 to 8 years. Furthermore, the number of additional round trips is strictly limited and their implementation is governed by Article 18 of the PSCs, which remained unchanged at the end of the PSC award procedure.

(632) There was no evidence for Corsica Ferries to suppose that the operator needed to keep permanently on standby reserve vessels that could be mobilised at any time to carry out additional or reschedulable round trips. La Méridionale points out in this regard that Annex 1 to the 2021-2022 PSCs (for which Corsica Ferries had applied) already provided for this mechanism of additional round trips, in almost the same terms, on the Ajaccio, Bastia and L'Île-Rousse routes. However, under those contracts, the additional round trips were never implemented under the conditions alleged by Corsica Ferries (i.e. by requesting several ships simultaneously). Therefore, Corsica Ferries must have known that having reserve vessels on permanent standby made no economic or operational sense.

5.3.3.2.4. La Méridionale's bids complied with the bidding rules

(633) *Firstly*, La Méridionale observes that, as regards reschedulable and additional round trips, its final bids did not make any changes to Annex 1 or to Articles 16 and 17 of the draft PSCs. Annex 1 submitted in support of La Méridionale's final bid for Lot 1 merely presented a suggestion for the positioning of additional round trips, based on its knowledge of maritime services.

(634) *Secondly*, as regards the carrying capacity of vessels (passengers and freight), La Méridionale considers that the capacities offered by the vessels it allocated to the various lots comply with the minimum capacities for carrying freight and passengers. La Méridionale also maintains that all its vessels comply with the minimum number of PRM cabins.

5.4. **Comments from the Stef Group**

(635) Stef and its subsidiaries (together forming the STEF Group) are mainly active in the field of controlled temperature road freight transport, fresh and cold logistics services, and the industrial packaging of agri-food products.

(636) In its comments, the Stef Group explains that Stef was the sole shareholder of La Méridionale between 2009 and 31 May 2023, when Stef sold La Méridionale to CMA CGM. Stef was therefore La Méridionale's sole shareholder when two of the measures at issue were awarded by France to La Méridionale.

(637) In its comments, the Stef Group repeats in full the content of the comments submitted by La Méridionale. The Stef Group does not submit any facts or arguments in addition to those already submitted by La Méridionale. The Stef Group's comments should therefore be understood as being identical to those of La Méridionale, already presented in Section 5.3.

6. COMMENTS FROM FRANCE ON THE COMMENTS OF THE INTERESTED PARTIES

(638) The French authorities submitted their comments on Corsica Ferries' comments by letters of 25 June and 11 July 2024. The comments concern the assessment of the existence of a public service need and compliance with the Concessions Directive.

6.1. Comments on the existence of a public service need

6.1.1. *The public consultations were not biased*

(639) As a preliminary point, the French authorities state that the method used to define the public service need complied with the principles of the Cabotage Regulation ([223]) and its interpretative communication of 2014 ('**the interpretative communication**') ([224]). They add that the 'SNCM test' criteria as set out by the General Court in the *SNCM I* and *SNCM II* judgments ([225]) were also taken into account.

(640) Contrary to Corsica Ferries' claims (recitals 399 to 403), the French authorities observe that the user consultation was not vitiated by any bias. They point out that that consultation was widely publicised among the general public. They also point out that the results of the consultation show, for example, that the ports of Marseille and Toulon are totally substitutable from the point of view of passengers (residents and non-residents of Corsica), as Corsica Ferries maintains. In any event, they point out that the operator consultation was one of a number of methods of identifying user demand.

(641) Moreover, contrary to Corsica Ferries' claims (recitals 455 to 468), nor was there any methodological bias in the operator consultation. France points out that this consultation was also widely publicised and was open to all interested operators. The French authorities state that Corsica Ferries' reply was analysed in detail to ensure it was robust and relevant. As regards Corsica Ferries' criticism of the lack of definition of territorial continuity, the French authorities state that the operator bidding file contained a supporting document describing the regulatory organisation of maritime passenger and freight transport, which reproduced in full the French legislation on territorial continuity.

6.1.2. *France correctly identified qualitative user demand*

6.1.2.1. France correctly identified the qualitative demand from medical passengers

(642) First of all, the French authorities reject Corsica Ferries' argument that there is a public service need only for medical passengers eligible for reimbursement from the health insurance scheme. They point out that the Gecodia report clearly demonstrates that some medical passengers specifically use maritime transport and that there is a specific link to the port of Marseille.

(643) The French authorities also refute Corsica Ferries' argument that there is no legal or regulatory constraint making the reimbursement of transport costs dependent on the distance between the port of arrival and the healthcare centre. They point out that reimbursement is made on the basis of the shortest route from the port of Marseille to the healthcare facility, in accordance with Article R. 322-10-5 of the CSS.

(644) In any event, the French authorities maintain that the land transport conditions for medical passengers are not the same in Marseille and Toulon. France points out that medical passengers are transported for the purpose of hospitalisation and associated consultations, taking place on the same day as the patient arrives on the mainland, involving potentially fragile persons with schedules (medical appointments) that need to be observed. Consequently, the addition of an extra journey of almost one hour from Toulon to the treatment centres in Marseille – and the risks associated with traffic congestion, and train or bus delays, and the significant costs that this could entail (overnight stays in hotels, taxi fares) – could make the trip even more difficult for medical passengers.

([223]) Article 4 of the Cabotage Regulation.

([224]) Communication from the Commission on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), COM(2014) 232 final, 22.4.2014.

([225]) Judgments of 1 March 2017, *SNCM I* and *SNCM II*, ibid.

6.1.2.2. France correctly identified the qualitative demand for towed freight

(645) *Firstly*, the French authorities maintain that, by claiming that the Commission based its assessment of the substitutability of the ports of Marseille and Toulon for towed freight only on the saturation of the port of Toulon and on the results of the public user consultation, Corsica Ferries arbitrarily and partially restricts its understanding of the method used.

(646) On the point relating to the absence of a risk of saturated capacity at the port of Toulon in terms of towed freight (recitals 436 to 438), the French authorities first of all point out that the reply from Var CCI clearly indicates that capacity at the port of Toulon is limited. In their comments, the French authorities provided additional information on the degree of saturation at the port of Toulon. They take the view that, if the daily traffic recorded on the routes between Marseille and Ajaccio/Bastia alone were to shift to the port of Toulon, demand would exceed the capacity of the port on 177 days out of 365 in 2029 ([226]).

(647) On the point relating to the user consultation on freight transport and the arguments raised by Corsica Ferries in this regard (recitals 439 to 443), criticising in particular the relevance of the information obtained from that consultation, the French authorities reiterate that a user consultation is valid evidence under the SGEI Framework.

(648) *Secondly*, the French authorities note, first of all, that Corsica Ferries does not dispute the additional road cost for hauliers of switching from Marseille to Toulon (recital 443) and that the analyses submitted by Corsica Ferries, Corsica Linea and La Méridionale all confirm that the logistics bases are located mainly around Marseille and in the Rhône valley.

(649) The French authorities also provide an updated quantitative assessment of the additional cost using the latest reference (December 2023) on production costs calculated by the national road committee ('**CNR**'). According to the French authorities, this assessment confirms the existence of an additional cost of around 40 % for a journey via the port of Toulon rather than the port of Marseille for a haulier whose logistics bases are located near Marseille.

(650) France also points out that the BRG 2 study submitted by Corsica Ferries (see recital 443), which contains an analysis of additional road costs, contains a number of methodological errors. Firstly, the BRG 2 study is based on a reference of 12 LM, whereas a standard articulated lorry (tractor + trailer) is close to 17 LM. Secondly, the maritime fare used by the BRG 2 study for Toulon is the fare excluding tax and handling costs, and not the fare actually paid. Finally, the BRG 2 study does not take into account several factors that increase the additional road cost. For example, the calculation is based on an additional road distance of 60 km, whereas it is more than 70 km.

(651) *Thirdly*, with regard to the assessment of the degree of substitutability of the specific demand for towed freight at the port of Marseille, the French authorities emphasise, in response to Corsica Ferries (recitals 444 to 445), that the October 2020 report, which Corsica Ferries refers to, noted that the assessment of the geographical scope of the towed freight market that had been carried out did not rule out a possible finding of partial substitutability between the mainland ports for the transport of towed freight, if more conclusive evidence was produced to that effect, in particular through a wider public consultation with shippers and hauliers. In the present case, however, the French authorities carried out wider public consultations, such that the conclusions reached in the October 2020 report are no longer relevant.

(652) *Lastly*, the French authorities refute Corsica Ferries' assertion that the ports of Marseille and Toulon are perfectly substitutable from the point of view of users as regards accommodating accompanied towed freight (recital 449). First of all, the French authorities note that Corsica Ferries does not provide any evidence to justify this distinction. The French authorities add that this difference was not raised by any hauliers, maritime operators or port authorities during the public consultations.

([226]) The capacity threshold is estimated at 80 lorries per day throughout the year, except in July and August, when the capacity threshold is estimated at 40 lorries per day due to the increase in passenger and light vehicle traffic in the summer months.

6.1.3. *France correctly identified quantitative user demand*

6.1.3.1. France correctly quantified the demand from medical passengers

(653) Contrary to the claims by Corsica Ferries (recitals 428 to 431), the French authorities point out that a 10 % maritime share in transport for medical reasons between Corsica and the mainland is a conservative assumption.

6.1.3.2. France correctly quantified the demand for towed and non-towed freight

(654) According to France, Corsica Ferries argues that a single growth rate of 2,3 % per year for all the routes covered by the PSCs is the result of an overestimation of demand for freight transport and therefore for drivers linked to towed freight (recitals 453 to 454). The French authorities reply that projected freight demand is based on historical data (2010-2019). This data is broad enough to take into account periods of decline and more dynamic periods in the Corsican economy.

(655) The French authorities point out that, between 2010 and 2019, Corsica went through two periods of growth (2010-2012; 2016-2018) and two periods of stagnation (2013-2015; 2019), and that freight flows reflect these variations. The French authorities also state that the reference used is an overall increase in freight traffic between Corsica and the French mainland. Finally, the French authorities note that data from the Regional Directorate for the Environment, Planning and Housing show an increase in traffic at all ports between 2000 and 2019, with fluctuations consistent with economic growth. The French authorities therefore conclude that the conclusions drawn by Corsica Ferries are unfounded and that the projected freight demand is prudent and conservative.

6.1.4. *France correctly identified the market failure*

(656) Contrary to Corsica Ferries' claims (recitals 455 to 468), the French authorities point out that a prospective approach was taken, with a counterfactual assessment of private supply in the absence of a public service contract between Corsica and Marseille.

(657) In addition, based on recent observations of traffic in the Mediterranean, the French authorities note that there is little potential for the port of Marseille to attract passengers, particularly to/from Corsica's secondary ports. For example, by 2030 towed freight traffic (non-substitutable in Marseille) is estimated to be around 170 000 LM for Marseille-Bastia, 120 000 LM for Marseille-Ajaccio and less than 50 000 LM for the secondary ports, which is much lower than the traffic recorded on routes operated on the open market or under the PSO regime in the other western Mediterranean islands. More generally, according to the French authorities, there is no daily route on the open market or under the PSO regime with such a small passenger and freight base.

6.1.5. *France chose a public intervention instrument that is necessary and proportionate to the public service need*

(658) To show that the minimum capacity included in the PSCs for freight transport is not overestimated, the French authorities refer to their comments on the opening decision (recitals 358 to 361).

(659) In addition, the French authorities point out that the driver traffic data for 2023 show that the minimum carrying capacity for drivers is regularly lower than the number of drivers actually transported for the following number of crossings:

— Ajaccio-Marseille: 199 crossings;

— Bastia-Marseille: 84 crossings;

— L'Île-Rousse-Marseille: 176 crossings;

— Porto-Vecchio-Marseille: 170 crossings;

— Propriano-Marseille: 118 crossings.

(660) Lastly, the French authorities point out that the additional crossings are not intended to absorb general traffic, but irregular peaks.

6.2. **Comments on compliance with EU public procurement law**

6.2.1. *The duration of the PSCs complies with the Concessions Directive*

(661) Contrary to Corsica Ferries' claim (recital 535), France explains that the duration of the PSCs was fixed, in accordance with the Concessions Directive, taking into account the investments made by the future contractors, namely in the vessels necessary to operate the maritime transport service. These costs include the cost of capital where the contractor owns its vessels, or the leasing charges where the contractor leases the ships. Thus, the French authorities consider that the duration is justified with regard to competitive objectives, since a shorter period would have discouraged operators from submitting bids. The French authorities also consider that this duration meets the objectives of adaptability, due to the obligation to bring ships into line with standards, in particular as regards the rules on greenhouse gas emissions.

(662) As regards Corsica Ferries' arguments concerning the lack of return on investments for the contracting authority at the end of the concession (recitals 536 and 537), France considers that such a claim does not correspond to the reality of concessions in the field of passenger and freight transport, since the operation of vessels is not part of a returnable assets approach, such a consideration being unrelated to the duration of the PSCs.

(663) As regards Corsica Ferries' claims that the compensation does not take account of the residual value of the vessels at the end of the contracts (recital 538), France considers that the compensation granted to the contractors should not take account of that value, since the vessels are the contractors' own assets and not assets returning free of charge and fully owned by the CdC or the OTC. France explains that, in accordance with Article 34 of the PSCs, the investment costs associated with the vessels are established on the basis of the fleet assigned by the contractor to operate the routes covered by the PSC. The purpose of these investments being compensated by the OTC is to cover the costs incurred by the contractor – less any subsidies and any public financing for these investments – corresponding to the depreciation and/or leasing charges and/or the cost of chartering the vessel assigned to the service.

(664) Furthermore, Corsica Ferries disputes the relevance of the examples of concessions lasting more than five years provided by the French authorities, in particular the example of the Norwegian coastal service (recital 539). In response, France clarifies that this example is entirely relevant, as the EFTA Surveillance Authority confirmed the seven-year concession for the 2012-2019 period and extended it by ten years for the 2021-2030 period. This extension was justified by the lifespan of the vessels, which far exceeds 10 years.

(665) In addition, the French authorities point out that Corsica Ferries already brought a challenge before Bastia Administrative Court in June 2022 concerning the duration of the PSCs, in the context of pre-contractual interim relief, arguing that it was disproportionate because of the lack of investments planned for the contractors. The Bastia court dismissed the application, and that decision was upheld by the Council of State, which did not admit the appeal brought against it.

(666) Lastly, as regards the technical specifications to be fulfilled (vessel capacity, number of passengers and number of PRM cabins), France explains that all companies operating services to Corsica between 2015 and 2022 had vessels that were compatible with the technical specifications set out in the PSCs. In particular, Corsica Ferries is one of the main shipping companies in Europe operating large-capacity vessels (Ro-Pax vessels). Its overall capacity, in passengers or freight, is close to or greater than that of its counterparts on the Corsican routes (e.g. Moby Lines, Corsica Linea and La Méridionale).

6.2.2. *The objections relating to the scope of the minimum requirements are unfounded*

(667) The French authorities point out that it is essential to draw a clear distinction between Article 2.4 of the bidding rules, which gives an exhaustive and unchangeable list of minimum characteristics, and Annex 1 to the PSCs, which serves as an overall technical reference, detailing minimum capacities without describing them as minimum characteristics. Annex 1 sets out technical elements, the nature of which depends on their inclusion in Article 2.4 of the bidding rules: if an element is mentioned in that article and then specified in Annex 1, France explains that it is then a minimum requirement.

(668) In addition, France notes that, in the context of the 2019-2020 PSCs, Bastia Administrative Court analysed only the requirements which could be linked to the minimum characteristics: 'These technical requirements, which relate to the carrying capacity of vessels, are among the minimum contractual requirements listed in Article 2.4 of the bidding rules' (19 March 2019, No 1900289). According to France, this reasoning was confirmed by the Council of State in a ruling of 24 June 2019: 'the technical annex on services set out in Annex 1 to the draft contract, which requires at least forty outlets for refrigerated vehicles for each crossing, had to be considered, given the terms of Article 4.1 of the bidding rules, as forming part of the bidding documents and, consequently, as explaining the minimum characteristics expected. In so ruling, the interim relief judge did not err in law.' Contrary to Corsica Ferries' claims, the Council of State did not, according to France, take the view that Annex 1 in its entirety constituted minimum requirements.

(669) Similarly, the French authorities reiterate that Annex 1 to the PSCs was not amended, meaning that neither the minimum characteristics nor the minimum capacities were misunderstood. The bids therefore complied with these minimum characteristics and capacities.

(670) As regards the clarity of the minimum requirements, the French authorities refer to Bastia Administrative Court order of 20 July 2022 (recital 274), concluding that the information on reschedulable and additional round trips was sufficient to 'enable candidates to assess the extent of the contractors' obligations and to submit a bid' ([227]).

7. **ASSESSMENT OF THE MEASURES**

7.1. **Existence of State aid within the meaning of Article 107(1) TFEU**

(671) Under Article 107(1) TFEU, 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, in so far as it affects trade between Member States, is incompatible with the internal market.

7.1.1. *Existence of an undertaking*

(672) According to settled case-law ([228]), the Commission must first establish whether service providers are undertakings under Article 107(1) TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Any activity consisting in offering goods and services on a market is an economic activity ([229]).

(673) The PSCs consist in the provision of maritime freight and passenger transport services between Corsica and the French mainland in return for compensation paid to the beneficiaries of those PSCs (Corsica Linea and La Méridionale). Corsica Linea and La Méridionale are therefore engaged in economic activities. Consequently, they are undertakings under Article 107(1) TFEU.

([227]) The administrative court observed, inter alia, that the bidding file included information documents on maritime services between Corsica and the mainland, such as the contractors' annual reports for 2017, 2018 and 2019, which set out an analysis of the quality of services.

([228]) Judgment of 18 June 1998, *Commission* v *Italy,* C-35/96, ECLI:EU:C:1998:303, and judgment of 23 April 1991, *Höfner and Elser*, C-41/90, ECLI:EU:C:1991:161, paragraph 21.

([229]) Judgment of 16 June 1987, *Commission* v *Italy,* C-118/85, ECLI:EU:C:1987:283, paragraph 7; judgment of 18 June 1998, *Commission* v *Italy*, C-35/96, ibid., paragraph 36.

7.1.2. *Imputability of the measures to the state and presence of state resources*

7.1.2.1. Imputability of the measures to the state

(674) It follows from settled case-law that measures adopted by intra-state entities of the Member States, whatever their status and description, fall, in the same way as measures taken by the central authority, within the ambit of Article 107(1) TFEU, if the conditions of that provision are satisfied ([230]).

(675) The Commission observes in the present case that the OTC, namely the authority which granted the measures under examination, is an administrative authority entirely attached to the CdC, which is itself an infra-state entity (recital 82). The OTC, whose president is a member of the CdC (recital 82), is subject to the supervision of the CdC in the conduct of its activities (recital 83). The CdC also appoints the director of the OTC, and the decisions of the OTC (including budgetary decisions) are taken by an administrative committee composed of representatives from the departments of Corse-du-Sud and Haute-Corse and, chiefly, elected representatives of the Corsican Assembly (recital 82). The award of the PSCs was itself the subject of a vote of approval by the Corsican Assembly (recital 280).

(676) The measures at issue are therefore imputable to the state.

7.1.2.2. Presence of state resources

(677) It is settled case-law that the resources of local and regional authorities are to be regarded as state resources within the meaning of Article 107(1) TFEU ([231]).

(678) As mentioned in recital 84, the PSCs are financed through a territorial continuity grant paid by the national government to the CdC, which transfers it to the OTC by law. The PSCs are therefore financed by the resources of the CdC, which is an infra-state entity.

(679) The Commission therefore considers that the financing of the PSCs involves state resources.

7.1.3. *Existence of an advantage*

(680) To determine whether a state measure constitutes aid to an undertaking, it must be determined whether the undertaking in question enjoys an economic advantage enabling it to avoid costs that would otherwise have been borne by its own financial resources or whether it enjoys an advantage which it would not have received under normal market conditions ([232]).

(681) Since the measures under examination are granted as a public service delegation, they constitute an advantage for the beneficiary, unless such compensation cumulatively complies with the four Altmark criteria ([233]).

(682) In view of the above, the Commission will examine whether the PSCs meet all the Altmark criteria.

7.1.3.1. Altmark criteria

(683) In the *Altmark* judgment, the Court ruled that public service compensation does not confer a selective advantage and does not constitute aid under Article 107(1) TFEU where four cumulative criteria are met:

— the recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined (criterion 1);

— the parameters on the basis of which the compensation is calculated have been established in advance in an objective and transparent manner (criterion 2);

([230]) Judgment of 12 May 2011, *Région Nord-Pas-de-Calais*, T-267/08 and T-279/08, ECLI:EU:T:2011:209, paragraph 108.
([231]) Id., paragraph 109.
([232]) Judgment of 14 February 1990, *France* v *Commission*, C-301/87, ECLI:EU:C:1990:67, paragraphs 44-45.
([233]) Judgment of 24 July 2003, *Altmark Trans GmbH*, C-280/00, ECLI:EU:C:2003:415, paragraphs 87-93.

— the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (criterion 3);

— where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations (criterion 4).

7.1.3.2. Compliance with the fourth Altmark criterion

7.1.3.2.1. Provider selected in a tendering procedure allowing for the selection of the candidate capable of providing these services at the least cost to the community

(684) A public procurement procedure only excludes the possibility of State aid if it allows for the selection of a tenderer capable of providing those services at the least cost to the community.

(685) The Commission communication on the application of EU State aid rules to compensation for services of general economic interest ('**SGEI communication**') ([234]) sets out the criteria for assessing whether the fourth Altmark criterion has been met.

(686) Paragraph 66 of the SGEI communication states that, as regards the characteristics of the call for tenders, a competitive dialogue or a negotiated procedure with publication confer a wide discretion on the adjudicating authority and may restrict the participation of interested operators. Therefore, they can only be deemed sufficient to satisfy the fourth Altmark criterion in exceptional cases.

(687) The Commission notes in the present case that France awarded the measures in question by means of a negotiated procedure (recitals 277 and 278). Thus, such a procedure cannot in principle be deemed to guarantee the least cost to the community under the SGEI communication.

(688) Moreover, there is nothing in the present case to allow the tendering procedure for PSCs to be regarded as an exceptional case that derogates from that presumption.

(689) First of all, the procedure falls under maritime services to Corsica, where there has never been a situation of free competition because of the limitations imposed by the PSO scheme and the historical existence of successive PSCs (recitals 60 and 61). Such a context is therefore likely to limit the commercial supply of and competition for maritime services to Corsica and is not likely to guarantee a service at the least cost to the community.

(690) Secondly, as Corsica Ferries points out (recital 518), the tender award criteria relating to financial compensation were weighted at only 20 %, while the criteria relating to the technical value of the bids were weighted at 60 % (recital 271). The Commission observes that these technical criteria were not defined in such a way as to allow effective competition minimising the advantage enjoyed by the successful tenderers, since those criteria mainly measured the capacity and quality of the candidates in terms of meeting the public service obligations assigned (timetables, adaptation of the fleet to users' needs, quality of services to professional and private users, etc.) rather than encouraging effective competition minimising the amount of compensation.

([234]) OJ C 8, 11.1.2012, p. 4.

(691) Moreover, the Commission notes that the procurement procedure for the PSCs did not lead to sufficient open and genuine competition, given the small number of candidates for each lot (recital 276). Corsica Linea's and La Méridionale's arguments that there was significant competitive pressure because '*it was common knowledge*' that three operators (Corsica Linea, La Méridionale and Corsica Ferries) could apply (recitals 577 and 614) are purely speculative and, moreover, unproven, since Corsica Ferries did not apply for the PSC award procedure. Similarly, the fact that the number of candidates (Corsica Linea and La Méridionale) is consistent with the number of operators who participated in the operator consultation is not in itself capable of demonstrating the existence of sufficient open and genuine competition (recital 613). Moreover, its own observation that no operator other than those three expressed an interest in the Corsican market (recital 575) thus reveals the low level of competition generated by the PSC award procedure, a fact acknowledged by La Méridionale (recital 613). Furthermore, Corsica Ferries, despite its interest, did not submit a bid which could have contributed to increasing competitive pressure during the PSC tendering procedure (recital 273). Thus, Corsica Linea's arguments that (i) the negotiation procedure reduced the amount of financial compensation initially proposed by the candidates (recital 578) and (ii) the French authorities were under no obligation to accept the bids of those candidates (recital 579) are not in themselves such as to demonstrate that the OTC obtained maritime transport services at the lowest cost to the community.

(692) Finally, in the case of procedures where only one bid is submitted, the tender cannot be deemed sufficient to guarantee the lowest cost to the community. ([235]) In the present case, all the PSCs, apart from those concerning the services to Propriano and Porto-Vecchio (which received only two applications), received only one application. Corsica Linea does not explain in that regard why the absence of a competing bid for three of the lots does not make it possible to rule out the existence of sufficient pressure in the present case (recital 576). Similarly, in Lots 3 (Porto-Vecchio) and 4 (Propriano), the fact that the French authorities accepted the lowest bid in both cases does not demonstrate that the successful bid was, in itself, the bid with the lowest cost to the community.

(693) It follows from these considerations that the tendering procedure for the PSCs provided no guarantee for the community that the services in question were contracted at the lowest cost.

7.1.3.2.2. Compensation determined on the basis of the costs that a typical, well-run and adequately resourced undertaking would incur to fulfil the assigned public service obligations

(694) The Commission points out that the fourth criterion laid down in the *Altmark* judgment, based on the analysis of costs in relation to a typical, well-run and adequately resourced undertaking, must be used where the undertaking entrusted with the execution of public service obligations is not chosen pursuant to a public procurement procedure.

(695) The French authorities have not provided any evidence or information capable of demonstrating that the compensation paid under the PSCs was determined on the basis of the costs that a typical, well-run and adequately resourced undertaking would bear in order to fulfil the public service obligations assigned to it. The interested parties did not submit any comments on this point.

(696) It should also be noted that the PSCs make no reference to the costs that would be incurred by a typical, well-run undertaking with adequate means to fulfil the public service obligations assigned to it. On the contrary, it is apparent from the information in the file that the compensation was determined only at the end of the PSC tendering procedure, following negotiations between the beneficiaries of the PSCs and the OTC, without any reference being made, during those negotiations, to the costs that would be borne by a typical, well-run undertaking with adequate means to fulfil the public service obligations assigned to it in order to determine that amount of compensation.

([235]) SGEI communication, paragraph 68.

(697) In the absence of any specific evidence provided by France, the Commission can only conclude that the compensation granted under the PSCs was not determined on the basis of the costs which a typical, well-run and adequately resourced undertaking would bear in order to fulfil the public service obligations assigned to it.

(698) As a result, the PSCs do not fulfil the fourth Altmark criterion.

7.1.3.3. Conclusion on the existence of an advantage

(699) In view of the above, the Commission concludes that the PSCs conferred an economic advantage on their beneficiaries which they would not have obtained under normal market conditions.

7.1.4. *Selectivity of the PSCs*

(700) Where the Commission has identified an advantage, arising directly or indirectly from a particular measure, it is also required to establish that that advantage specifically benefits one or more undertakings.

(701) The selectivity requirement differs depending on whether the measure in question is envisaged as a general scheme of aid or as individual aid. In the latter case, the identification of the economic advantage is, in principle, sufficient to support the presumption that it is selective ([236]).

(702) In the present case, the PSCs were all granted under bilateral contracts concluded with each of the beneficiaries.

(703) These PSCs are therefore individual measures and must therefore be presumed to be selective in favour of those beneficiaries.

7.1.5. *Barrier to trade between Member States and distortion of intra-EU competition created by the PSCs*

(704) Aid which is intended to release an undertaking from the costs which it would normally have had to bear in its day-to-day management or its normal activities in principle distorts competition ([237]). It has been ruled that any grant of aid to an undertaking exercising its activities in the Community market is liable to cause distortion of competition and affect trade between Member States.

(705) Maritime transport within a Member State (maritime cabotage) has been open to all Community operators since 1 January 1993 ([238]). Since that date, aid granted to an undertaking transporting passengers and/or freight within a Member State has therefore been liable to constitute a barrier to trade between Member States. In the present case, the PSCs grant compensation for the provision of maritime freight and passenger transport services in connection with maritime services to Corsica. That compensation is therefore likely to affect trade between Member States, also because Corsica has connections with Italy.

(706) It should be borne in mind that Corsica Linea and La Méridionale operate on routes between the French mainland and Corsica in direct competition with operators such as Corsica Ferries, but also, potentially, with any maritime undertaking offering, or likely to offer, maritime transport services to/from Corsica (recital 45). This is all the more the case in view of the significant passenger traffic between Corsica and the French and Italian mainlands (recital 56). The Commission thus notes that the measures are likely to strengthen the position of Corsica Linea and La Méridionale in relation to competing maritime transport undertakings in the European Union and, in so doing, may distort competition.

(707) Consequently, the measures are likely to distort competition in the internal market and affect trade between Member States.

([236]) Judgment of 4 June 2015, *MOL*, C-15/14 P, ECLI:EU:C:2015:362, paragraph 60.
([237]) See judgment of 19 September 2000, *Germany* v *Commission*, C-156/98, ECLI:EU:C:2000:467, paragraph 30 and the case-law cited.
([238]) See the Cabotage Regulation.

7.1.6. *Conclusion regarding the existence of State aid*

(708) On the basis of the above, the Commission considers that the compensation granted to the operators under the PSCs constitutes State aid under Article 107(1) TFEU.

7.2. **Legality of the Measures**

(709) Pursuant to Article 108(3) TFEU, Article 2(1) of Council Regulation (EU) 2015/1589 ([239]) provides that 'save as otherwise provided in regulations made pursuant to Article 109 TFEU or to other relevant provisions thereof, any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned.' Article 3 of that regulation further provides that 'aid notifiable pursuant to Article 2(1) shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.'

(710) The Commission notes that, although the French authorities did notify, on 27 December 2022, their plans to establish PSCs for the period from 1 January 2023 to 31 December 2030, they nevertheless implemented the PSCs on 1 January 2023 without the Commission taking, or being deemed to have taken, a decision authorising them. The measures in question therefore in principle infringe Article 2(1) of Regulation (EU) 2015/1589.

(711) The Commission notes that, under the SGEI Decision, Member States may be exempted, in certain cases, from the notification requirement under Article 108(3) TFEU.

(712) In that regard, it is necessary to examine whether the PSCs fall within the scope of the SGEI Decision in order to determine whether the measures are exempted from the notification requirement laid down in Article 108(3) TFEU.

(713) The Commission points out first of all that, according to established case-law, as an exception to the general rule of the notification requirement, the provisions of a regulation or a decision granting exemption from notification, and the conditions laid down therein, must be interpreted strictly ([240]).

(714) The scope of the SGEI Decision is defined in its Article 2. Article 2(d) provides that State aid in the form of public service compensation for maritime links to islands is not exempt from the notification requirement if the average annual traffic on those routes exceeded 300 000 passengers in the two financial years preceding that in which the SGEI was granted.

(715) Article 2(d) of the SGEI Decision refers only to maritime passenger transport and makes no reference to maritime freight transport. In view of the principle of strict interpretation which governs the application of a notification exemption decision (recital 713), the Commission considers that, in the absence of any explicit reference to maritime freight transport, compensation paid for SGEIs relating to maritime freight transport, or to combined services (passengers/freight), cannot be covered by the SGEI Decision ([241]).

(716) Since the PSCs relate to combined services, the compensation granted to the beneficiaries of the PSCs does not fall within the scope of the SGEI Decision.

(717) The comments from the interested parties on this point do not affect this conclusion.

([239]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, ELI: http://data.europa.eu/eli/reg/2015/1589/oj).

([240]) Judgment of 21 July 2016, *Dilly's Wellnesshotel*, C-493/14, ECLI:EU:C:2016:577, paragraphs 37 and 38; judgment of 5 March 2019, *Eesti Pagar AS*, C-349/17, ECLI:EU:C:2019:172, paragraph 60.

([241]) For an interpretation by analogy, see the judgment of 19 October 2023, *SAD Trasporto locale*, C-186/22, ECLI:EU:C:2023:795, paragraphs 23-29, concerning the scope of a regulation exempting from notification State aid granted in the form of public service compensation for land transport services.

(718) First of all, contrary to Corsica Linea's assertion (recital 582), the exclusion of maritime freight transport from the scope of the SGEI Decision is not contrary either to the text of the SGEI Decision or to its purpose as interpreted by recital 24 of that Decision. Indeed, none of the articles in the SGEI Decision mention maritime freight transport. Recital 24 merely specifies the rules applicable to State aid granted for the financing of SGEIs in the air and maritime transport sectors, simply clarifying that the SGEI Decision determines the conditions under which such aid may be exempted from the notification requirement laid down in Article 108(3) TFEU in the absence of a sectoral rule on this point. However, Article 2(d), which defines the scope of the SGEI Decision, does not cover maritime freight transport. Moreover, Corsica Linea does not justify why the exclusion of maritime freight transport from the SGEI Decision would be contrary to the principle of equal treatment.

(719) Furthermore, the argument that the reference only to a passenger threshold is justified by the fact that passenger traffic is an overall indicator of the economic importance of a given route (recital 584) does not demonstrate that the SGEI Decision expressly covers maritime freight transport. On the contrary, the Commission notes that the main purpose of the PSCs is the transport of freight, passenger transport being limited to the transport of medical passengers and drivers (except for the Marseille-Propriano route), the volumes of which are limited.

(720) Finally, the observation that the Commission's decision-making practice suggests that the SGEI Decision applies to combined services is irrelevant (recital 583), since it is settled case-law that the Commission is not bound by its decision-making practice ([242]).

(721) The SGEI Decision is therefore not applicable in the present case. It follows that the measures were unlawfully implemented by the French authorities, in breach of Article 3 of Regulation (EU) 2015/1589 and Article 108(3) TFEU.

7.3. **Compatibility of the measures**

7.3.1. *Applicability of Article 106(2) TFEU and of the SGEI Framework*

(722) Where public service compensation constitutes State aid under Article 107(1) TFEU, that compensation is subject to Articles 106, 107 and 108 TFEU.

(723) The assessment of the compatibility with the internal market of State aid granted for SGEIs has its legal basis in Article 106(2) TFEU. In the present case, the State aid in question concerns the granting of compensation in return for fulfilling public service obligations within the framework of an SGEI. It is therefore necessary to analyse the compatibility of the aid with Article 106(2) TFEU and, more specifically, with the specific rules relating to the application of that article.

(724) In the present case, the specific rules relating to the application of Article 106(2) TFEU are contained in the SGEI Framework. According to paragraph 11 of the SGEI Framework, 'State aid falling outside the scope of the [SGEI Decision] may be declared compatible with Article 106(2) of the Treaty if it is necessary for the operation of the service of general economic interest concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union. The conditions set out in sections 2.2 to 2.10 [of the SGEI Framework] must be met in order to achieve that balance.'

(725) The Commission notes that the French authorities also notified the PSCs on the basis of the SGEI Framework.

(726) The sections below therefore set out the Commission's analysis of the compatibility of the measures in question with the conditions laid down in the SGEI Framework, given that the measures do not fall within the scope of the SGEI Decision (recital 721).

([242]) Judgment of 20 September 2011, *Regione autonoma della Sardegna*, T-394/08, ECLI:EU:T:2011:493, paragraph 190.

(727) It should also be noted that, in accordance with paragraph 8 of the SGEI Framework, the principles set out in the SGEI Framework apply to public service compensation granted in the field of maritime transport without prejudice to stricter specific provisions contained in sectoral Union legislation. In the field of maritime transport, the Cabotage Regulation, as interpreted by the interpretative communication, sets out the conditions under which a Member State may conclude public service contracts with shipping companies involved in scheduled services to or from islands, and pay financial compensation to shipowners in return. The Commission will therefore analyse the compatibility of the measures with the SGEI Framework, without prejudice to the specific provisions laid down in the Cabotage Regulation.

7.3.2. *Existence of a genuine service of general economic interest*

(728) According to paragraph 12 of the SGEI Framework, the aid must be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) TFEU. The burden of proving the correct definition of the scope of public service rests with the Member State ([243]), on the understanding that the Commission's examination is limited to manifest error of assessment, as indicated in paragraph 13 of the SGEI Framework.

(729) Paragraph 13 of the SGEI Framework points out that Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the state, by undertakings operating under normal market conditions.

(730) Paragraph 14 of the SGEI Framework emphasises that Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account.

(731) As stated in recital 727, the Cabotage Regulation authorises a Member State to conclude public service contracts for scheduled services to or from islands in return for financial compensation. A public service contract under the Cabotage Regulation is understood as a contract concluded in order to provide adequate transport services. It may cover notably:

— standards of continuity, regularity, capacity and quality;

— additional transport services;

— transport services at specified rates and subject to specified conditions, in particular for certain categories of passengers or on certain routes; and

— adjustments of services to actual requirements.

(732) The two judgments of 1 March 2017 delivered by the General Court in Cases T-366/13 ('*SNCM I* judgment') ([244]) and T-454/13 ('*SNCM II* judgment') ([245]) clarified the obligations incumbent on the Member States as regards the definition of the scope of a public service and the form which public intervention must take in order to ensure the provision of that service. In particular, the General Court confirmed that the scope of a public service contract must meet a public service need characterised by (i) user demand for all or part of the services (ii) not met by market operators in the absence of an obligation laid down by the public authorities to that end, (iii) the Member State having to give preference, to meet this need, to the approach which is least harmful to the essential freedoms for the proper functioning of the internal market ([246]).

([243]) Judgment of 15 November 2018, *Stichting Woonlinie*, T-202/10 RENV II and T-203/10 RENV II, ECLI:EU:T:2018:795, paragraphs 79-83.
([244]) Judgment of 1 March 2017, *SNCM I*, ibid.
([245]) Judgment of 1 March 2017, *SNCM II*, ibid.
([246]) Judgment of 1 March 2017, *SNCM II*, paragraph 134.

(733) In the present case, it is necessary to assess whether the scope of the PSCs meets the conditions laid down in the SGEI Framework and the Cabotage Regulation as interpreted by the interpretative communication. The Commission will therefore examine whether the PSCs meet a public service need and whether they are the approach which is least harmful to the essential freedoms for the proper functioning of the internal market.

7.3.2.1. Characterisation of a public service need

(734) As the General Court held in *SNCM II*, the characterisation of a public service need in relation to maritime cabotage can result only from demonstrating user demand for a given service which is not satisfied by the market. According to the General Court, a public service need can be assessed through, inter alia, market research, public consultations or calls for projects ([247]).

(735) These conditions correspond, in essence, to those imposed by paragraphs 14 (Member States must give proper consideration to the interests of users, through public consultation or other appropriate instruments) and 13 (Member States must be sure that there is a market failure) of the SGEI Framework.

(736) It follows, first of all, that if there is no *user demand* for all or part of the services, there can be no public service need. In that regard, paragraph 14 of the SGEI Framework provides that the interests of users must be duly taken into account through public consultations or other appropriate instruments. Identification of user demand, both in qualitative and quantitative terms, is necessary to set the framework for the market failure analysis. Defining a public service need consists in comparing user demand with the commercial supply that operators would propose in the absence of the public service obligation envisaged by a Member State.

(737) Similarly, in the absence of a *market failure*, there can be no public service need. The analysis of market failure is divided into two stages. First of all, it is necessary to examine the services that the market would offer in the absence of the public service obligation envisaged. In that regard, paragraph 14 of the SGEI Framework states that the interests of service providers must be properly taken into account through public consultations or other appropriate instruments. Then, it is necessary to examine whether such supply would be sufficient to meet user demand.

(738) As Corsica Ferries rightly points out (recitals 455 and 456), the identification of market supply is not limited to the that identified *ex ante* on the market, but must be evaluated dynamically, by assessing future market supply. In other words, when analysing a market failure, Member States are obliged to verify that the existing *and* potential supply (i.e. the supply that an operator could provide, credibly and within a reasonable timeframe, in the absence of the public service obligation envisaged) would not be sufficient to meet the user demand identified.

(739) However, contrary to Corsica Ferries' assertion (recital 457), there is no obligation on the Commission to carry out a detailed examination of the Member State's analysis of the existence of a market failure. As stated in recital 728, the Commission's examination is limited to checking for manifest error of assessment.

(740) In the present case, the French authorities questioned the need to maintain public service contracts in the context of maritime services to Corsica. They concluded that they should be maintained in the light of the public service needs they had identified. The subsections below present the Commission's analysis of each of the public service needs identified by France.

7.3.2.1.1. Need for maritime transport of Corsican resident and non-resident passengers between Marseille and Propriano

(741) In the context of this subsection, the Commission will examine whether the need for maritime transport of Corsican resident and non-resident passengers on the Marseille-Propriano route meets (i) demand from those users, duly demonstrated by France, (ii) which could not be met by private supply.

([247]) Judgment of 1 March 2017, *SNCM II*, paragraph 135.

7.3.2.1.1.1. Existence of user demand

7.3.2.1.1.1.1. Qualitative demand

(1) On the appropriate instruments used to establish qualitative demand

(742) The Commission notes that the French authorities identified passenger demand on maritime services to Corsica, including on the Marseille-Propriano route, by several means.

(743) First of all, the French authorities organised several public consultations to gather information on the demand from these passengers.

(744) An initial consultation, the user consultation (recital 93), invited all passengers to respond to a general questionnaire on the use of maritime transport services between the port of Marseille and the Corsican ports. This questionnaire was accompanied by several documents informing users of (i) the main characteristics of the maritime services to Corsica, (ii) the steps taken by the French authorities to establish the existence of a public service need and (iii) the presentation of the various user categories initially identified by France (recital 95). The Commission considers that all this information enabled users to understand the context in which they were consulted. In addition, the user consultation was open for a period of one month, which is a reasonable period of time. This consultation and its information documents were accessible to the general public on the CdC's website and were publicised in the local and regional press (recitals 94, 95 and 366) in order to ensure the widest possible dissemination to the public.

(745) The questionnaire contained around 20 questions, designed to assess user needs for each maritime link between the port of Marseille and the Corsican ports, including the Marseille-Propriano link. The detail of the questions, set out in Section 3.4.2.1.1.1.1, shows that they enabled the French authorities to collect information, for each route between Corsica and the French mainland (including the Marseille-Propriano route), on passengers' needs in terms of departure and arrival times, types of travel (car and cabin), frequencies of maritime services, and fares applied (recital 105). Furthermore, the questionnaire included several questions relating to the substitutability (from users' point of view) of the mainland ports (recital 106) and of air and maritime transport (recital 107).

(746) The questions generally proposed several possible answers. Several questions even allowed respondents to provide different answers to those suggested. In general, the French authorities accepted any free text contribution (recital 109). The questionnaire was therefore sufficiently open to allow various points of view to be expressed. The suggested answers were clear, plausible and varied. Corsica Ferries' observation that the questionnaire was too restrictive (recital 401) should be rejected.

(747) In the opening decision ([248]), the Commission questioned the possible methodological bias caused by the fact that the questionnaire was primarily intended for users of the maritime routes between the port of Marseille and Corsica. Nevertheless, after an in-depth analysis, the Commission notes that the questionnaire did not have such a bias, since several questions asked users about the substitutability of the port of Marseille with the other mainland ports for their trips to/from Corsica (recital 106). The French authorities were thus in a position to ascertain (i) whether users compared the crossings available in Marseille, in terms of frequency and purpose, with those available in Toulon and Nice; (ii) whether users would switch to Toulon and Nice in the event of a hypothetical increase in maritime transport fares in Marseille; and (iii) whether users had already used the ports of Toulon and/or Nice to travel from/to Corsica, and for what reason. As a result, the French authorities were in a position to understand the degree of substitutability between the mainland ports, and particularly of the port of Marseille with the ports of Toulon and Nice.

(748) Corsica Ferries' comment on the wording of the questions (recital 400) should therefore be dismissed. Contrary to its claim, the questions relating to the mainland ports other than Marseille were not directed solely at explaining the respondent's choice of the port of Marseille over the other ports. They also asked users about the reasons for using the ports of Toulon and/or Nice rather than the port of Marseille.

([248]) Opening decision, recital 283.

(749) It must also be borne in mind that, historically, only the routes between the port of Marseille and the Corsican ports have been the subject of public service contracts (recital 69). France could therefore legitimately question, in the present case, the need to maintain public service contracts between Marseille and the Corsican ports, by seeking to identify the current needs of users on those routes, and whether other services (air or maritime from other mainland ports) could meet their needs under conditions equivalent to those of the maritime routes between Marseille and Corsica. Corsica Ferries does not explain how the provision of specific questionnaires for users using routes between Toulon and Corsica, or Nice and Corsica, could have led to conclusions different from those drawn by the French authorities.

(750) Finally, the Commission notes that the user consultation attracted numerous replies (almost 1 000) ([249]), thus providing the French authorities with a significant sample of direct observations from users. Corsica Ferries cannot therefore claim that the number of replies received was insufficient (recital 402) in view of the total number of maritime passengers travelling between Corsica and the French mainland. Corsica Ferries does not provide any information on the minimum number that should be required to utilise user consultation data. For example, it is commonly accepted that a sample of around 1 000 people is sufficient to compile a survey with a low margin of error for the whole of France, which has a population of over 67 million ([250]). In any event, the user consultation was one of a number of instruments used by the French authorities to establish qualitative passenger demand.

(751) As regards the fact, reported by Corsica Ferries, that Corsica Linea attempted to influence the responses to the questionnaires by inviting its employees to tick the answers which would help ensure the maintenance of the public service contract (recital 403), the Commission notes that this is a particularly serious accusation concerning an act which could, under national law, be subject to administrative and/or criminal proceedings. Such allegations must therefore be accompanied by clear, concrete and solid evidence. However, Corsica Ferries does not provide any such evidence in its comments. Although it does provide an email from a Corsica Linea employee, that email merely shared an internet link to the user consultation. The email did not mention the rank of the employee, the recipients or the existence of attachments, and so it is not possible for the Commission to assess its actual scope.

(752) A second consultation, the port consultation, also invited port authorities to submit their comments on maritime services to Corsica, with the aim of informing the French authorities, in particular, of the level of competition in maritime transport services and the capacity of the ports (recitals 116 to 119). As indicated in recital 96, this consultation was open for one month, which was a reasonable period of time. The questionnaire submitted to the port authorities was sufficiently structured to allow the French authorities to obtain a complete and detailed view of the functioning of the ports concerned. It also informed the French authorities not only about user demand (through elements such as the port's catchment area, the facilities available to maritime transport users, the port's accessibility, etc.) but also about the market supply that could be credibly offered in the absence of a public service contract (through a full description of the services and capacities available to shipping companies in the ports). The French authorities received contributions from the ports of Marseille, Toulon and Nice (recital 120), as well as from the Corsican ports through Corsica CCI (recital 124).

(753) The French authorities thus carried out public consultations allowing them to take into account the interests of users.

(754) The French authorities also instructed an independent economic consultant, Gecodia, to conduct a complementary study of user demand, in parallel with the public consultations, in order to supplement the consultations (recital 90). The Gecodia report contains the conclusions on this study. The Commission notes that, under paragraph 14 of the SGEI Framework, a study conducted by an independent economic consultant on user demand for a given service may constitute an appropriate instrument for taking into account the interests of users of the service in question, especially where such a study is conducted in addition to a public consultation.

([249]) 300 replies concerned in particular the Marseille-Propriano route.

([250]) https://www.vie-publique.fr/questions-reponses/269387-les-sondages-dopinion-foire-aux-questions-faq (accessed on 18 October 2024).

(755) These elements show that France relied on several instruments, which the Commission considers appropriate within the meaning of paragraph 14 of the SGEI Framework, to take account of the interests of the users of the services in question.

(2) On France's conclusions on the qualitative demand of users between Marseille and Propriano

(756) The Commission will examine in turn the conclusions of the French authorities on (i) the lack of substitutability of maritime transport with air transport from the point of view of passengers; (ii) the distinction between Corsican resident and non-resident passengers; (iii) the geographical substitutability of the port of Marseille with Toulon and Nice; and (iv) the geographical substitutability of the port of Propriano with the other Corsican ports.

(a) On the lack of substitutability of maritime transport with air transport

(757) The Commission notes that the French authorities considered that user demand for maritime transport between the mainland and Corsica could not be met under equivalent conditions by air transport, irrespective of the maritime route concerned. France ruled out substitutability between air transport and maritime transport on the basis of several factors, summarised in recitals 127 to 131.

(758) Among those factors, the Commission notes, in particular, that the results of the user consultation tend to show that such substitutability is excluded, as a large majority of respondents made little or no comparison between air and maritime transport, particularly for the Marseille-Propriano route. The Commission also notes that a high proportion of passengers travel with their car in the case of maritime services to Corsica, a fact confirmed by Corsica Ferries in its comments (recital 420). The Gecodia report also shows that journey time constraints and transport frequencies contribute to this lack of substitutability, in so far as the journey times differ greatly between the two modes of transport (1 hour by plane and 6-12 hours by boat) and there are far more flights than sea crossings.

(759) On the basis of this evidence, the Commission is of the opinion that such an analysis does not appear to be manifestly incorrect. Moreover, none of the interested parties commented on this point. The French authorities could therefore rule out substitutability between air transport and maritime transport in the context of services to Corsica without committing a manifest error of assessment.

(b) On the distinction between resident and non-resident passengers

(760) The Commission notes that, on the basis of the Gecodia report, France considers that there are two categories of passenger travelling between Corsica and the mainland with separate demand, namely resident passengers, on the one hand, and non-resident passengers, on the other (recitals 132 to 135).

(761) France explains that this distinction stems from the existence of a special fare for Corsican residents imposed by the CdC and also applied by shipping companies. The distinction also results from the different behaviour of the two categories of user in terms of their use of maritime transport services (resident passengers travel more regularly throughout the year and prefer overnight crossings) and their different choice of port of departure/arrival on the French mainland (resident passengers do not regard Marseille and Nice as substitutable, unlike non-residents).

(762) In the opening decision, the Commission took the preliminary view that this distinction did not appear to be vitiated by a manifest error of assessment. However, after an in-depth analysis of the evidence submitted by France, the Commission does not consider that any of these considerations justified such a distinction.

(763) First of all, the argument that resident passengers benefit from a reduced fare imposed by the 2019 PSO scheme does not demonstrate in itself the existence of different behaviour in the use of maritime transport services. The fare is determined on the basis of the user's place of residence and not on the basis of their use of the service in question. The existence of such a fare is primarily the result of the CdC's political will to reduce the constraints of insularity for this category of passenger, without the fare proving that residents behave differently from non-residents. The argument that shipping companies can apply special fares for residents on their own initiative is also irrelevant, since (i) the services considered in the present case are maritime transport services operated between Corsica and mainland France, and not other geographical areas, and (ii) the 2019 PSO scheme requires shipping companies, without any choice on their part, to apply reduced fares for resident passengers on all routes serving Corsica.

(764) Moreover, as regards the arguments that (i) resident passengers travel throughout the year (while non-residents travel mainly in the summer) and (ii) use night crossings more than non-resident passengers (who would rather travel by day), it is clear that this evidence is not manifestly convincing. On the first point, the user consultation shows that a majority of respondents (residents and non-residents) travel two to five times a year (recital 112), including on the Marseille-Propriano route, such that these two categories of passengers have similar travel frequencies, even if they tend to travel at different times of the year. On the second point, the Commission observes that, as the French authorities themselves acknowledge, the conclusion that residents travel more often at night than non-residents applies only to the routes between Toulon and Corsica. By contrast, almost the same number of resident and non-resident passengers travel at night on the routes between Nice and Corsica. ([251]) In any event, the results of the user consultation clearly show that all users (both residents and non-residents), irrespective of the maritime route concerned, are in favour of the departure and arrival times in Corsica in force at the time of the user consultation, and these times confirm the preference of non-resident passengers for night crossings (recital 112).

(765) More generally, the results of the user consultation largely confirm the existence of homogeneous demand from passengers (recital 112), whether resident or non-resident, for the use of maritime transport services, including on the Marseille-Propriano route ([252]).

(766) The Commission therefore considers, on the basis of the information submitted to it by the French authorities, that there is no obvious difference in the needs of resident and non-resident passengers as regards the use of maritime transport services to Corsica. On the contrary, passenger demand for maritime transport services in the context of maritime services to Corsica is very homogeneous.

(767) Nevertheless, the Commission notes that the French authorities aggregated the demand from resident and non-resident passengers for the purpose of the market failure analysis (see Table 16). Furthermore, the PSC for the Marseille-Propriano route does not provide for any specific public service obligation for either category of passenger: in other words, it treats them equally, without recognising a public service need specific to one of them.

(768) Therefore, the manifest error of assessment made by the French authorities involved a distinction that did not itself call into question the characterisation of the public service need on the Marseille-Propriano route.

(c) On the geographical substitutability of the port of Marseille with the other mainland ports

(769) The Commission observes that, as regards the choice of mainland port of departure/arrival (recital 135), the French authorities took the view that resident passengers did not distinguish between the ports of Marseille and Toulon. In other words, a resident passenger using a route to/from Corsica can use either the port of Marseille or the port of Toulon to reach their final destination. However, France considered that, due to the distance of 200 km between Marseille and Nice, resident passengers did not consider those two ports to be substitutable for

([251]) Footnote 78.

([252]) In addition to the departure and arrival times in Corsica and the frequency of crossings, the Commission notes from the user consultation that resident and non-resident passengers (i) have the same needs for travel by car and with a cabin and (ii) have the same preferences for the frequencies of sea crossings between Marseille and Corsica.

their trips to/from Corsica. Consequently, the demand from resident passengers using a route to/from Corsica was to be understood as covering passenger demand between Marseille/Toulon and Corsica, and the analysis of the market failure between Corsica and the French mainland was to be examined simultaneously on routes to or from the ports of Marseille and Toulon.

(770) As regards non-resident passengers, France maintains that they made no distinction between the three mainland ports, and that those three ports were entirely substitutable, without, however, providing any specific justification in support of that conclusion. That meant that the quantitative demand from non-resident passengers had to be calculated on an aggregate basis for the three mainland ports, and the analysis of the market failure between Corsica and the French mainland had to be examined simultaneously on the routes to or from the ports of Marseille, Toulon and Nice.

(771) The Commission also notes that the results of the user consultation show that the majority of passengers (residents/non-residents) compare the available crossings in Marseille and the other mainland ports, and that a large proportion of them used at least one mainland port other than Marseille for their journeys to/from Corsica in 2019 (recitals 113 and 114). In the event of an increase in the maritime fare at Marseille, a significant majority of respondents would switch to Toulon, while a minority would also travel to Nice. The Commission notes, however, that such comparisons are less frequent on the Marseille-Propriano route (recital 113), including in the event of a hypothetical increase in the maritime fare at the port of Marseille (recital 114). Overall, the results also show that non-resident passengers tend to compare the crossings available at the various mainland ports less than resident passengers.

(772) The Commission also notes that, in the context of the port consultation, the ports of Toulon and Marseille stated that they compete fully with each other for maritime passenger transport, with a catchment area covering the whole of France. The level of competition between the port of Nice and the ports of Marseille and Toulon seems to be lower, since the port of Nice primarily attracts regional customers (recitals 121 and 122). However, the authorities of these three ports did not express any particular constraints as regards the possibility of easily handling passenger traffic using their infrastructure (recital 123), although the Toulon port authority is unable to guarantee daily or weekly round trips to Corsica given the high level of occupancy of its infrastructure.

(773) Lastly, the Commission notes that the cities of Marseille and Toulon are approximately 60 km apart, with an average journey time of less than one hour by road and rail (recital 25). The two cities are very well connected with each other, with major motorway infrastructure and frequent rail connections. Nice, on the other hand, is much further away from Toulon and Marseille, with distances of more than 150 km (corresponding to an average journey time of at least 1 hour 45 minutes to 2 hours by road or rail between Toulon and Nice), despite the major road infrastructure and rail connections.

(774) The Commission notes in this regard that a distance of more than 100 km, or a journey time of more than 1 hour, between two facilities can be an indication that, in principle, competition between them is excluded from users' point of view. For example, the Commission considers that the catchment area of an airport covers a geographic market with a radius of around 100 km or around 60 minutes travelling time by car, bus, train or high-speed train ([253]).

(775) The following conclusions can be drawn from these findings.

(776) The Commission considers that the ports of Marseille and Toulon are substitutable from the point of view of passengers, whether residents or non-residents. The distance between the two ports is less than 100 km and the journey time is less than 1 hour; the two cities are very well and regularly connected by road and rail infrastructure. The user and port consultations also show strong competition between the two ports for passenger transport ([254]). In this regard, the French authorities did not commit a manifest error of assessment.

([253]) Communication from the Commission – Guidelines on State aid to airports and airlines, OJ C 99, 4.4.2014, p. 3, point 2.2.
([254]) This conclusion also seems to be shared in the competition authority opinion, paragraphs 297-305.

(777) On the other hand, the Commission considers, on the basis of the information submitted to it, that there is insufficient evidence of substitutability between the ports of Marseille and Nice from the point of view of passengers, whether resident or non-resident ([255]).

(778) Firstly, the Commission notes that the distance between Marseille and Nice is well over 100 km or a travel time of one hour. The substitutability of the port of Nice with the port of Marseille should therefore, in principle, be ruled out. Secondly, the results of the user and port consultations confirm this absence of substitutability between the ports of Nice and Marseille. The port of Nice itself also points out that its catchment area is only regional, unlike that of the other two mainland ports, which is national. Thirdly, the Gecodia report, which nevertheless concludes that non-resident passengers consider the three mainland ports to be substitutable (unlike resident passengers), does not provide any justification to support this conclusion.

(779) On the basis of all the information submitted by France, the Commission considers that, for passengers, whether resident or non-resident, the port of Nice clearly did not appear to be substitutable for the port of Marseille.

(780) Nevertheless, the Commission is of the opinion that this manifest error has no impact, in the present case, on the characterisation of a need for a public passenger transport service between Marseille and Propriano.

(781) First of all, as regards the estimated quantitative demand (i.e. the number of passengers to be transported), the Commission notes that France did not overestimate the quantitative demand from passengers travelling between the French mainland and the port of Propriano, since the port of Propriano has historically only been linked to Marseille, excluding the ports of Toulon and Nice. Therefore, the total number of passengers travelling between the port of Propriano and the French mainland was de facto the number of passengers on the Marseille-Propriano route. The demand estimated by the French authorities, which is based on historical data for 2016-2021 (recital 150), was limited to historical traffic between Marseille and Propriano. As a result, the French authorities strictly included the demand between Marseille and Propriano in the public service need, such that the inclusion or otherwise of the ports of Toulon and Nice within the scope of the public service was of no consequence in the present case.

(782) Secondly, and in the same way, that error did not vitiate the market failure analysis in so far as that analysis showed in any event that there was no operator willing to provide commercial services between the port of Propriano and the French mainland (recital 828). Therefore, irrespective of the degree of substitutability assumed between the mainland ports for links to Propriano, there was in any case a complete market failure.

(d) On the lack of geographical substitutability of the port of Propriano with the other Corsican ports

(783) The Commission observes that, as regards passengers' choice of Corsican port of departure/arrival, the French authorities did not carry out a specific analysis of the geographical substitutability of Corsican ports from the point of view of users, and more particularly of the port of Propriano with the other Corsican ports. In the complaint, Corsica Ferries maintained that the ports of Ajaccio and Propriano were, however, entirely substitutable from the point of view of passengers. In the opening decision, the Commission took the preliminary view that this did not appear to be the case, given the significant travelling time between the two places and the particular topographical characteristics of the journey ([256]).

(784) The French authorities provided several pieces of evidence in this regard during the formal investigation procedure, demonstrating in their view that the port of Propriano is not substitutable with the port of Ajaccio, or more broadly with the other Corsican ports (Sections 2.1, 2.2 and 4.1.3). Some interested parties also provided evidence on this point, with Corsica Ferries insisting on the substitutability of the ports of Ajaccio and Propriano, while Corsica Linea disputes this.

([255]) Since the substitutability between the ports of Toulon and Nice is not relevant for the purposes of this decision, the Commission will not comment on this point, especially since the French authorities have not provided any evidence to assess that substitutability.

([256]) Opening decision, recital 300.

(785) The Commission notes first of all that, on the basis of the information submitted to it, the port of Propriano is located at a considerable distance from the ports of Bastia and L'Île-Rousse (recitals 36 and 37). Therefore, the port of Propriano could not be regarded as substitutable with those other two ports.

(786) As regards the ports of Ajaccio and Porto-Vecchio, the Commission notes that the distance between those ports and Propriano is approximately 70 km. However, in both cases the journey time is almost 1 hour 30 minutes by car and 1 hour 45 minutes by bus, with relatively few daily services available (recitals 36 and 37). Those long journey times thus tend to exclude, in principle, the substitutability of the ports of Ajaccio and Porto-Vecchio with the port of Propriano.

(787) The Commission also notes, as do the French authorities (recital 361), that the travelling times between Propriano and Ajaccio/Porto-Vecchio are affected by winding roads that exacerbate the risk of road accidents, which are particularly frequent in Corsica. The island also has a high rate of road fatalities (recital 18). These geographical constraints also contribute to increasing petrol costs, as Corsica Linea rightly points out in its comments (recital 549); these costs being particularly high in Corsica (recital 21) and this in a context where the Propriano region was badly hit by high inflation in 2022, increasing the daily living costs of the local population (recital 23). This objective information submitted by the French authorities, which takes into account the interest of users in accordance with paragraph 14 of the SGEI Framework, reinforces the finding that it does not appear manifestly incorrect to consider that the ports of Ajaccio and Porto-Vecchio, on the one hand, and Propriano, on the other, can be regarded as non-substitutable from the point of view of users.

(788) The Commission also notes that, although the user consultation did not include specific questions on the geographical substitutability of the Corsican ports, the results of that consultation provided some insights on this point. Indeed, as set out in recitals 113 and 114, while passengers generally tend to compare the crossings available from the various mainland ports to Corsica, these results vary from route to route. It appears that a majority of respondents using the Marseille-Propriano route (more than 60 %) did not use other maritime transport services to/from the other mainland ports in 2019 as an alternative (such as, for example, the Toulon-Ajaccio or Toulon-Porto-Vecchio routes), and that more than 50 % of them never compare the crossings available at the mainland ports to/from Propriano, unlike on the other routes from/to Corsica.

(789) In view of the fact that the port of Propriano has only one link with the mainland (Marseille), those results tend to show all the more so that users do not compare the Marseille-Propriano route with alternative crossings available from other mainland ports, such as Toulon-Ajaccio or Toulon-Porto-Vecchio, to travel to Propriano and vice versa.

(790) On the basis of all these considerations, the Commission considers that it is not manifestly incorrect for the French authorities to consider in the present case that the ports of Propriano and Ajaccio/Porto-Vecchio are not substitutable from the point of view of users ([257]).

(791) The comments submitted by Corsica Ferries, which merely dispute the lack of substitutability between Ajaccio and Propriano alone, are not such as to alter that conclusion.

(792) Firstly, by noting that the distance between Propriano and Ajaccio is only 70 km and that such a distance is negligible for passengers who are mainly in vehicles (recital 420), Corsica Ferries bases the substitutability between the two ports exclusively on the distance between them. However, the distance between the two ports is only one factor among others in determining their degree of substitutability.

([257]) It should be borne in mind in this regard that the questionnaire submitted as part of the user consultation included questions on the use of maritime transport services on the entire route (for example Marseille-Ajaccio), thus taking into account the needs and preferences of users both when departing from or arriving at the port of Marseille, and departing from or arriving at the Corsican ports. Similarly, questions on substitutability between air and maritime transport also concerned users departing from the mainland or from Corsica. The question of the geographical substitutability of the Corsican ports was therefore the only point missing from the user consultation and Gecodia report, but it cannot be concluded, on the basis of the evidence submitted by the French authorities, that such an omission constitutes a manifest error of assessment.

(793) Secondly, Corsica Ferries submits that it is wrong to consider that a travelling time of approximately one hour would be an obstacle to the substitutability of the two ports (recital 421). However, the journey time between the ports of Ajaccio and Propriano is not around 1 hour, but 1 hour 30 minutes by road and 1 hour 45 minutes by bus (recitals 36-37) and therefore considerably longer ([258]).

(794) In that context, Corsica Ferries notes that the French authorities considered that longer journey times between Marseille and Nice or Toulon and Nice did not prevent substitutability between those ports being recognised (recital 422). However, the Commission considers that the analysis of the geographical substitutability of the mainland ports is not relevant for examining the geographical substitutability of the Corsican ports, since the latter must be the subject of an analysis specific to Corsica's circumstances and features. In any event, the Commission considers that the Gecodia report's analysis of the degree of substitutability of the mainland ports was not sufficiently rigorous for the reasons set out in recital 780.

(795) Thirdly, Corsica Ferries notes that residents located midway between Ajaccio and Propriano (in particular in Grosseto-Prugna) considered the two ports to be substitutable (recital 423). The Commission notes, however, that the analysis of a port's catchment area calls for consideration to be given to all users covered by that area, and not only those who are on the boundaries of that area and who, by definition, may be in contact with another catchment area. Indeed, it is inherent in any catchment area to have boundaries, at the edge of which users may resort to one or more other infrastructures or services ([259]). In any event, Corsica Ferries does not demonstrate that the residents of Grosseto-Prugna constitute the majority, or even a significant minority, of the passengers using maritime transport services at the port of Propriano.

(796) Fourthly, the Commission notes, as stated in the opening decision ([260]) and without being challenged on that point by Corsica Ferries, that the fact that passengers usually boarding at Propriano are required to travel to Ajaccio to reach the mainland on days when there is no round trip at the port of Propriano does not, from the passenger's point of view, result from a choice to travel to one port or the other, but from a requirement to travel to Ajaccio due to the absence of services in Propriano. Contrary to Corsica Ferries' argument (recital 424), that fact cannot therefore be regarded as relevant in assessing the substitutability of the two ports.

(797) Lastly, as regards the fact that the French authorities themselves acknowledged the substitutability of the ports of Propriano and Ajaccio for passenger transport in 2018 in the context of an expert opinion ordered by a national court (recital 425), it must be noted that that fact is irrelevant, in so far as it relates to measures other than those examined in the present case. It should be borne in mind that the opinion concerned the substitutability of the ports of Propriano and Ajaccio with regard to the additional service put in place under the 2007-2013 PSC for the summer period, the financing of which constituted incompatible State aid (recital 67).

(798) Thus, Corsica Ferries' arguments that that opinion concerned (i) maritime services to Corsica and public service obligations similar to those laid down by the PSCs and (ii) a recent period during which there were no substantial changes to the market for maritime services (recital 426) are incorrect. The PSCs do not provide for an additional service such as that provided for in the 2007-2013 PSC.

([258]) Corsica Ferries maintains, moreover, that Grosseto-Prugna, which is situated halfway between Ajaccio and Propriano, is 40 minutes from Ajaccio and 45 minutes from Propriano. The total travel time is therefore estimated at 85 minutes, i.e. 1 hour 25 minutes.

([259]) For example, assuming that two infrastructures are close to 400 km apart, users located halfway between the two (i.e. 200 km from both) could consider them to be substitutable, all other things being equal. This does not mean, however, that the two infrastructures are substitutable for that reason alone.

([260]) Opening decision, recital 301.

(799) Furthermore, the letter provided by Corsica Ferries in Annex 8 to its comments does not provide any factual or legal evidence as to the reasons which led the legal expert to find substitutability between the ports of Ajaccio and Propriano, with the result that the Commission is not in a position to include this evidence in its analysis. The letter refers only to the fact that the parties '*agreed*' on the existence of such substitutability. However, the French authorities dispute substitutability between the ports of Ajaccio and Propriano in the present case (Section 4.1.3) and have submitted several pieces of objective evidence in support of their position, which the Commission is required to take a position on under Article 108(3) TFEU. None of the evidence put forward by Corsica Ferries in its comments is capable of establishing that the information provided by France concerning the absence of substitutability between the ports of Ajaccio and Propriano is manifestly incorrect.

(e) Conclusions on qualitative passenger demand

(800) In conclusion, it is apparent from all of the above that the French authorities used appropriate instruments to identify the qualitative passenger demand between Marseille and Propriano, in accordance with paragraph 14 of the SGEI Framework.

(801) Those instruments made it possible to highlight user needs for maritime transport services, although the French authorities made an error of assessment in distinguishing between Corsican resident and non-resident passengers, since the demand from those two categories appeared to be broadly homogeneous. However, this error has no impact on the analysis of the public service need carried out by the French authorities for the Marseille-Propriano route.

(802) Moreover, although the French authorities correctly established the geographical substitutability of the ports of Marseille and Toulon from the point of view of users, they did not carry out a rigorous analysis of the substitutability of the ports of Marseille and Nice. Such an error is not, however, capable of affecting the analysis of the existence of a public service need between Marseille and Propriano.

(803) Lastly, the evidence submitted by the French authorities is sufficiently plausible to rule out any manifest error of assessment relating to the absence of substitutability between the port of Propriano and the other Corsican ports.

7.3.2.1.1.1.2. Quantitative demand

(804) In order to quantify passenger demand for each of the maritime routes between Marseille and Corsica, including on the Marseille-Propriano route, the Commission observes that the French authorities drew up projections for the period from 2023 to 2030, taking as a reference the data for 2019; 2020 and 2021 being affected by the COVID-19 pandemic (recital 150) ([261]). In other words, the French authorities selected the most recent year in which the market for maritime passenger transport in the context of maritime services functioned normally. According to the Commission, that choice is not vitiated by a manifest error of assessment.

(805) In addition, in order to estimate future demand over the period under analysis, the French authorities applied an average annual growth rate from official sources, namely the average annual growth rate published by the Ministry of Ecological Transition for transport demand up to 2030, calculated on the basis of the data available in 2021 (recital 150). The Commission notes that this average annual growth rate was calculated, inter alia, for the purpose of making transport projections available to local authorities for transport-related projects, as is the case here. The French authorities could therefore use that average annual growth rate without committing a manifest error of assessment, particularly since the rate was adjusted to take account of the specific situation of Corsica, which was itself addressed in the studies by the Ministry of Ecological Transition.

(806) The interested parties did not submit any comments on this point.

([261]) The Commission also notes that the data for 2022 were not yet available when the French authorities carried out their analyses of the public service need.

(807) As a result, France did not commit a manifest error of assessment in analysing the quantitative demand for passenger transport between Marseille and Propriano.

7.3.2.1.1.2. Existence of a market failure

7.3.2.1.1.2.1. Identification of market supply in the absence of a public service contract

(1) On the appropriate instruments used by France to identify market supply

(808) The Commission notes that the French authorities launched the operator consultation calling on all interested maritime operators to express their views on the services they would offer in the absence of any public service contract between Corsica and the French mainland. The operator consultation lasted five weeks and was accessible on the CdC website to any operator wishing to participate (recital 97).

(809) The operator consultation included a questionnaire on the characteristics of the commercial services that operators would propose to deploy. This questionnaire was accompanied by several documents informing operators of (i) the main characteristics of the maritime services to Corsica, (ii) the steps taken by the French authorities to establish the existence of a public service need, (iii) the various categories of user initially identified by France and (iv) a brief presentation of the results of the user consultation (recital 98). All the information presented thus enabled operators to understand the context in which they were being consulted.

(810) The questionnaire submitted to operators invited them, in particular, to describe the characteristics of the commercial services they would implement (recitals 163 to 165), enabling the French authorities to understand: the number of routes that would be operated; their frequency; the capacity and characteristics of the vessels used; departure and arrival times; the services offered on board; the periods of the year during which the service would be deployed; whether or not the services included stopovers, etc. The Commission notes that these questions reflected those raised in the context of the user consultation (timetables, frequency, vessels with cabins and vessel capacity, periods of the year, ports of departure/arrival, etc.).

(811) The French authorities were thus in a position to compare the supply proposed by operators with the characteristics of user demand in order to establish the existence of a public service need. It is therefore incorrect to state, as Corsica Ferries does (recital 461), that the questionnaire merely invited operators to describe the services that they would implement in order to meet the needs of territorial continuity. On the contrary, the questionnaire requested, in short, a full description of the market supply, both existing and potential, which operators would be likely to implement in the absence of a public service contract. The Commission notes, moreover, that Corsica Ferries complained, in its reply to the operator consultation, about the detailed nature of the questions (recital 169).

(812) It is also clear from this that Corsica Ferries has no grounds for claiming that the French authorities did not establish a transparent and objective counterfactual scenario (see recital 459).

(813) In addition, the Commission notes that the French authorities also carried out a port consultation, which made it possible to gather relevant information on the capacity and services offered by the ports to shipping companies (recital 752).

(814) As a result, the French authorities carried out appropriate public consultations to take into account the interests of service providers, in accordance with paragraph 14 of the SGEI Framework.

(2) On France's conclusions regarding the identification of market supply

(815) The Commission notes that three operators replied to the user consultation (recital 166). Corsica Linea and La Méridionale stated that they would not provide any commercial services in the absence of a public service contract (recital 167). Corsica Ferries submitted to the French authorities the commercial offer it would make in the absence of any public service contract (recitals 170 to 173).

(816) In its comments, Corsica Ferries considers, in essence, that the statements made by Corsica Linea and La Méridionale were not credible and that the French authorities should therefore have analysed those statements in more detail (recitals 464 and 465).

(817) As a preliminary point, the Commission notes that, under paragraph 14 of the SGEI Framework and Article 4 of the Cabotage Regulation as interpreted by case-law (*SNCM II* judgment), Member States have a wide discretion to choose the appropriate instruments to analyse a possible market failure. They may, in that regard, organise a public consultation (recital 737) with a view to gathering the views of operators on the ability of the market to meet a demand identified by the public authorities. This point is not disputed by any of the interested parties.

(818) The Commission observes that, in the present case, the French authorities organised a public operator consultation, the content of which enabled them to collect precise and complete information on the market supply which would be offered in the context of maritime services to Corsica, under the 2019 PSO scheme, in the absence of any public service contract (Section 3.4.2.2.1).

(819) Where a full and precise public consultation is organised by a Member State, it is the choice of operators whether or not they participate, and if they decide to participate, they must do so on the basis of the principle of good faith. They are therefore required to provide correct and complete information to the Member State in order to enable it to analyse as fully as possible the market supply that would be deployed in the absence of a public service obligation.

(820) In the present case, as regards *the existing market supply* offered by Corsica Linea and La Méridionale, the Commission notes, on the basis of the information provided by the French authorities and the interested parties, that, on the date on which the PSCs were granted (20 December 2022), neither Corsica Linea nor La Méridionale provided commercial services outside PSCs on one or more routes between Corsica and the French mainland. Those companies operated commercial international maritime transport services only between France and North Africa. Corsica Ferries provides no evidence to the contrary in its comments. It merely provides information on the services actually offered, by both Corsica Linea and La Méridionale, in 2023 and 2024, i.e. after the date on which the PSCs were awarded (recital 465). Therefore, the French authorities could not rely on an analysis of the existing private supply offered by Corsica Linea or La Méridionale.

(821) As regards the *potential supply* that La Méridionale and Corsica Linea could have offered, the BRG 1 study provided by Corsica Ferries states that Corsica Linea had submitted a transport plan in June 2022 to the OTC informing it of its intention to launch, in the course of 2023, 19 round trips between Marseille and Propriano, 5 round trips between Marseille and Ajaccio and 10 round trips between Marseille and L'Île-Rousse. It is clear, however, that (i) the transport plan did not concern La Méridionale; (ii) it was submitted more than three months after the operator consultation and the characterisation of the public service need by France, while the PSC tendering procedures had already been launched on 6 May 2022; (iii) it concerned operations planned for 2023 alone, whereas the aim of the operator consultation was to analyse market supply for the 2023-2028 period. In view of those limitations, that fact alone is not sufficient to prove that Corsica Linea's statements were not credible. In any event, Corsica Ferries does not demonstrate how the transport plan, which, moreover, concerns a negligible number of one-off round trips, could have influenced the market failure analysis conducted by the French authorities.

(822) Furthermore, the French authorities cannot be criticised for not having carried out an in-depth analysis of the replies received to the operator consultation if, at that time, they had no evidence that the statements in question were manifestly incorrect. Corsica Ferries' reference to paragraph 369 of the competition authority opinion (recital 464) is irrelevant in this regard, since it does not provide any evidence to that effect. First, the opinion dealt with the characterisation of the public service need carried out in the context of the 2019-2020 PSCs, and not the measures in question. Second, the opinion proposed using an alternative methodology to a public consultation. However, as indicated in recital 814, in the present case, the operator consultation was an appropriate instrument for analysing the market failure, without the French authorities being required, under the SGEI Framework, to use any other instruments to do so.

(823) Moreover, the mere fact that Corsica Linea and La Méridionale had provided identical responses to the operator consultation does not demonstrate the existence of a conflict of interest affecting them or of coordination between the two. Similarly, the mere fact that Corsica Linea and La Méridionale are the outgoing concession holders is not in itself a reason to doubt the credibility of the responses given by those operators during the operator consultation, or even to prevent them from participating in that consultation (recital 466). In that regard, concerning the claim that the composition of Corsica Linea's shareholders prevented it from participating in the consultation because of a conflict of interest (recitals 462 and 463), the Commission notes that there is nothing in Corsica Ferries' comments to establish that Corsica Linea's shareholders were 'the main customers of maritime freight services to Corsica'. The Commission further notes that Article 14 of Directive 2006/123/EC does not prohibit competing operators from participating in a public consultation, as was the case here. In any event, Corsica Ferries does not demonstrate how the prohibition on Corsica Linea's participation in the operator consultation would have enabled the French authorities to reach a different conclusion on the examination of the market failure.

(824) Finally, contrary to Corsica Ferries' claim in recital 467, Corsica Linea and La Méridionale did not merely make general and abstract statements, without any context or consultation. The Commission points out that the operator consultation invited them to detail their market offer in the absence of a public service contract. As Corsica Linea and La Méridionale indicated that they would not provide any commercial services, they could not give details of the services they would offer in the absence of PSCs.

(825) It follows from the above that the French authorities did not make a manifest error of assessment in identifying the market supply which would be offered for maritime passenger transport in the context of maritime services to Corsica, in the absence of a public service contract.

7.3.2.1.1.2.2. Analysis of market failure

(826) The Commission notes that the French authorities concluded that there was a complete market failure between the port of Propriano and the ports of Marseille and Toulon (these two ports being substitutable), since Corsica Ferries would not offer any commercial services between Marseille/Toulon and Propriano (recitals 169 and 174).

(827) Corsica Ferries does not dispute in its comments the French authorities' interpretation of its commercial offer. It considers only that the ports of Ajaccio and Propriano are substitutable, such that the services it would offer between the port of Ajaccio and the mainland would be sufficient to cover demand to/from Propriano. However, the Commission rejects this argument for the reasons set out in recitals 783 to 799.

(828) It follows that the French authorities did not commit a manifest error of assessment in finding that there was a market failure between the port of Propriano and the port of Marseille.

7.3.2.1.1.3. Conclusion on the existence of a need for maritime passenger transport between Marseille and Propriano

(829) It follows from all of the above that the French authorities did not commit a manifest error of assessment in identifying the existence of a public service need between Propriano and Marseille, since the demand for transport established and quantified by the French authorities could not be covered by the market supply identified.

7.3.2.1.2. Need for maritime transport of medical passengers

(830) In this subsection, the Commission will examine whether the need for maritime transport of medical passengers on each of the routes between the Corsican ports and the port of Marseille meets (i) the demand from those users, duly demonstrated by the French authorities, (ii) which could not be met by market supply in the absence of a public service contract drawn up to that effect by the French authorities.

7.3.2.1.2.1. Existence of user demand

7.3.2.1.2.1.1. Qualitative demand

(1) On the appropriate instruments used to establish qualitative demand

(831) The Commission notes that the French authorities sought to identify the demand from medical passengers by several means.

(832) First of all, the French authorities organised several public consultations to gather information on the demand from these passengers.

(833) An initial consultation, the user consultation (recital 93), invited all medical passengers to respond to a questionnaire on the use of maritime transport services in the context of services to Corsica. The questionnaire had the same characteristics as that sent to all passengers (recitals 744 to 746), and also contained more precise questions on the needs and preferences of medical passengers (recital 108). As a result, the user consultation made it possible to take due account of the interests of medical passengers, and the Commission refers in this regard to its analysis set out in recitals 746 to 751. However, the consultation proved unsuccessful, since the French authorities received a small number of replies to the questionnaire (recital 111).

(834) A second consultation, the port consultation, also invited port authorities to submit their comments on maritime services, with the aim of informing the French authorities, in particular, of the level of competition for maritime transport services in the context of maritime services and the capacity of those ports (recitals 116 to 119, and 752).

(835) Finally, the French authorities also instructed an independent economic consultant, Gecodia, to conduct a complementary study of user demand, in parallel with and in order to supplement the public consultations (recitals 90 and 754). The Gecodia report contains the conclusions on this study, and in particular on the demand from medical passengers. Given that the user consultation produced no results with regard to the demand from medical passengers, the French authorities relied exclusively on the Gecodia report to characterise the demand from those users. The Gecodia report assessed the qualitative (and quantitative) demand on the basis of substantial data gathered, in particular, from health and social security agencies.

(836) These elements show that France relied on several instruments, which the Commission considers appropriate within the meaning of paragraph 14 of the SGEI Framework, to take account of the interests of the users of the services in question.

(2) France's conclusions on the qualitative demand

(837) The Commission will now examine France's conclusions on (i) the absence of substitutability of maritime transport with air transport from the point of view of medical passengers; (ii) the geographical substitutability of the port of Marseille with the ports of Toulon and Nice; and (iii) the geographical substitutability of the Corsican ports.

(a) On the absence of substitutability of maritime transport with air transport

(838) The Commission notes that the French authorities considered that user demand for maritime transport between the mainland and Corsica could not be met under equivalent conditions by air transport, irrespective of the maritime route concerned. The French authorities ruled out substitutability between air transport and maritime transport on the basis of several factors, summarised in recitals 127 to 131.

(839) The Commission points out that such substitutability is excluded in the case of medical passengers travelling by sea, in so far as the mode of transport is imposed by the doctor's medical prescription according to the patient's condition and their level of autonomy (recitals 141 and 142).

(840) The Commission therefore considers that this analysis is not vitiated by a manifest error of assessment. The interested parties did not submit comments on this point.

(b) On the lack of geographical substitutability of the mainland ports

(841) The Commission notes first of all that, as regards medical passengers, the need for maritime transport concerns (i) passengers residing in Corsica (ii) who have to travel to the mainland to receive treatment which is not available on the island (recitals 143 to 144) (iii) by maritime transport where medically prescribed (recitals 141 to 142). The Commission thus notes that medical passengers have an urgent need to travel to the mainland of France in order to receive appropriate care.

(842) The Commission then comments that, in order to obtain reimbursement for transport costs which they may incur in connection with their journey, medical passengers must comply with a number of conditions laid down by the CSS (recitals 137 to 139). In particular, the applicable legal regime (Article R.310-10-5 of the CSS) provides that the reimbursement of transport costs is calculated on the basis of the distance between the patient's place of care and the nearest prescribed treatment facility. In other words, medical passengers must take the shortest route between their place of care in Corsica and the prescribed treatment facility on the mainland. As the French authorities point out, it is reasonable, in these circumstances, to consider that medical passengers are very sensitive to the distances travelled between these two points, and that they therefore tend to favour for their journey by sea the mainland port closest to the treatment facility to which they have to travel. As a result, medical passengers do not seem willing to compare the available crossings to the various mainland ports, and thus none of the mainland ports seems substitutable from the point of view of those users.

(843) Lastly, the Commission notes that, on the basis of data obtained from the social security bodies (CPAM), a very large majority of cases involves maritime transport to Marseille, which is where most of the treatment facilities prescribed by doctors for medical passengers are located (recitals 147 and 148). The data submitted by the French authorities therefore confirm that the demand from medical passengers is concentrated on the routes to/from the port of Marseille.

(844) On the basis of those factors, the Commission considers that the French authorities did not commit a manifest error of assessment in taking the view that medical passengers do not regard the mainland ports to be substitutable for one another, including Marseille and Toulon, due to their specific needs.

(845) The comments submitted by Corsica Ferries are not such as to affect this conclusion.

(846) Firstly, Corsica Ferries considers that the public service need identified by the French authorities is not limited solely to medical passengers whose transport costs are eligible for reimbursement by social security, but covers all medical passengers, including those whose journeys are not eligible for reimbursement by social security and who face no regulatory constraints in relation to the journey they must make (recitals 407 to 409). Corsica Ferries points out that there are many cases in which medical passengers undertake medical journeys which are not eligible for reimbursement by social security.

(847) The Commission notes, however, that Corsica Ferries does not document, quantify or even specify the 'numerous cases' in which medical travel not eligible for social security reimbursement is undertaken. Nor does it explain how the French authorities could have identified the journeys that are eligible or ineligible for social security cover, in order to clarify the demand from medical passengers. Such a claim is therefore purely speculative. In these circumstances, the French authorities cannot be criticised for having made a manifest error of assessment by assuming that medical passengers undertake journeys in accordance with the rules of the CSS governing the coverage of transport costs.

(848) Secondly, without providing any evidence, Corsica Ferries considers that Article R. 322-10-5 of the CSS, on which the French authorities rely to exclude any geographical substitutability of the mainland ports from the point of view of users, is not applicable to scheduled boat crossings, such that medical passengers are not obliged to go to the nearest prescribed treatment facility (recitals 410 to 416). They simply have to choose the cheapest journey, regardless of the distance. They can therefore go to either the port of Marseille or Toulon.

(849) Article R. 322-10-5 of the CSS states that 'the reimbursement of transport costs referred to in [subparagraphs] (b)-(f) of paragraph 1 of Article R. 322-10 is calculated on the basis of the distance between the patient's place of care and the nearest prescribed treatment facility'. As stated in recital 137, Article R. 322-10(1)(f) of the CSS provides that 'the transport costs of the insured person or beneficiary who is obliged to travel shall be covered [...] 1. in order to receive the treatment or undergo the examinations appropriate to their condition in the following cases: [...] (d) Transport to a location more than 150 kilometres away under the conditions laid down in Articles R. 322-10-4 and R. 322-10-5'. Article R. 322-10-1 of the CSS states: 'transport covered by health insurance may be carried out by the following means: 1) ambulance; 2) professional seated transport, light medical vehicle or taxi; 3) land-based public transport, scheduled air or sea transport, individual means of transport'.

(850) It is clear from reading those articles that, contrary to the claims of Corsica Ferries, medical passengers travelling from Corsica to the mainland (i.e. to a place more than 150 kilometres away) by one of the means of transport referred to in Article R-322-10-1 of the CSS (including by scheduled boat service) can be reimbursed for their transport costs only if they comply with Article R-322-10-5 of the CSS (i.e. on the basis of the distance between the patient's place of care and the nearest prescribed treatment facility). Corsica Ferries cannot therefore validly claim that Article R. 322-10-5 of the CSS is not applicable to transport by scheduled boat service. It follows that medical passengers are in principle obliged to go to the nearest prescribed treatment facility, including when travelling by scheduled boat service. Thus, the French authorities did not commit a manifest error of assessment in finding that medical passengers are very sensitive to distances and that they travel to the mainland ports closest to their final destination.

(851) The fact that Corsica Ferries was the only company transporting passengers during the COVID-19 lockdown period (recital 417) is irrelevant. As Corsica Ferries admits, this was an exceptional period in which only persons specifically authorised to travel under French law (care workers, military personnel, firefighters, technicians) could do so, which did not necessarily include all medical passengers. Corsica Ferries does not demonstrate in that respect that it carried medical passengers. In any event, it must be noted that, from the users' point of view, that fact does not characterise the geographical substitutability of the mainland ports, in so far as medical passengers did not have the choice of mainland port of arrival, in the absence of a service to Marseille. Consequently, it cannot be concluded that there is necessarily substitutability between the ports of Toulon and Marseille from the point of view of users, where there is no service for users to the port of Marseille and they are obliged to travel to the port of Toulon. On the contrary, in view of the fact that (i) the transport cost reimbursement scheme requires medical passengers to travel to the nearest port (Marseille) and (ii) the large majority of prescribed treatment centres are located in Marseille, which Corsica Ferries does not dispute, France did not commit a manifest error of assessment in considering that there is specific transport demand from passengers for the mainland port closest to their prescribed treatment centre.

(852) Thirdly, Corsica Ferries considers that a journey via Toulon to a healthcare centre located in Marseille does not constitute a constraint for medical passengers, since the two cities are only 45 minutes away by car (recital 418). The Commission refers in this regard to recital 850. In any event, Corsica Ferries wrongly assumes that (i) all medical passengers travel with a vehicle, whereas that is not necessarily the case and (ii) can travel easily from the port of Toulon to the treatment centres in Marseille after a 12-hour journey by boat, without taking into account the patient's health and level of autonomy, as the French authorities rightly point out (recital 644). Corsica Ferries' assumptions therefore appear to be speculative in the case of medical passengers, whose individual situation may be delicate depending on their health or level of autonomy.

(c) On the lack of geographical substitutability of the Corsican ports

(853) The Commission observes that, as regards passengers' choice of Corsican port of departure/arrival, the French authorities did not carry out a specific analysis of the geographical substitutability of the Corsican ports from the point of view of users.

(854) However, on the basis of the information that was submitted by the French authorities during the formal investigation procedure and was available to them at the time the measures were granted (Section 4.1.3), the Commission notes that, in the present case, that omission was not such as to affect the French authorities' examination of the existence of a public service need.

(855) For the reasons set out in recitals 783 to 790, the Commission considers that the port of Propriano is not substitutable with the ports of Ajaccio and Porto-Vecchio.

(856) The Commission also notes that distances and travel times are significantly higher between the rest of the Corsican ports (recitals 36 to 37), taking into account in particular the characteristics identified in recitals 16 to 18. This is the case between the two ports in northern Corsica (L'Île-Rousse and Bastia) and the three ports in southern Corsica (Porto-Vecchio, Propriano and Ajaccio), as well as between Ajaccio and Porto-Vecchio. The distances between these points far exceed 100 km and one hour of travel, irrespective of the means of transport used. As for the distance between Bastia and L'Île-Rousse, while it is only 70 km, the journey takes at least one and a half hours by car and 1 hour 45 minutes by public transport. The Commission also notes the particularly high level of congestion at the port of Bastia, as pointed out by Corsica CCI (recitals 39 and 125), which may also contribute to the lack of substitutability between those two ports.

(857) Therefore, any substitutability between those ports should in principle be ruled out. All the more so as medical passengers are particularly sensitive to the distances travelled, not only because of the scheme for covering transport costs related to medical travel but also because of their potentially delicate and fragile condition linked to their state of health or autonomy, which may lead them to favour the Corsican ports closest to home in order to limit travel time and costs.

(858) Such considerations do not suggest a manifest error of assessment. Moreover, the interested parties did not submit any comments on this point.

(859) Consequently, the French authorities did not commit a manifest error of assessment in considering that none of the Corsican ports were substitutable from the point of view of medical passengers.

(d) Conclusions on the qualitative demand from medical passengers

(860) It is apparent from all the evidence submitted by the French authorities that they were able to establish, without committing a manifest error of assessment, qualitative demand from medical passengers travelling by sea between the port of Marseille and each of the Corsican ports.

7.3.2.1.2.1.2. The quantitative demand from medical passengers

(861) The French authorities estimated the quantitative demand on the basis of both historical data and projected data for the 2023-2030 period.

(862) In order to quantify the historical demand from medical passengers, the French authorities followed three steps.

(863) Firstly, they reconstructed the total annual number of patients living in Corsica who travelled to the mainland to receive treatment not available in Corsica between 2016 and 2019. In the absence of direct data on these flows, the Gecodia report carried out an approximate reconstruction on the basis of public data provided by government health services (recital 154). The Commission notes in this regard that this reconstruction was based on concrete data and that the French authorities made prudent and reasonable assumptions.

(864) The average annual demand also includes persons accompanying medical passengers. The Commission notes that this estimate is consistent with the data collected by the French authorities from the social security bodies (recital 155). Corsica Ferries cannot therefore maintain that the estimate of the number of accompanying persons made by the French authorities is not based on objective data (recital 429). Moreover, France's assumption that persons under the age of 19 and over the age of 75 are systematically accompanied is not manifestly inconsistent with the statutory system for covering the transport costs of accompanying persons, contrary to Corsica Ferries' claims (recital 430) ([262]).

([262]) As stated in Article R.322-10-7 of the CSS cited by Corsica Ferries, 'the public transport costs incurred by a person accompanying an insured person or beneficiary are covered where the latter's condition requires the assistance of a third party or they are under the age of 16'. It is not manifestly incorrect to consider in these circumstances that persons over the age of 75 or under the age of 19 are systematically accompanied, since those two age groups are especially likely to receive assistance from a third party when travelling.

(865) Secondly, the French authorities sought to estimate the number of medical passengers who travelled by boat to the mainland. To that end, they relied on two approaches. A first approach was to empirically establish the number of medical passengers using maritime transport, based on the 15 237 requests for prior approval for medical travel submitted to social security bodies by medical passengers between 2020 and 2021. Of those 15 237 requests, 4 % concerned maritime transport (recital 157). A second approach was to subtract from the total estimated number of medical passengers between Corsica and the French mainland (65 000) those who had travelled by plane (and for whom CPAM had data), in order to obtain the number of medical passengers who travelled by boat. That method estimated the number of medical passengers who had travelled by boat at 30 % (recital 158). The French authorities finally decided to reconcile the two approaches, taking the view that 10 % of the estimated total medical passengers (65 000) travelled by boat (recital 159).

(866) Contrary to Corsica Ferries' claim (recital 431), the French authorities' final estimate is not vitiated by a manifest error of assessment. Indeed, the estimate is based on two approaches, each relevant and based on concrete and reliable data. The fact that there was a significant difference in the estimated number of medical passengers meant that the French authorities could reasonably adopt a cautious and conservative approach, setting the final estimate of the number of medical passengers having travelled by boat at 10 % of the total number of medical passengers estimated annually, i.e. at a level well below the average of the percentages established using these two methods (the average of 30 % and 4 % being 17 %). Corsica Ferries does not explain at any point in its comments why the French authorities' second approach (resulting in an estimate of 30 %) was incorrect or inappropriate. By arguing that the French authorities should have used an estimate of 4 % in line with the first approach, Corsica Ferries ignores the French authorities' second approach, which is just as reasonable as the first, and misinterprets the methodology used by the French authorities.

(867) Finally, the French authorities allocated the demand by Corsican port on the basis of the territorial distribution of MCO activities, which were the only public data available to the French authorities for estimating the point of departure of medical passengers (see recital 160). The Commission further notes that these data reflect the historical distribution of passengers between the different Corsican ports (Table 11). The French authorities also allocated the demand by mainland port on the basis of data collected from CPAMs, which provided more precise data by department (Bouches-du-Rhône, Var, Alpes-Maritimes), and thus by mainland port. Those estimates are reasonable and are not vitiated by a manifest error of assessment.

(868) As regards future demand, the French authorities considered that demand would remain stable over the 2023-2030 period compared to 2019. That assessment, which takes into account both the ageing of the Corsican population (and thus an increase in the number of medical trips) and the expansion of healthcare available in Corsica (and thus a reduction in the number of medical trips), is not vitiated by a manifest error of assessment, in so far as it neutralises those two conflicting assumptions. The interested parties did not submit any comments on this point.

(869) On the basis of all of the above, the Commission considers that the French authorities quantified the demand from medical passengers without committing a manifest error of assessment.

7.3.2.1.2.2. Existence of a market failure

7.3.2.1.2.2.1. Identification of market supply in the absence of a public service contract

(870) The Commission refers in this regard to the arguments set out in recitals 815 to 825, which are also valid for identifying available market supply in relation to the demand from medical passengers.

7.3.2.1.2.2.2. Analysis of market failure

(871) The Commission notes, first of all, that the French authorities concluded that there was a complete market failure between the port of Propriano and the port of Marseille, since Corsica Ferries would not offer any commercial services between Marseille and Propriano.

(872) The Commission also notes that the French authorities considered the service proposed by Corsica Ferries between Marseille and the other four Corsican ports to be sporadic, since Corsica Ferries would offer only three round trips per month from/to L'Île-Rousse and Porto-Vecchio (as opposed to the three weekly round trips required) and two weekly round trips to/from Ajaccio and Bastia, whereas at least five weekly round trips are required to meet user demand.

(873) The Commission notes that the French authorities did not commit a manifest error in their market failure analysis, in so far as it has been established that the market supply was insufficient to meet the entire demand from medical passengers between the port of Marseille and each of the Corsican ports.

7.3.2.1.2.3. Conclusion on the existence of a public service need for the transport of medical passengers between Marseille and each of the Corsican ports

(874) It is apparent from all of the above that France correctly identified the existence of a public service need between Marseille and each of the Corsican ports, since the demand for transport established and quantified by France could not be covered by the market supply identified.

7.3.2.1.3. Need for maritime transport of towed and non-towed freight

(875) In this subsection, the Commission will examine whether the need for maritime transport of towed and non-towed freight between the port of Marseille and each of the Corsican ports meets (i) demand from those users, duly demonstrated by France (ii) which could not be met by private supply in the absence of a public service contract drawn up to that effect by France.

7.3.2.1.3.1. Existence of user demand

7.3.2.1.3.1.1. Qualitative demand

(1) On the appropriate means used to establish the qualitative demand from users

(876) The Commission notes that the French authorities sought to identify the demand from users of towed and non-towed freight transport in several ways.

(877) Firstly, the French authorities organised several public consultations to collect information on the demand from those users.

(878) An initial consultation, the user consultation (recital 93), invited all users of freight transport to respond to a questionnaire on the use of maritime transport services between the French mainland and Corsica. As regards the general characteristics of this consultation, the Commission refers to its analysis set out in recital 744.

(879) The questionnaire sent to freight users included around 20 questions, aimed at assessing the satisfaction and needs of those users in connection with services between Corsica and the mainland for each maritime route between the port of Marseille and the Corsican ports. The detail of the questions, presented in Section 3.4.3.1.1.1.1, shows that they enabled the French authorities to collect information on the profile of users and their travel habits and preferences with regard to departure and arrival times, travel needs, difficulties encountered due to the lack of available spaces at ports or on vessels, frequency of maritime services and fares charged (recital 185). Furthermore, the questionnaire included several questions relating to the substitutability of the mainland ports (recital 186).

(880) For the same reasons set out in recital 746, the Commission considers that the questionnaire was sufficiently open to allow different views to be expressed. The suggested answers are clear, plausible and diversified. Corsica Ferries' observations on this point (recital 401) are therefore unfounded. Similarly, the comments relating to the methodological bias affecting the user consultation are not convincing, for the reasons explained in recitals 747 to 749.

(881) However, the Commission notes that, despite the relevant consultation organised by the French authorities, only five hauliers replied to the questionnaire, making it unusable (recital 188).

(882) The French authorities therefore consulted directly (by telephone) a sample of around 20 operators, whose aggregate market share of freight traffic between Corsica and the French mainland was largely representative (recital 189). As part of this consultation, the French authorities asked users about their use of maritime transport services on all routes departing from the ports of Marseille, Toulon and Nice, and not only from Marseille as initially planned in the user consultation (recital 189). This direct consultation thus enabled the French authorities to remedy the lack of replies to the questionnaire submitted during the user consultation.

(883) Contrary to Corsica Ferries' claim (recital 402), there is no reason to criticise the methodology followed by the French authorities due to the lack of transparency regarding the questions asked and the identity of the operators interviewed. First of all, the alleged lack of transparency has not been established since the questionnaire submitted by telephone was the same as the questionnaire for the user consultation, which was public and accessible to all. Corsica Ferries could therefore be aware of the content of the questions. Secondly, as regards the identification of the operators interviewed, it must be stated that this information does not appear to be relevant, since the operators interviewed represented a substantial part of the freight traffic between Corsica and the mainland. The fact, which has not been proved, that some of the operators may have been shareholders in a contractor is not sufficient, in any event, to exclude those operators from any public consultation, in so far as they remain users of maritime freight transport services in the same way as all other users, and are therefore free to express their needs and preferences in the context of a public consultation.

(884) A second consultation, the port consultation, also invited port authorities to submit their comments on maritime services, with the aim of informing the French authorities, in particular, of the level of competition between maritime transport services in the context of maritime services and the capacity of those ports, with questions relating to the transport of towed and non-towed freight (recitals 192 to 195). As regards the characteristics of this consultation, the Commission refers to its examination set out in recital 752.

(885) It follows that the French authorities carried out public consultations allowing the interests of users to be taken into account, in accordance with paragraph 14 of the SGEI Framework.

(886) The French authorities also instructed an independent economic consultant, Gecodia, to conduct a complementary study of user demand, in parallel with and in order to supplement the public consultations (recital 90). The Commission considers that such a study is an appropriate instrument for establishing user demand, for the reasons set out in recital 754.

(887) These elements show that France relied on several instruments, which the Commission considers appropriate within the meaning of paragraph 14 of the SGEI Framework, to take account of the interests of users of the services in question.

(2) France's conclusions on qualitative user demand

(888) The Commission will examine France's conclusions on (i) the distinction between towed and non-towed freight, (ii) the geographical substitutability of the port of Marseille with the ports of Toulon and Nice for users of non-towed freight and (iii) for users of towed freight, and (iv) the geographical substitutability of the Corsican ports for users of towed and non-towed freight.

(a) On the distinction between towed and non-towed freight

(889) The Commission notes that the French authorities distinguish between towed and non-towed freight mainly because of the handling and logistics constraints of non-towed freight, which requires specific port equipment and a particular logistics chain, unlike towed freight (recitals 205 to 207). These considerations are reasonable and therefore not manifestly incorrect. They also show that the demand for towed freight goes together with demand for the transport of drivers accompanying their lorry as passengers on board the ship.

(890) The Commission also notes that this distinction is agreed on by all port authorities (recital 197).

(891) The Commission notes, however, that Corsica Ferries disputed this distinction in its reply to the operator consultation, considering it artificial (recital 236). Corsica Ferries considered, in particular, that the distinction did not depend on the supply offered by the companies, but on the size, organisation and choices specific to each haulier. However, it must be stated that the French authorities established the existence of such a distinction precisely on the basis of information provided by Corsica Ferries (recital 889).

(892) Therefore, the French authorities could make such a distinction without committing a manifest error of assessment.

(893) In its comments (recitals 393 and 447 to 450), Corsica Ferries states that another distinction should be made between accompanied and unaccompanied towed freight. The absence of such a distinction irretrievably vitiates the estimation of the number of drivers travelling on maritime services to Corsica. In support of its claims, Corsica Ferries refers to the BRG 1 study.

(894) The Commission notes, however, that the BRG 1 study does not provide any concrete data on the existence of such a distinction. In particular, it does not at any point indicate the methodology to be followed by the French authorities in order to distinguish between accompanied and unaccompanied towed freight. Nor does the BRG 1 study provide any figures on the estimated respective volumes of accompanied and unaccompanied towed freight. Finally, the BRG 1 study does not refer to any other study or investigation that has identified the existence of such a distinction. It follows, for example, from the competition authority opinion that a distinction is made only between towed and non-towed freight ([263]).

(895) Thus, in the absence of concrete evidence, the conclusions of the BRG 1 study cannot be such as to characterise a manifest error of assessment on the part of the French authorities. The Commission considers, moreover, that Corsica Ferries had the opportunity to provide specific evidence during both the user consultation (through a free text contribution) and the operator consultation, in order to clarify to the French authorities this potential distinction between accompanied and unaccompanied towed freight, which it did not do however (recital 236).

(b) On the geographical substitutability of the mainland ports in relation to the maritime transport of non-towed freight

(896) As regards non-towed freight, the French authorities established that there was exclusive demand for the port of Marseille.

(897) The Commission notes that this conclusion is based in particular on four elements: (i) only the port of Marseille has sufficient equipment and handling areas to accommodate non-towed freight, given that the only alternative, Toulon-Brégaillon, has much too limited infrastructure to accommodate all or even a not insignificant part of that traffic; (ii) the user consultation clearly shows an absence of substitutability between the port of Marseille and the other mainland ports; (iii) the port authorities on the mainland consider that the port of Marseille is the only port able to handle this traffic on a large scale; (iv) and a transfer of non-towed freight traffic from the port of Marseille to the other mainland ports would result in significant additional costs and logistics constraints affecting the flow of non-towed freight (recitals 210 to 214).

(898) The Commission takes the view that all of these considerations show the absence of geographical substitutability between the port of Marseille and the ports of Toulon and Nice for the maritime transport of non-towed freight.

([263]) Competition authority opinion referred to in recital 20, paragraph 295.

(899) It is apparent from the information provided by the port authorities that the port of Marseille has very large capacities to provide transport to each of the Corsican ports (recital 199). Conversely, although the Toulon-Brégaillon terminal can also accommodate such traffic, it must be stated that its capacity is more limited, since it has only one berth. The Commission also notes the statements by the Toulon port authority that the catchment area of that port extended only to the very immediate hinterland (recital 198). The user consultation also shows a complete absence of substitutability between the ports of Marseille and Toulon (recital 190). Finally, the Commission notes the special organisation of the logistics chain for non-towed freight, which involves hauliers making regular round trips between the port and their logistics bases, the majority of which are located to the north and west of Marseille, in the course of the same day (recital 206). Switching to Toulon would undoubtedly lead to significant additional costs for hauliers, which would be highly likely to be passed on to end consumers in Corsica. Such a situation would add to the economic difficulties already encountered by economic operators and consumers in Corsica as a result of insularity (recitals 20 to 23).

(900) The Commission notes that this point is not discussed by any of the interested parties.

(901) The Commission therefore concludes that the French authorities did not commit a manifest error of assessment in finding that there was exclusive demand for the maritime transport of non-towed freight between each of the Corsican ports and the port of Marseille.

(c) On the geographical substitutability of the mainland ports in relation to the maritime transport of towed freight

(902) As regards towed freight, the French authorities established that there is partial substitutability between the ports of Toulon and Marseille. They consider that some users of towed freight transport do not see any alternative to the port of Marseille. The French authorities justify this conclusion on the basis of the following elements.

(903) *Firstly*, the port consultation revealed the existence of capacity constraints at the ports of Toulon and Nice (recital 217). The Commission notes on this point that, although the three mainland ports can accommodate towed freight, the port authorities in Toulon and Nice expressed reservations about their capacity (recital 199). Var CCI thus points out that Toulon-Port de Commerce is the only terminal in the port of Toulon capable of accommodating towed freight ([264]), and that this terminal already has a significant level of congestion (close to 80 % on average) throughout the year (linked to local public policies) and particularly in summer (traffic limited to around 10 trailers per day). For its part, the port of Nice states that, while it can accommodate towed freight traffic without constraints, passenger traffic remains the top priority.

(904) It is clear from the above that Corsica Ferries' comments on the absence of congestion at the port of Toulon (recital 437) are unfounded in the light of the statements by Var CCI shared with the French authorities during the port consultation. The French authorities cannot be criticised for having relied on that information to analyse the degree of substitutability between the ports of Toulon and Marseille, especially when the information provided by Var CCI was clear and unambiguous.

(905) In the light of those elements, the fact that in 2014 the port of Toulon could accommodate more than twice the current towed freight traffic was not relevant in the present case. Similarly, the fact that Corsica Ferries confirmed that information with Var CCI is also irrelevant, since it does not show that the French authorities misinterpreted the responses provided by Var CCI during the port consultation.

(906) *Secondly*, the French authorities relied on the results of the user consultation to explain the existence of partial substitutability (recital 218). These results thus show that respondents largely exclude any comparison between the ports of Marseille and Toulon or Nice (recitals 190 and 191).

([264]) The Brégaillon terminals do not admit passengers and the Seyne-sur-Mer terminal is reserved for cruise ships.

(907) However, Corsica Ferries disputes the credibility of the responses received during the telephone consultation of freight transport users, in so far as the respondents interviewed were shareholders in Corsica Linea and were therefore, in that capacity, in a situation of conflict of interest with regard to the user consultation (recital 441). It also adds that the responses submitted were general and unsubstantiated assertions from a sample of respondents of uncertain representativeness (recital 440).

(908) The Commission notes, first of all, that the users interviewed responded to the questions put to them as part of the user consultation. Corsica Ferries does not dispute the relevance of the questions asked as part of the user consultation ([265]). It cannot therefore be considered, as Corsica Ferries claims, that the respondents provided 'general and unsubstantiated assertions'. Moreover, the sample of users interviewed could not be considered unrepresentative in view of the freight volumes they represented (recital 189).

(909) Furthermore, according to the Commission, the fact that a user of maritime freight transport is a shareholder in Corsica Linea cannot alone exclude that user from a public consultation aimed at determining the needs and preferences of users of a given transport service. All users of a given service can respond as such to such a public consultation. In the present case, the Commission notes that, on the basis of the information provided by France, while some users were shareholders of Corsica Linea ([266]), others were not ([267]).

(910) Moreover, the Commission observes that the users interviewed, in addition to being the main hauliers in terms of freight volumes, used all the routes between Corsica and the French mainland, including the routes between Toulon/Nice and the Corsican ports on which Corsica Linea is not active. Moreover, the public consultation did not concern the use of freight transport services provided exclusively by Corsica Linea, but those provided by all maritime operators active between Corsica and the French mainland. The Commission notes in this regard that the needs of users are not necessarily linked to the interests of maritime operators: for example, the majority of users surveyed wished to see a Ro-Ro transport service introduced that would better meet their specific needs, even though none of the three operators active between Corsica and the French mainland planned such a service (recital 191). The Commission notes that, in any event, the user consultation is one of the indications used by the French authorities to justify the partial substitutability of the ports of Toulon and Marseille for maritime freight transport.

(911) *Thirdly*, the French authorities point out that transferring towed freight traffic from the port of Marseille to the other mainland ports would entail significant additional costs for users of towed freight transport, whose logistics bases are mainly located to the west of Marseille and in the Rhône corridor (recital 219).

(912) The Commission notes in this regard that the French authorities provided several pieces of evidence to show that the logistics bases are mainly located to the west of Marseille and in the Rhône corridor (recital 213), for which the port of Marseille is in principle more easily accessible than the other mainland ports. The analyses submitted by Corsica Linea (recital 544) and La Méridionale (recitals 593 to 595), as well as Corsica Ferries' complaint (recital 433), also tend to confirm this. It follows that Corsica Ferries' claim that the French authorities never provided any evidence in support of their assertion (recital 442) is unfounded.

(913) The Commission also notes that the French authorities provided concrete evidence of the estimated additional costs that would be incurred by a significant shift of hauliers from the port of Marseille to the port of Toulon. This figure was established in particular on the basis of data published by the national road committee. The interested parties also submitted similar data, all of which showed the existence of such additional costs, although the estimate varies between 5 % of the total production cost according to Corsica Ferries (recital 443) and 11 % according to Corsica Linea (recital 544). La Méridionale considers that it would not make economic sense for the vast majority of hauliers based closer to Marseille than Toulon to switch to the port of Toulon, also confirming the additional road costs involved (recitals 595 and 596).

([265]) Corsica Ferries' criticisms relate to the absence of questionnaires for the routes from Toulon and Nice.
([266]) […].
([267]) For example […].

(914) Although Corsica Ferries acknowledges the existence of additional road costs, it maintains that those additional costs are offset by the lower maritime fare applied by Corsica Ferries at the port of Toulon as compared with that applied by its competitors at the port of Marseille (recital 443).

(915) The Commission notes that the BRG 2 study uses the average freight fare observed in Toulon in 2023 (EUR 32,40 per LM), while it takes the freight fare of EUR 42,50 per LM in Marseille, which represents the maximum fare that can be charged under the 2019 PSO scheme (recital 62). However, such an analysis appears to be incorrect for several reasons. First of all, the study is based on data from 2023, which therefore post-dates the awarding of PSCs. Secondly, the study is based on poor parameters: it compares, on the one hand, the market fare actually applied by Corsica Ferries at the port of Toulon and, on the other hand, the maximum regulatory fare applicable at the port of Marseille under the 2019 PSO scheme. However, for the comparison to be relevant, the analysis would have to be based, for both ports, on the maximum maritime fares applicable under the 2019 PSO scheme, given that maritime operators could reach that cap in the hypothetical scenario in which the PSCs did not exist. Finally, as the French authorities note (recital 650), the maritime fare used by the BRG 2 study for Toulon excludes tax and handling costs, and is not the fare actually paid by users.

(916) The Commission therefore concludes, on the basis of the data provided by France and all the interested parties, that the transfer to the port of Toulon of users of towed freight transport whose logistics bases are mainly located near the port of Marseille or in the Rhône corridor would result in additional road costs for those users. It has not been demonstrated that these additional costs could clearly be offset by a lower maritime fare at Toulon. The French authorities could therefore conclude that this factor was likely to limit the degree of substitutability between the ports of Marseille and Toulon.

(917) The Commission also observes that it is apparent from the responses of the ports of Toulon and Nice that their catchment area is limited to their local hinterland, while the port of Marseille has a national customer base, which is consistent with the conclusions of the French authorities (recitals 197, 198 and 219). La Méridionale provides additional information in this respect (recital 593), which is consistent with the conclusions of the French authorities. Corsica Ferries' comments in this regard (recital 442) must therefore be rejected.

(918) Finally, the Commission notes on this point that it is in the interests of end consumers in Corsica (shops, individuals, businesses, etc.), who depend on and benefit from freight transport services (transport of goods for businesses etc.), to limit the costs of insularity, which are clearly highlighted by the various studies and statistics on the cost of living in Corsica (recitals 20 to 23). It should also be noted that Corsica imports many more goods than it exports, thus showing its dependence on the mainland (recital 19). As a result, a rise in the price of goods imported into Corsica could further affect the island's economy and its inhabitants. The existence of additional road costs would therefore be liable to have an even greater effect on the price of goods for end consumers in Corsica.

(919) *Lastly*, the French authorities considered that episodes of persistent price shocks affecting the port of Marseille had not led to a significant transfer of traffic from the port of Marseille to the ports of Toulon and Nice (recital 220). This point tends to characterise the absence of substitutability between the two ports, and is not disputed by the interested parties.

(920) It is thus apparent from all of the above that the French authorities did not commit a manifest error in taking the view that the ports of Toulon and Marseille are partly substitutable from the point of view of users, and that there is therefore specific demand from the users of towed freight transport for the port of Marseille.

(921) Corsica Ferries' observations in recitals 433 and 434 do not affect this conclusion. Corsica Ferries does not at any point demonstrate how the situation of a towed freight driver is identical to that of a passenger travelling with their car. Furthermore, the fact that Corsica Ferries transports as many drivers from the port of Marseille as from the port of Toulon does not call into question the partial substitutability recognised by France between the two ports for the transport of towed freight. France does not dispute that the ports of Toulon and Marseille each provide half of the towed freight traffic to Corsica: it argues merely that users of towed freight transport prefer the ports closest to their logistics bases and that, therefore, some of the users whose logistics bases are close to the port of Marseille do not consider any alternative to that port.

(d) On the geographical substitutability of the Corsican ports as regards the maritime transport of towed and non-towed freight

(922) The Commission observes that, as regards the choice of Corsican port of departure/arrival for users of towed and non-towed freight transport, the French authorities did not carry out a specific analysis of the geographical substitutability of the Corsican ports from the users' point of view.

(923) However, on the basis of the information that was submitted by the French authorities during the formal investigation and was available to them at the time the measures were granted, the Commission notes that, in the present case, that omission was not such as to affect the French authorities' examination of the existence of a public service need.

(924) *Firstly*, the Commission notes the distances and journeys between each of the Corsican ports, which tend in principle to exclude any geographical substitutability. It refers on this point to recitals 36, 774, 785 and 856.

(925) *Secondly*, the Commission also notes the high level of congestion in Corsica's ports as a whole, as reported by Corsica CCI (recital 201). Corsica CCI draws attention, in particular, to the situation at the ports of Bastia, Ajaccio and Porto-Vecchio, where capacity is reaching saturation point or there is severe congestion. Those disadvantages increase the amount of goods left at the quayside, affect the conditions in which heavy goods vehicles circulate and cause delays in deliveries detrimental to users of the maritime freight transport service (recital 208). France can therefore validly maintain that those constraints are such as to limit the transfer of traffic to one or other of the ports, in particular to the ports of Bastia, Ajaccio and Porto-Vecchio, and to make it necessary, from the point of view of both the users of the service and the public authorities, to spread out maritime freight traffic among the various Corsican ports.

(926) *Thirdly*, the Commission notes that the long distances, traffic conditions and characteristics of the road infrastructure in Corsica (recitals 16 to 19) also mean additional road costs for users of maritime freight transport, which may in turn increase the cost of imports borne by individuals and professionals in Corsica. The Commission also notes that it is in the interest of users and residents of the island to limit the circulation of heavy goods vehicles in Corsica, in particular because of the high risk of accidents and the cost of insularity.

(927) For all these reasons, the Commission considers that it was not manifestly incorrect to consider that the Corsican ports were not substitutable with each other from the point of view of users of maritime freight transport. This point is not disputed by any of the interested parties.

7.3.2.1.3.1.2. Quantitative demand

(928) *Firstly*, as regards the quantification of the partial substitutability of the ports of Toulon and Marseille for the transport of towed freight, the Commission points out that it had expressed doubts in its opening decision on the sources used by the French authorities in assessing that users whose volumes represented 80 % of the historical demand for towed freight between the port of Marseille and the Corsican ports did not see the port of Toulon as substitutable for the port of Marseille. It invited France and the interested parties to submit their comments on this point.

(929) In their comments, the French authorities submitted three analyses tending to confirm their initial estimate of the level of substitutability between the ports of Marseille and Toulon from a demand point of view (recitals 337 to 346). All the interested parties that submitted comments also responded to this point (recitals 444, 445, 543, 591 to 596).

— the first analysis by the French authorities was based on data on the location of the hauliers' headquarters, warehouses and logistics bases. According to France, the immediate proximity of the port of Marseille justifies the preference of hauliers for the port of Marseille. 80 % of total towed freight traffic between Marseille and Corsica between 2018 and 2021 came from hauliers located near Marseille. In France's view, this shows that substitutability between the two ports is limited, at around 20 %;

— the second analysis consisted in identifying the location of the logistics bases of a large number of Corsica Linea's and La Méridionale's customers. It is apparent from that analysis that 83 % of the volume of towed freight transported by Corsica Linea and 88 % of the volume of towed freight transported by La Méridionale can be traced to a logistics base close to the port of Marseille. This analysis therefore confirms the results of the first analysis;

— the third analysis presented detailed data on a large number of hauliers that had used the two ports in the past to transport towed freight by sea, indicating for each haulier the distance between the logistics base and the ports of Marseille and Toulon and the share of towed freight (in LM) that was transported via Marseille and/or Toulon in 2017-2019 and 2021.

(930) The Commission notes that the first two analyses focus solely on historical towed freight traffic between Marseille and Corsica. They only analyse the origin of the towed freight traffic at the port of Marseille, but do not support the conclusion that a haulier whose base is closest to the port of Marseille would use only the port of Marseille and not the port of Toulon. They assume that hauliers have to use the port of Marseille if their headquarters, warehouses or logistic bases are located close to Marseille, without investigating the actual use of the ports, whereas this is precisely the assumption that the French authorities are required to prove. Consequently, the Commission considers that those two analyses do not demonstrate the alleged degree of 'non-substitutability' of 80% between Marseille and Toulon for towed freight.

(931) On the other hand, the third analysis, which shows the actual use of the two ports by hauliers, can be taken into account. The Commission also considers that the data presented in this analysis are sufficiently representative, as they cover approximately 65 % of the volume of towed freight between Corsica and the ports of Marseille and Toulon for 2017-2019 and 2021 (recital 341).

(932) The Commission notes, on the basis of this analysis, that the majority of hauliers actually only use the port which is closest to their logistics base, as set out in recital 344. In particular, this analysis shows that around 79 % of historical towed freight traffic (in LM) originating in a logistics base close to Marseille moved solely through the port of Marseille or would have done so in the absence of capacity constraints. Thus, the Commission considers that the assumption made by the French authorities to assess the demand for towed freight traffic, namely that 80 % of the historical demand is specific to Marseille and does not consider Toulon to be substitutable, does not appear to be manifestly incorrect.

(933) Corsica Ferries' claim (recital 444) that the substitutability rate for towed freight used by the French authorities is not based on any objective and verifiable data must therefore be rejected. In any event, the claim is not supported by any relevant quantitative analysis. Moreover, neither the Commission nor the French authorities are bound by the previous conclusions drawn by the CdC regarding the substitutability of those ports for towed freight traffic, as suggested by Corsica Ferries (recital 445), if the French authorities can demonstrate, on the basis of objective and verifiable data, that the assumptions underlying the assessment of the PSCs are justified, which is the case here.

(934) *Secondly*, as regards the assessment of the demand for towed and non-towed freight, the Commission notes, first of all, that the use of historical data as a basis for estimating the expected demand for maritime freight transport between Marseille and Corsica is a valid approach (recitals 223 and 228). The French authorities thus relied on historical data covering a period of 10 years (2010-2019) to estimate the future demand trends up to 2030.

(935) The parameters chosen by the French authorities are not therefore vitiated by a manifest error of assessment.

(936) *Thirdly*, as regards the assessment of driver demand associated with towed freight traffic, the Commission observes that France considered driver demand to be proportional to the volume of towed freight transported. France calculated the future demand between 2023 and 2030 on the basis of the ratio of driver / LM transported between 2018 and 2021 (recital 230).

(937) Contrary to Corsica Ferries' claims (recitals 446 to 454), such an approach, based on concrete, historical and objective data, is not affected by a manifest error of assessment.

(938) Firstly, the French authorities were not required to distinguish between accompanied and unaccompanied towed freight for the reasons set out in recitals 894 and 895.

(939) Secondly, the French authorities did not use the ratio of driver / LM transported expected in 2030 to estimate the demand between 2023 and 2030, but relied on the average historical ratio of drivers / average LM calculated between 2018 and 2021 and on the future demand for towed freight to assess the number of drivers each year between 2023 and 2030.

(940) Thirdly, the French authorities did not apply an incorrect ratio, but merely a ratio rounded to two decimal places, whereas Corsica Ferries took the ratio to three decimal places. However, France cannot be criticised for committing a manifest error of assessment merely because it rounded the ratio in question. In any event, the resulting overestimation of demand (11 % on the Marseille-Ajaccio route and 7% on the Marseille-Bastia route) is not characteristic of a manifest error of assessment.

(941) Lastly, it should be borne in mind that the growth rate of 2,3 % used by the French authorities to estimate the demand for towed freight from 2019 onwards, and for the 2023-2030 period, is the result of the average change in the growth rate for freight traffic between 2010 and 2019 on all five routes between Marseille and the Corsican ports. Although the French authorities could calculate the growth rate in historical traffic specific to each route, it must be noted that this possibility was only one methodology among others. Corsica Ferries does not explain why the methodology used by the French authorities was not manifestly appropriate to calculate the future demand on each of the maritime routes. Nor does it explain how an alternative methodology could have led to a different result.

(942) Corsica Ferries cannot claim either that the growth rate of 2,3 % is not based on recent objective data, or validly argue that the historical data between 2018 and 2023, on the contrary, show a fall in traffic. Firstly, this rate of 2,3 % is the result of average annual freight traffic growth between 2010 and 2019, i.e. before the COVID-19 pandemic (2020-2021) and Russia's war of aggression against Ukraine (2022). The data used by the French authorities therefore relate to the last period during which the maritime transport market between Corsica and the mainland functioned normally. Moreover, this argument contradicts another observation by Corsica Ferries that the French authorities should have analysed freight traffic data from 2014, before Corsica Linea entered the market (recital 394). It also contradicts its own responses submitted during the operator consultation, which show that Corsica Ferries was preparing to offer significantly higher capacity over the 2023-2030 period than it had between 2016 and 2019, and also higher than the total demand for freight recorded in 2019, which indicated that Corsica Ferries was forecasting an increase in traffic in the coming years ([268]).

([268]) As indicated in Table 3, freight traffic between Corsica and the mainland amounted to 2.2 million LM. As indicated in Table 20, Corsica Ferries intended to bring to the market a transport capacity of almost 3.3 million LM between 2023 and 2030 (in the absence of the measures), thus confirming that the company seemed to be anticipating an increase in traffic.

7.3.2.1.3.2. Existence of a market failure

7.3.2.1.3.2.1. Identification of market supply in the absence of a public service contract

(943) The Commission refers in this regard to the arguments set out in recitals 815 to 825, which are also valid for the identification of the available market supply in relation to the demand from users of towed and non-towed freight services.

7.3.2.1.3.2.2. Analysis of market failure

(944) The Commission notes first of all that the French authorities concluded that there was a total market failure between the port of Propriano and the port of Marseille, since Corsica Ferries would not offer any commercial service on this route.

(945) The Commission also notes that the French authorities considered the service proposed by Corsica Ferries between Marseille and the other four Corsican ports to be sporadic, since Corsica Ferries would offer only three round trips per month from/to L'Île-Rousse and Porto-Vecchio (as opposed to the three weekly round trips required) and two weekly round trips to/from Ajaccio and Bastia, whereas at least five weekly round trips are required to meet user demand.

(946) The Commission notes that the French authorities did not commit a manifest error in their market failure analysis, in so far as it has been established that market supply is insufficient to meet the entire demand from users of towed and non-towed freight transport between the port of Marseille and each of the Corsican ports.

7.3.2.1.3.3. Conclusion on the existence of a public service need for the transport of towed freight and non-towed freight between Marseille and each of the Corsican ports

(947) It is apparent from all of the above that France correctly identified the existence of a public service need for the transport of towed freight and non-towed freight between Marseille and each of the Corsican ports, since the demand for transport established and quantified by France could not be covered by the market supply identified.

7.3.2.2. Proportionality of the state intervention

(948) Since the French authorities justified, without committing a manifest error of assessment, the need for state intervention on the basis of the existence of several genuine needs for a public maritime transport service between Corsica and the French mainland, it is now necessary to examine whether that intervention is proportionate in the light of the essential freedoms for the proper functioning of the internal market.

7.3.2.2.1. Proportionality of the legal instrument of intervention

(949) The Commission notes that, according to the French authorities, there was no legal instrument other than a public service contract to guarantee a service capable of meeting the public service needs identified by the French authorities (recitals 249 to 253). In particular, the French authorities argue that the market failure is already characterised under the 2019 PSO scheme and that such a scheme would prove insufficient to meet the public service need. They also argue that the public service obligations that may be imposed are limited under the 2019 PSO scheme, in particular as regards departure and arrival times, which are nevertheless a characteristic of the demand from passengers (recital 112) and freight transport users (recitals 190 and 191).

(950) The Commission believes that such considerations do not constitute a manifest error of assessment. As the French authorities rightly point out, there is already a PSO scheme in force for maritime transport services between Corsica and the mainland: the aim of the operator consultation was, moreover, to determine the supply that the market would be prepared to offer under the 2019 PSO scheme. However, that supply proved to be insufficient, making it necessary to provide for an additional scheme guaranteeing the provision of services sufficient to meet the public service need ([269]).

(951) Therefore, the French authorities had no choice but to strengthen the 2019 PSO scheme by providing for daily sea crossings between Marseille and the ports of Ajaccio and Bastia, and weekly crossing to the ports of L'Île-Rousse and Porto-Vecchio, as well as a mandatory weekly service to Propriano. However, laying down stricter conditions under the 2019 PSO scheme, even though a market failure has already been identified in that context by the French authorities, would have made it even more difficult for operators to exercise their freedom to provide maritime transport services between Corsica and the mainland, since any operator wishing to provide services between Marseille and the Corsican ports would have had to comply with the enhanced requirements of the 2019 PSO scheme in order to operate such services. The Commission notes that, in those circumstances, the use of a public service contract awarded by means of a public procurement procedure is, by contrast, less restrictive of the freedom to provide services, in so far as it is likely to limit the constraints imposed on operators under the 2019 PSO scheme and to allow competition for the market.

(952) Furthermore, the Commission observes that it was not possible to provide for compensation under the 2019 PSO scheme either, since such compensation could not have been limited solely to routes between Marseille and Corsica, but would have had to be extended to all routes between the mainland and Corsica in order to ensure the non-discriminatory nature of the 2019 PSO scheme ([270]). However, as the French authorities point out (recital 252), such an option would not only have placed a significant financial burden on the public authorities' budget, while Member States' budget is not unlimited, but it would also have offered no guarantee that the services necessary to meet the public service needs identified were actually provided ([271]). The PSO scheme imposes obligations on operators who choose to provide services, but does not impose the provision of the services itself.

(953) Furthermore, it must also be noted that the Cabotage Regulation does not allow a PSO scheme to lay down obligations as regards departure and arrival times ([272]), whereas such a requirement arises from the qualitative demand identified.

(954) It follows that the French authorities could therefore have recourse to a public service contract to meet the various public service needs identified. The interested parties do not comment on this point.

7.3.2.2.2. Proportionality of the public service obligations laid down to meet the public service need

(955) Since the public authorities could have recourse to PSCs, it is now necessary to consider the proportionality of the public service obligations laid down by the PSCs to meet the public service need identified by France.

(956) *Firstly*, the Commission notes that the French authorities considered it necessary to conclude a public service contract for the maritime transport of medical passengers, towed freight and accompanying drivers (for those users who do not consider any alternative to the port of Marseille), as well as of non-towed freight between the port of Marseille and each of the Corsican ports. Furthermore, as regards the Marseille-Propriano route, France considers that the public service contract must also cover the maritime transport of passengers (recital 255).

([269]) See, to that effect, the judgment of 20 February 2001, *Analir*, C-205/99, ECLI:EU:C:2001:107, paragraph 66.
([270]) Id., paragraph 38.
([271]) Id., paragraph 65.
([272]) See Section 5.3.1 of the interpretative communication on the Cabotage Regulation.

(957) The Commission notes in this regard that these obligations result strictly from the market failure identified by the French authorities (Sections 3.4.3.2.2 and 3.4.2.2.2). The purpose of the PSCs is therefore limited to the sole public service need identified. The interested parties did not comment on this point.

(958) *Secondly*, the French authorities defined as public service obligations the arrival and departure times to be observed on each route covered by the PSCs. These obligations also stem from the demand identified by the French authorities for both the transport of passengers (who favour night crossings) and the transport of freight (which requires early deliveries in Corsica and sufficiently long stopovers during the day to allow semi-trailer tractors to rotate between the port and the logistics bases / delivery points). Therefore, the obligations regarding departure and arrival times do not appear disproportionate. The interested parties did not submit comments on this point.

(959) *Thirdly,* the Commission notes that the French authorities defined a number of public service obligations relating to the frequencies to be ensured under the PSCs (recitals 257 to 261).

(960) First of all, the Commission notes that the French authorities imposed minimum annual frequencies to be complied with. These frequencies are intended to ensure regular and sufficient services with Corsica from/to the port of Marseille throughout the year. Concession holders are thus required to operate 365 round trips per year on the Marseille-Ajaccio and Marseille-Bastia routes, and 156 round trips on the other three routes.

(961) The Commission notes that these frequencies meet the public service need identified. It is apparent from the user consultation that passengers and freight transport users were satisfied with the frequencies in force under the 2021-2022 PSCs, which were identical to those set by the French authorities in the 2023-2030 PSCs (recital 69). The Commission also points out, in general, that Corsica's insularity requires regular frequencies with the French mainland, in particular for medical passengers, who may need such services at any time depending on their state of health. This is also the case for freight traffic (towed and non-towed), as professionals and private individuals in Corsica need to be supplied frequently because of the limited storage capacity of the island's warehouses (recital 22). The results of the user consultation are thus consistent with the socio-economic characteristics of Corsica.

(962) Lastly, the Commission notes that frequencies are higher with the ports of Ajaccio and Bastia, which are the most important ports in Corsica in terms of passenger and freight traffic (Sections 2.3.1 and 2.3.2) and are also the two cities with the largest urban areas in Corsica, while the frequencies are more limited with the other three ports, which generate less traffic.

(963) The obligation to carry out a certain number of annual round trips is subdivided into two public service obligations: ensuring a minimum number of fixed round trips per week and ensuring flexible (reschedulable) round trips in addition to fixed weekly round trips, but within the limit of the number of round trips set per year. The Commission understands that reschedulable round trips, decided by the OTC, are a flexible tool to adjust supply to demand. For example, if the OTC finds that the expected demand for a round trip on a particular day is very low, it may decide to reschedule it to a busier day, provided that the operator complies with the weekly frequencies required by the PSCs. The Commission points out in that regard that the technical monitoring committee for the PSCs (recital 290), headed by the OTC, meets weekly to examine traffic demand, among other things.

(964) Thus, the public service obligations relating to the minimum frequencies to be complied with have the dual purpose of ensuring the regularity of transport services (through minimum weekly frequencies to be ensured under each PSC) and of optimising maritime services to Corsica (through reschedulable round trips).

(965) The Commission notes that the minimum weekly frequencies to be complied with correspond to user demand (recitals 112, 190 and 191). France imposed a public service obligation of daily round trips in high season on the Marseille-Ajaccio and Marseille-Bastia routes (almost daily in the low season), and three round trips per week on the other three routes. These frequencies are thus adjusted according to the season (low or high season) and the route concerned (Ajaccio and Bastia with high frequencies, while the other three Corsican ports have lower frequencies).

(966) It is thus apparent from all those elements that the French authorities did not commit a manifest error of assessment in setting the minimum frequencies required in the context of each PSC. The interested parties did not submit comments on this point.

(967) Furthermore, the Commission notes that the PSCs on the Marseille-Ajaccio, Marseille-Bastia and Marseille-L'Île-Rousse routes provide for additional round trips, in addition to the number of annual round trips to be complied with. The aim of these round trips is to cope with exceptional peaks in demand during the year and prevent vessels being left at the quayside as far as possible. The Commission notes that these additional round trips, which concern only freight transport, meet demand from freight transport users, who complain in particular about the lack of space to load goods on board vessels at the port of Marseille (recitals 190 and 191), which is confirmed by historical traffic data. The Commission also notes that the Corsican port authority reported the growing problem of trailers being left on the quayside in the Corsican ports and called on the public authorities to provide additional round trips to spread out traffic (recital 201). The Commission further notes that the number of additional round trips per year is relatively limited and that these round trips are optional and activated at the sole discretion of the OTC, subject to the fulfilment of predefined conditions (recital 287) and verified by the technical monitoring committee for the PSCs (recital 290). These additional round trips are planned for the three routes mentioned above, as they are most likely to experience such traffic peaks.

(968) As regards these factors, the Commission is of the opinion that the introduction of additional round trips, planned and regulated under conditions defined in advance by the PSCs for the Marseille-Ajaccio, Marseille-Bastia and Marseille-L'Île-Rousse routes, meets demand from users and maritime transport service providers. It follows that France did not commit a manifest error of assessment in putting in place such public service obligations.

(969) Corsica Ferries' comments on this point do not affect that conclusion. In fact, contrary to what it claims (recital 470), the Cabotage Regulation does not prohibit France from introducing reschedulable and additional round trips under the conditions laid down in the PSCs. First of all, reschedulable round trips are part of the annual frequency obligations imposed on operators, which are precisely the result of user demand not met by market supply. Similarly, additional round trips meet demand from users and service providers, and are put in place to respond to duly recorded exceptional traffic peaks. In addition, reschedulable and additional round trips are introduced subject to pre-defined conditions. These round trips are activated in particular where there is an exceptional public service need (additional round trips) or insufficient public service need (reschedulable round trips). They are thus seen as a tool for adapting to changing public service needs in the course of the PSCs, which run for eight years. Therefore, it cannot be said that those round trips are implemented 'without conditions or justifications'. Furthermore, the fact that the PSCs do not fix the days on which reschedulable and additional round trips are to be implemented is irrelevant, since those round trips are by definition flexible and activated according to the public service need identified.

(970) Moreover, Corsica Ferries' argument that those round trips appear superfluous, given that the minimum weekly frequencies imposed are already sufficient to meet the public service need, is also irrelevant (recital 471). In fact, such an argument specifically ignores user demand, historical traffic data and the purpose of those round trips. Similarly, the argument that reschedulable and additional round trips are already planned in advance by the concession holders cannot be accepted. Firstly, reschedulable round trips are by definition round trips planned in advance by the concession holder (who is required to comply with the number of annual round trips imposed by the PSCs), but which may be rescheduled by the OTC in line with the need to optimise traffic. Secondly, as is apparent from the comments by France, Corsica Linea and La Méridionale, the additional round trips were indicatively planned by the concession holders, with the OTC remaining in any event solely competent to decide on their implementation.

(971) Finally, Corsica Ferries' comments on the concession holders' failure to comply with the public service obligations laid down by France (recital 472) are not such as to call into question the proportionate nature of those obligations with regard to the public service need identified.

(972) It follows from the above that the French authorities did not commit a manifest error of assessment in defining annual and weekly frequency obligations, as well as additional and reschedulable round trips.

(973) *Lastly*, the Commission observes that the French authorities considered it necessary and proportionate to the public service need to define minimum carrying capacity obligations for vessels assigned to PSC operations (recitals 262 to 263). These obligations concern both freight and passenger transport.

(974) As regards freight transport, the French authorities established, in each of the PSCs, a minimum carrying capacity, which they calculated on the basis of the average number of LM expected in July 2030. That number corresponds to the month with the highest volumes of anticipated freight traffic during the implementation of the PSCs (recital 266). In that regard, it should be borne in mind that, as stated in recital 331, the Commission expressed doubts in the opening decision as to the proportionality of that minimum freight carrying capacity in relation to the public service needs identified.

(975) Those doubts are shared by Corsica Ferries. It argues in its comments that the minimum freight carrying capacity should have been calculated on the basis of the average demand estimated between 2023 and 2030 to meet the public service need identified (recital 469) rather than the demand expected for July 2030 ([273]). However, France, like Corsica Linea and La Méridionale, considers such doubts to be unfounded (Sections 5.2.1.2 and 5.3.1.1.3.1, recitals 347 to 357, 546 to 547 and 606 to 611).

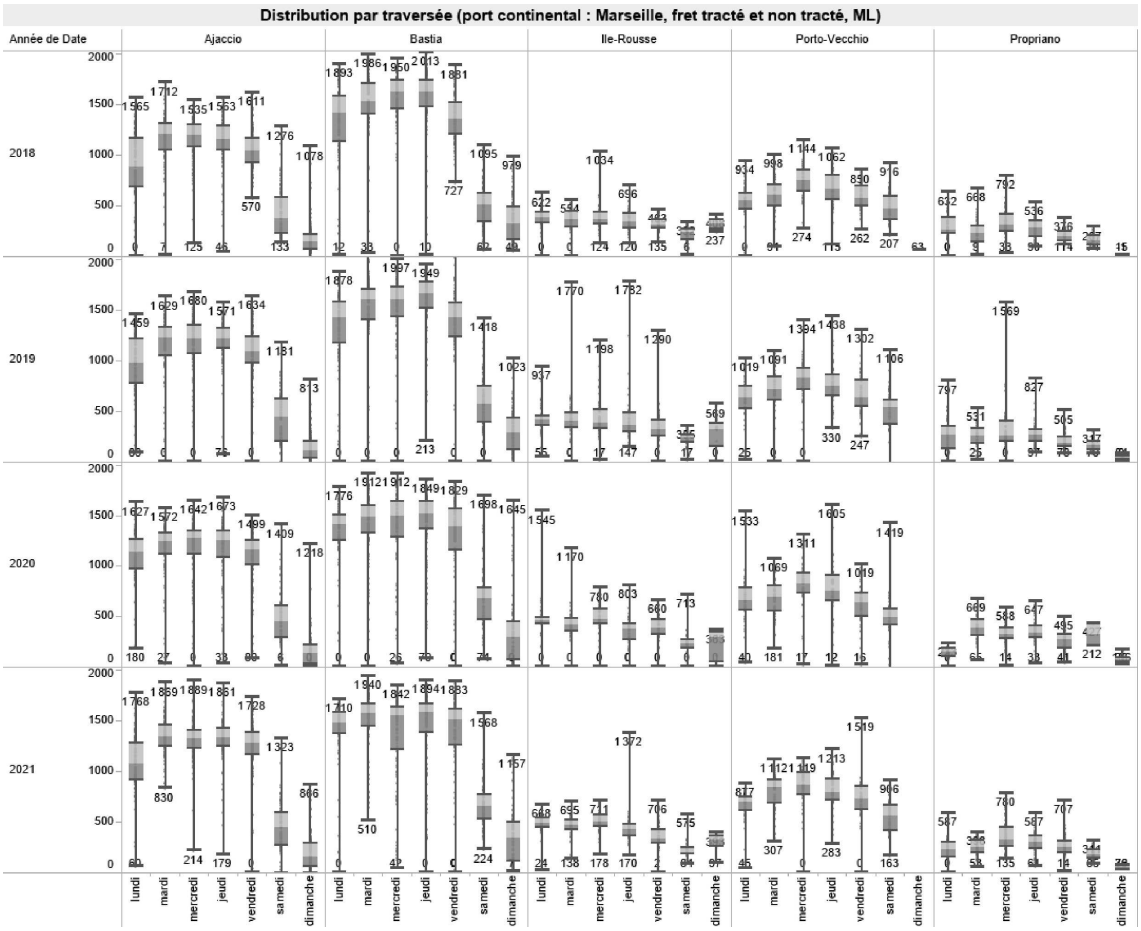
(976) The Commission observes, first of all, that the data provided by the French authorities show that the demand for freight traffic per crossing varies considerably by month and by day of the week on all routes between Marseille and Corsica (Figure 3 and Figure 4). For example, on the Marseille-Ajaccio route, over a given month, traffic demand per crossing can vary from 20 LM to 1 680 LM (figures for March 2019). Similarly, over a given week, traffic demand per crossing can vary from 0 LM to 1 680 LM (figures for Wednesdays in 2019) ([274]).

([273]) To recap, the average demand per crossing, anticipated for the 2023-2030 period, is calculated as the annual public service need (Table 21) divided by the annual round trips provided for in the PSCs (Table 23).

([274]) As explained by the French authorities, this variation in demand for freight traffic reflects the actual demand from hauliers, which means that maritime transport usually takes place on the date requested by hauliers, maritime operators having little scope to change the date of the transport service requested by the users. As regards freight, a large proportion of the freight destined for Corsica is intended to supply Corsica's supermarkets, particularly with fresh produce. These goods are perishable and must therefore be delivered at a specific time. Bookings for a space on board are therefore made at very short notice, most often on the day of departure, and at the earliest a few days in advance. For certain goods (non-perishable materials, oversized industrial machinery, removals), the booking can be made more than a week in advance, but this situation is much rarer according to the French authorities.

Figure 3

Non-towed and towed freight traffic on the Corsica-Marseille routes. Distribution of traffic by day of the week (LM)



Source: Comments from the French authorities submitted on 27 July 2023.

Key:

— *Distribution par traversée (port continental : Marseille, fret tracté et non tracté, ML)* – Distribution by crossing (mainland port: Marseille, towed and non-towed freight, LM)

— *Année de Date* – Reference year

— *Lundi* – Monday

— *Mardi* – Tuesday

— *Mercredi* – Wednesday

— *Jeudi* – Thursday

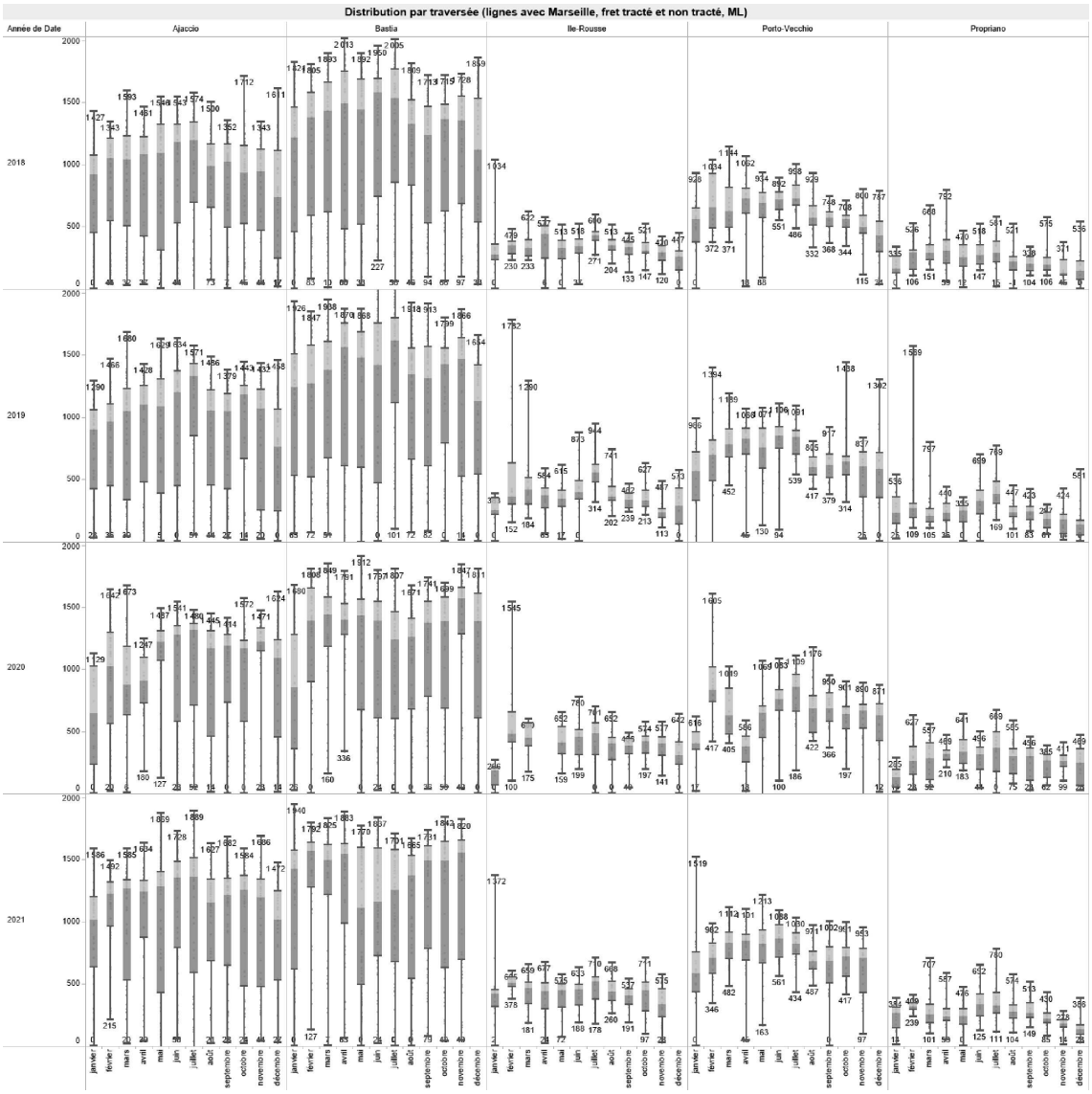
— *Vendredi* – Friday

— *Samedi* – Saturday

— *Dimanche* – Sunday

Figure 4

Non-towed and towed freight traffic (combination of the two segments, including substitutable share) on the Corsica-Marseille routes. Distribution of traffic by month (LM)



Source: Comments from the French authorities submitted on 27 July 2023.

Key:

— *Distribution par traversée (lignes avec Marseille, fret tracté et non tracté, ML)* – Distribution by crossing (routes with Marseille, towed and non-towed freight, LM)

— *Année de Date* – Reference year

— *Janvier* – January

— *Février* – February

— *Mars* – March

— *Avril* – April

— *Mai* – May

— *Juin* – June

— *Juillet* – July

— *Août* – August

— *Septembre* – September

— *Octobre* – October

— *Novembre* – November

— *Décembre* – December

(977) In view of this wide spread of demand for freight traffic, the French authorities consider that the minimum freight capacity per crossing provided for in the PSCs is not disproportionate. In particular, as indicated in Table 31, if the minimum freight capacity per crossing had been calculated on the basis of average demand per crossing derived from historical data, as suggested by Corsica Ferries, the estimated demand for freight traffic would not be met for a significant number of crossings (including reschedulable round trips). According to the data provided by the French authorities, excess demand in relation to the minimum expected capacity would affect one in two crossings on the routes between Marseille and Ajaccio, Bastia and Porto-Vecchio (one in four crossings on the Marseille-Propriano and Marseille-L'Île-Rousse routes), which is significant.

(978) The Commission also notes that such a methodology would mean that a significant share of the public service need identified in relation to freight could not be met. On the basis of the data provided by the French authorities, it is likely that between 17 % and 25 % of the annual need for freight transport could not be met. This would exacerbate the capacity constraints already observed on the routes between Marseille and the Corsican ports, as pointed out by users and service providers (recital 350).

(979) In addition, it should be noted that the minimum freight carrying capacity set out in the PSCs is not even sufficient to cover, in all circumstances, the freight demand anticipated by the French authorities. In particular, on the Marseille-Ajaccio and Marseille-Bastia routes, the French authorities considered that, on the basis of historical traffic data (2019), it was likely that demand could exceed the minimum freight carrying capacity set by the PSCs for a number of crossings. That risk is also one of the factors justifying the need to provide for additional round trips in the PSCs.

(980) Finally, in general terms, the Commission observes that it is legitimate for a Member State to ensure that public service obligations are determined in such a way that the public service can meet forecast demand, even on a daily basis, as La Méridionale rightly points out (recital 609). Article 14 TFEU states that the European Union and the Member States must ensure that SGEIs operate on the basis of principles and conditions which enable them to fulfil their missions. However, the solution proposed by Corsica Ferries would present a significant risk of not allowing the SGEIs imposed under the PSCs to fulfil their missions with regard to the public service needs identified. The Commission also refers to the relevant comment made by La Méridionale regarding the possible operational constraints on operators that Member States must take into account when defining public service obligations (recital 609).

(981) For those reasons, the Commission notes that the minimum freight carrying capacity obligations provided for in the PSCs are not manifestly disproportionate to the public service needs identified.

(982) Contrary to Corsica Ferries' claim (recital 475), it was not appropriate to include additional round trips when calculating the minimum freight carrying capacity per crossing. Indeed, the objective of the public service obligations relating to minimum freight carrying capacity is to provide a sufficient transport service in terms of capacity within the annual frequencies required by the PSCs (i.e. basic traffic) and in the context of expected demand, excluding exceptional peaks in demand. The sole purpose of additional round trips, which are optional and therefore may never be implemented, is to cope with exceptional peaks in demand. These additional round trips are therefore only activated in exceptional circumstances and as part of a well-defined process that requires additional needs to be established in advance. Therefore, the French authorities were entitled to set out the minimum freight carrying capacity, so as to ensure that the operator would be able to meet the basic traffic needs without prejudice to the flexible tool of additional round trips, which enabled them to respond to unforeseen peaks on an exceptional basis.

(983) As regards passenger transport, the French authorities set a minimum carrying capacity in the PSCs for each of the categories of passenger identified as needing a public maritime transport service (residents and non-residents on the Marseille-Propriano route, medical passengers and towed freight drivers on all routes).

(984) Firstly, as regards the minimum carrying capacity for resident and non-resident passengers per crossing included in the PSC for the Marseille-Propriano route, the Commission notes that these capacities were calculated on the basis of the total passenger demand expected in 2030 (the highest demand in the course of the PSC implementation), which is slightly higher than in 2019 (+ 1 %). This finding is not affected by a manifest error of assessment.

(985) Furthermore, as regards the minimum capacity for carrying medical passengers per crossing, the French authorities considered that the demand for medical passengers would be constant between 2023 and 2030 on the basis of the estimated level of traffic in 2019 (recital 161). This finding is not affected by a manifest error of assessment in so far as the carrying capacity obligations are set on a constant basis that corresponds to a conservative estimate of traffic trends.

(986) Finally, as regards the minimum carrying capacity for drivers per crossing, it is worth remembering that the French authorities considered that, for each maritime route, the ratio of drivers to LM of towed freight corresponded to the average value observed over the 2018-2021 period (recital 230). Thus, the expected demand from drivers in 2030 is directly linked to the estimated volume of towed freight in 2030.

(987) The Commission considers that the historical ratio of drivers to LM of towed freight is a valid approach for estimating the number of drivers linked to the public freight transport service. Since the Commission considers that the minimum freight carrying capacity provided for in the PSCs is not disproportionate to the public service need identified (recital 981), the same argument must apply to the capacity relating to the number of drivers.

(988) Corsica Ferries' comments concerning the disproportionate obligation on concession holders to be able to systematically accommodate more than 12 passengers per crossing, excluding the use of Ro-Ro vessels (recitals 476 to 479), must be rejected. As indicated in recitals 829, 874 and 947, the Commission considers that the French authorities did not commit a manifest error in characterising the existence of public service needs in relation to passenger transport. Furthermore, as set out in recitals 984 to 986, the Commission considers that the public service obligations relating to minimum passenger carrying capacity are proportionate to the public service need to be met. Therefore, the minimum carrying capacity was not set by reference to the type of vessel to be used, but only according to the public service need to be met. In addition, the PSCs do not contain any requirements as to the type of vessels to be used. It should be noted, for example, that the PSCs on the L'Île-Rousse and Porto-Vecchio routes do not even require a minimum passenger capacity of more than 12 passengers. In those circumstances, it cannot therefore be claimed that the PSCs impose disproportionate use of Ro-Pax vessels rather than Ro-Ro vessels.

7.3.2.2.3. Conclusion on the proportionality of the state intervention and the public service obligations laid down in the PSCs

(989) It follows from all of the above that the use of PSCs, as well as the public service obligations contained in them, is not manifestly disproportionate to the public service need, and thus constituted the approach that was least restrictive of the essential freedoms for the proper functioning of the internal market.

7.3.3. *Existence of an entrustment specifying the public service obligations and the methods for calculating compensation*

(990) According to paragraphs 15 and 16 of the SGEI Framework, responsibility for the operation of the SGEI must be entrusted to the undertaking concerned by means of one or more acts, the form of which may be determined by each Member State. The act or acts must include, in particular:

— the content and duration of the public service obligations;

— the undertaking and, where applicable, the territory concerned;

— the nature of any exclusive or special rights assigned to the undertaking by the granting authority;

— the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and

— the arrangements for avoiding and recovering any overcompensation.

(991) In the present case, the Commission notes that:

— the content of the public service obligations is set out in Articles 17, 18 and 23 of and Annex 1 to the PSCs. Their duration of 8 years is specified in Article 3 of the PSCs;

— the undertaking designated as the concession holder is referred to on page 2 of the PSCs, where it is listed as a contracting party. The geographical scope of the PSCs is specified in Article 1;

— the PSCs do not provide for any special or exclusive rights;

— the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation are set out in Articles 30 to 39 of and Annex 9 to the PSCs;

— the procedures for recovering any overcompensation and the means of avoiding such overcompensation are set out in Article 40 of the PSCs.

(992) The Commission is therefore of the opinion that the PSCs comply with paragraphs 15 to 16 of the SGEI Framework. The interested parties did not submit comments on this point.

7.3.4. *Duration of the entrustment*

(993) According to paragraph 17 of the SGEI Framework, the duration of the entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of an SGEI's entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.

(994) The Commission notes first of all that, according to the interpretative communication on the Cabotage Regulation, the Regulation does not set a maximum duration for public service contracts. The communication states that public service contracts lasting more than five (in cases where the contract is a concession within the meaning of Concessions Directive) or six years can meet the proportionality requirement provided that (i) they are justified by objective criteria, such as the need to recoup the investments made in operating the maritime cabotage service under normal operating conditions (e.g. investments in vessels or infrastructure) and (ii) they do not lead to market foreclosure ([275]).

([275]) The Commission points out that, as stated in the communication on Community guidelines on State aid to maritime transport, in the field of maritime cabotage, the duration of public service contracts should be limited to a reasonable and not overlong period, normally in the order of six years (Commission communication C(2004) 43 – Community guidelines on State aid to maritime transport (OJ C 13, 17.1.2004, p. 3, point 9). Nevertheless, the interpretative communication, which concerns the application of the principle of freedom to provide services to maritime transport, states that: 'experience since 2003 has shown that in some cases the six years limit puts shipowners off bidding as they consider this duration to be too short to recoup the investments in the operation of the service. Likewise, public authorities also claim that contracts of short duration might discourage shipowners from making more substantial investments, thus hampering innovation and possible improvements in the quality of the service. [...] For this reason the Commission believes that public service contracts lasting more than five (in case the contract is a concession in the meaning of Concessions Directive) or six years can meet the proportionality requirement provided that (1) they are justified by objective criteria, such as the need to recoup the investments made in operating the maritime cabotage service under normal operating conditions (e.g. investments in vessels or infrastructure) and (2) they do not lead to market foreclosure. Without prejudice to a case-by-case analysis, according to the Commission's experience and the information provided by the public authorities, contracts of a maximum duration of 12 years could be justified in order to enable the depreciation of a significant part of costs of an average new ferry while allowing the proper functioning of the market.'

(995) In addition, Article 18(2) of the Directive on the award of concession contracts provides that 'the investments taken into account for the purposes of the calculation [of the duration of the concession] shall include both initial investments and investments during the life of the concession.'

(996) The duration of seven years (and one optional year) is justified by the French authorities by the objective of enabling the concession holder to recoup the purchase or leasing costs of vessels and the cost of bringing them into compliance with the applicable regulations, in particular as regards safety and the green transition. This period is necessary to stimulate the concession holders' investments during the term of the concession.

(997) While the Commission notes that the PSCs do not directly require any investment, it nevertheless points out that concession holders must be able to mobilise vessels (purchased or chartered), which represents a significant capital burden. The Commission also notes the significant investments in compliance with the latest environmental standards implemented by Directive (EU) 2023/959 ([276]) and Regulation (EU) 2023/1805 ([277]). As indicated in recital 571, Corsica Linea estimates the cost of bringing its vessels into line with environmental standards at EUR 12 million.

(998) As regards the absence of market foreclosure, the Commission notes that the CdC decided to use an open award procedure and 'route-by-route' public service contracts. Instead of awarding a single contract for seven years (and one optional year), the CdC decided to award five separate contracts for the same duration for similar services, which promotes a diversity of players likely to offer maritime transport services between mainland France and Corsica. In addition, the purpose of this duration was to make the tender more attractive to potential candidates and thus to stimulate competition. In the absence of such a duration, the Commission finds that it would have been difficult for potential candidates to carry out an economic activity that allowed them to recoup the necessary investments. The Commission also notes that the complainant continues to provide maritime services to Corsica from Nice and Toulon. Lastly, the Commission notes that durations of more than six years exist under other maritime public service contracts in Europe (e.g. six plus four years in Croatia ([278]) and 12 years in Italy ([279])). On the basis of this information, the Commission considers that, in the present case, the duration of the contracts is not likely to foreclose the market.

(999) In view of the above, the Commission considers that the seven-year term of the PSCs, renewable for one year, satisfies the requirements of proportionality, particularly in view of the investments required under the PSCs and considering that such a duration was not likely to foreclose the market.

7.3.5. *Compliance with Directive 2006/111/EC*

(1000) Under paragraph 18 of the SGEI Framework, aid can be considered compatible with the internal market on the basis of Article 106(2) TFEU only where the authority complies, where applicable, with Directive 2006/111/EC ('**Transparency Directive**') ([280]). Aid that does not comply with that Directive is considered to affect the development of trade to an extent that would be contrary to the interest of the Union within the meaning of Article 106(2) TFEU.

(1001) According to Article 2(d) of the Transparency Directive, an undertaking required to maintain separate accounts means inter alia any undertaking which is entrusted with the operation of an SGEI under Article 106(2) TFEU and receives public service compensation in any form whatsoever in relation to such service, and that carries on other activities.

([276]) Directive (EU) 2023/959, *ibid.*
([277]) Regulation (EU) 2023/1805, *ibid.*
([278]) Commission Decision of 12 July 2018 on cases SA.48119 (2017/N) and SA.49523 (2017/N) – Croatia – SGEI – scheduled coastal maritime public transport on the ferry routes Nos 431, 432, 632 and 635, C(2018) 4375 final (OJ C 339, 21.9.2018, p. 1).
([279]) Decision (EU) 2022/448.
([280]) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17, ELI: http://data.europa.eu/eli/dir/2006/111/oj).

(1002) The Commission notes in the present case that Corsica Linea and La Méridionale are to be regarded as undertakings required to maintain separate accounts within the meaning of the Transparency Directive.

(1003) The provisions of the Transparency Directive applicable to undertakings required to maintain separate accounts are as follows.

(1004) According to Article 1(2) of the Transparency Directive, the Member States must ensure that the financial and organisational structure of any undertaking required to maintain separate accounts is correctly reflected in the separate accounts, so that the following emerge clearly:

— the costs and revenues associated with different activities;

— full details of the methods by which costs and revenues are assigned or allocated to different activities.

(1005) Furthermore, according to Article 4(1) of the Transparency Directive, '[...] Member States shall take the necessary measures to ensure that for any undertaking required to maintain separate accounts:

— the internal accounts corresponding to different activities are separate;

— all costs and revenues are correctly assigned or allocated on the basis of consistently applied and objectively justifiable cost accounting principles;

— the cost accounting principles according to which separate accounts are maintained are clearly established.'

(1006) In the present case, the Commission notes that it is apparent from Article 30 of the PSCs that the contractors' internal accounts relating to SGEI and non-SGEI activities are separate, and that those accounts show the revenues and costs associated with those different activities (recital 293).

(1007) Furthermore, and as will be described in Section 7.3.8, the Commission notes at this stage that the French authorities correctly assigned and allocated the costs and revenues relating to the provision of the SGEI and commercial activities on the basis of clearly defined, consistently applied and objectively justifiable cost accounting principles. Details of the methods by which costs and revenues are assigned or allocated to different activities are also provided in the PSCs.

(1008) The PSCs therefore comply with the Transparency Directive. The interested parties did not submit comments on this point.

7.3.6. Compliance with EU rules on public procurement

(1009) According to paragraph 19 of the SGEI Framework, aid can be considered compatible with the internal market on the basis of Article 106(2) TFEU only where the responsible authority, when entrusting the provision of the service to the undertaking in question has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) TFEU.

(1010) This requirement is reiterated in the interpretative communication on the Cabotage Regulation ([281]). Furthermore, the communication also imposes conditions as to the choice of procedure for awarding contracts ([282]). It states that launching an open tender procedure is in principle the easiest way to ensure non-discrimination. An award procedure involving negotiation with the potential bidders may comply with the principle of non-discrimination provided that the negotiations between the adjudicating authority and companies having submitted bids in the tender are impartial, fair and transparent. As stated in the interpretative communication on the Cabotage Regulation, the Commission is of the opinion that the direct award of a contract does not comply with the principles of non-discrimination and transparency laid down in Article 4 of the Cabotage Regulation. Likewise, any tender procedure which is designed in such a way as to unduly restrict the number of potential bidders does not comply with the principles of non-discrimination and transparency.

(1011) The interpretative communication on the Cabotage Regulation also states that, in order to ensure compliance with the aforementioned principles, the period between the launching of the tender procedure and the date from which the operation of the transport services has to start, should be of appropriate and reasonable length. Too short periods that do not sufficiently reflect the needs of cabotage service to be awarded (e.g. regarding the size of the market, requirements of quality or frequency) might favour the incumbent shipowner in breach of the principle of equal treatment.

(1012) The Commission thus examined whether the authority responsible, when entrusting the provision of the service to the undertakings concerned, complied with the EU rules on public procurement, in this case the Concessions Directive.

(1013) In its complaint, Corsica Ferries alleges two infringements of the Concessions Directive. As regards the first infringement, Corsica Ferries submits that it was faced with obstacles which made it impossible to apply, in particular the very short deadlines for the procedure (recital 522) ([283]). In addition, it maintains that the French authorities unduly amended the minimum characteristics of the tendering procedure in order to select tenders which did not comply with the technical requirements of Annex 1 to the PSCs, in particular as regards reschedulable and additional round trips.

(1014) As regards the second infringement (recital 523), Corsica Ferries submits that the duration of the PSCs was not justified in the light of the absence of investments required from the concession holders. The Commission refers on this point to Section 7.3.4 of the decision.

7.3.6.1. Duration of the tender procedure

(1015) In this section, the Commission will examine whether the duration of the tendering procedure complies with the Concessions Directive from two angles: (i) the period between the start of the procedure (6 May 2022) and the actual start of the PSC (1 January 2023) and (ii) the period between the award of the PSCs (21 December 2022) and their entry into force (1 January 2023).

(1016) The Concessions Directive provides for ([284]) a minimum period of 30 days for the submission of applications and tenders, starting from the date of publication of the concession notice. This minimum deadline was complied with in the present case (the deadline for the submission of applications being 25 July 2022).

([281]) Section 5.4.1.

([282]) Section 5.4.2.

([283]) Corsica Ferries also argues that the requirement to mobilise Ro-Pax vessels constituted a barrier to entry (recital 517). Nevertheless, the Commission notes that the companies operating services to Corsica between 2015 and 2022, including Corsica Ferries, have vessels of a size compatible with the provisions set out in the current PSCs. Furthermore, the Commission considers that the capacity conditions required in the PSCs are justified by a public service need, as mentioned in Sections 7.3.2.1.1.3, 7.3.2.1.2.3 and 7.3.2.1.3.3. Therefore, those conditions cannot have constituted a barrier to entry.

([284]) Concessions Directive, Article 39.

(1017) However, the Concessions Directive does not lay down any minimum or maximum period between the award of a concession and the entry into force of that concession. It is therefore necessary to assess whether the deadlines of the procedure in question were likely to breach the principles of transparency, equal treatment and non-discrimination.

(1018) The Commission will examine below Corsica Ferries' claims that the time limits imposed by the procedure constituted a barrier to new entrants, in the light of existing case-law ([285]) and practices in the maritime sector.

(1019) The Commission notes that the 2021-2022 PSCs expired on 31 December 2022. The entry into force of the new PSCs on 1 January 2023 had been announced in January 2022, as part of the operator consultation carried out by the CdC, in which Corsica Ferries participated. The contract notice was published by the OTC on 6 May 2022, i.e. eight months before the start of the 2023-2030 PSCs.

(1020) The Commission also notes that, following the publication of the contract notice on 6 May 2022, none of the potential candidates requested a change in the timetable, even though it had been known from the beginning of the procedure (see recital 374).

(1021) Corsica Ferries considers that this timetable was an obstacle that made it impossible for it to apply. In particular, it states that, in the maritime transport sector, bookings are opened at least six months in advance, making it impossible for new service providers to mobilise ships with a minimum capacity in terms of passenger transport and cabins within the tender deadlines. Therefore, in order to be able to redeploy its fleet assigned to the Toulon-Corsica, Nice-Corsica and Italy-Corsica routes on Marseille-Corsica routes, it would have had to close bookings on those routes at least six months in advance.

(1022) The Commission notes the comments from La Méridionale and Corsica Linea, which indicate that a much shorter deadline than that mentioned by Corsica Ferries is sufficient to open bookings. The beneficiaries of the PSCs explain that for freight transport, which is the main purpose of the PSCs, the vast majority of bookings are made a few days in advance or on the same day for regular customers. For passenger transport, the PSCs started in the low season with less traffic. La Méridionale states, for example, that it opened bookings for Lots 1 and 3 (Ajaccio and Porto-Vecchio) on 21 December 2022 without this preventing it from commencing normal operations.

(1023) The Commission notes that the provisional timetable for the procedure was announced by the OTC in Corsican Assembly Resolution 22/050 of 28 April 2022. In line with that timetable, the date for receipt of applications was 25 July 2022, negotiations were scheduled to take place from August 2022, and the award of the PSCs, and the selection and notification of the successful candidate(s) were scheduled for October 2022.

(1024) In view of that timetable, the estimated time between the award of the PSCs and their entry into force (1 January 2023) was just over two months, i.e. a period more than twice as long as that in the SNCM II case-law (see recital 372).

(1025) The Commission also notes that on 25 July 2022, the date on which the applications were received, the OTC and the CdC found that only Corsica Linea and La Méridionale, either in their own name or as a consortium, had applied, noting that no new entrants had applied. As a result, as of 25 July 2022, the OTC and the CdC were able to consider that delaying the initial timetable and shortening the period between the award of the PSCs and their entry into force had no foreclosure effect with regard to potential new entrants.

(1026) In view of the above, in particular the timetable for the award procedure, the fact that no request to amend the timetable was received, and booking practice in the maritime transport sector, the Commission considers that any candidate had reasonable time to (i) prepare their application and bid and (ii) deploy their fleet on the routes for which they were bidding.

([285]) Judgment of 1 March 2017, *SNCM II*, *ibid*.

7.3.6.2. On the minimum requirements and reschedulable and additional round trips

(1027) In this section, the Commission will examine the compliance of the award procedure with the Concessions Directive as regards (i) the scope of the minimum requirements, (ii) the compliance of the PSCs with the minimum requirements and (iii) compliance with the principles of equal treatment and non-discrimination as regards reschedulable and additional round trips.

7.3.6.2.1. Scope of the minimum requirements

(1028) As regards the minimum requirements, Article 37 of the Concessions Directive provides that the successful tender must comply with the minimum requirements set by the contracting authority and that those requirements must not be changed during the negotiations. Article 2.4 of the bidding rules (recital 270) provides for the following 'minimum characteristics':

— '[The] maximum fares applicable to residents of Corsica and the carriage of goods,

— [The] carrying capacity of vessels,

— [The] timetables and service frequencies,

— [The] duration of the contract, [and]

— [The] maximum amount of financial compensation paid by the OTC.'

(1029) Annex 1 (technical annex on services, recital 285) to the bidding rules indicates that the characteristics of maritime services constitute 'minimum capacities'.

(1030) In its comments on the opening decision, France clarified that the minimum requirements were set out in Article 2.4 of the bidding rules (recital 379) and that Annex 1 described only the minimum requirements relating to (i) the carrying capacity of vessels and (ii) timetables and service frequencies (recital 380).

(1031) The Commission notes that Article 2.4 of the bidding rules constitutes a list in which the minimum characteristics are only listed without further details on their respective definitions or minimum values. To understand the precise scope of the minimum characteristics, it is necessary to consult other documents included in the bidding file (see recital 379).

(1032) The minimum characteristics relating to (i) the carrying capacity of vessels and (ii) timetables and service frequencies are detailed in Annex 1 ('technical annex on services'), which sets out (i) the minimum passenger and freight capacity and (ii) the minimum frequencies and time slots. According to Corsica Ferries, all the elements mentioned in Annex 1 constitute minimum characteristics, given in particular the Council of State judgment of 24 June 2019 ([286]). In that regard, even though it is for the Court of Justice of the European Union to interpret EU law, it should be pointed out that that judgment upheld the Bastia Administrative Court order of 19 March 2019 ([287]), which appears to have concluded, in the context of the procedure for the award of the PSC for the maritime transport of passengers and goods between Corsica and the mainland for the 2019-2020 period, that only the technical requirements laid down in an annex linked to a minimum characteristic of the contract listed in the relevant article of the bidding rules were also to be regarded as minimum characteristics.

(1033) According to Corsica Ferries, the bids did not comply with the minimum requirements, within the meaning of the Concessions Directive, for reschedulable and additional round trips as set out in Annex 1.

([286]) Council of State, 24 June 2019, *La Méridionale*, No 429407, paragraph 3.
([287]) Bastia Administrative Court, 19 March 2019, *La Méridionale*, No 1900289, paragraph 12.

(1034) However, reschedulable round trips are not mentioned in Article 2.4 of the bidding rules or in Annex 1. Consequently, they cannot be regarded as forming part of the minimum requirements within the meaning of the Concessions Directive. As regards additional round trips, Annex 1 refers only to the maximum number that the contracting authority may implement in view of the needs to provide the public service on certain routes. However, Annex 1 does not deal with other characteristics of additional round trips, such as fixing their dates ([288]).

(1035) In view of the above, the Commission considers that reschedulable and additional round trips were not part of the minimum requirements within the meaning of the Concessions Directive.

7.3.6.2.2. Compliance of the PSCs with the minimum requirements

(1036) Corsica Ferries also argues that the French authorities changed the minimum characteristics.

(1037) As regards the alleged change in the minimum characteristics during the negotiations, the French authorities state that they did not change. After checking the signed PSCs, the Commission finds that the minimum characteristics are identical to those laid down in Article 2.4 of the bidding rules and in the tender file.

(1038) As regards the conformity of the successful tenders with the minimum requirements, the Commission, after verification ([289]), finds that they comply with the characteristics set out in Article 2.4 of the bidding rules and in the tender file.

(1039) In addition, all the successful tenders complied with the technical requirements in Annex 1. Only one Corsica Linea vessel, Paglia Orba, had a single PRM cabin instead of two as provided for in Annex 1. Nevertheless, even assuming that the technical requirement concerning the number of PRM cabins was a minimum requirement under the Concessions Directive, the vessel was a secondary ship intended to be used as a replacement for a main vessel (recital 384). In addition, the candidate undertook to replace this vessel with one of the seven vessels potentially assigned to the service if two PRM cabins were required. It is worth remembering that Article 20 of the PSCs allows for the replacement of vessels during the contract. At the same time, Corsica Linea undertook to carry out work enabling a second PRM cabin to be fitted out. This work has been completed and Paglia Orba now has two PRM cabins.

7.3.6.2.3. Compliance with the principles of equal treatment and non-discrimination as regards reschedulable and additional round trips

(1040) Corsica Ferries argues that complying with the requirements set out in Annex 1 for reschedulable and additional round trips was economically problematic. According to Corsica Ferries, it would have required the mobilisation of a vessel exclusively dedicated to those round trips, as the trips must be carried out at any time, subject to a minimum notice period of one week.

(1041) The Commission notes that the PSCs and Annexes 1 thereto provide for three categories of round trips: 'basic', 'reschedulable' and 'additional' round trips.

(1042) Reschedulable round trips are governed by Article 17 of the PSCs, which provides: 'In order to optimise the organisation of traffic, the regional authority reserves the right to reschedule round trips, in accordance with the total number of annual round trips set out in Annex 1. This rescheduling will take place in the context of the technical committee referred to in Article 10.2 of this contract'.

(1043) The Commission notes that reschedulable round trips are not additional round trips added to the total number of annual round trips, but are part of that total number.

([288]) As mentioned in recital 1055, the fact that the concession holders propose dates for such round trips has no impact on the choice of actual dates being ultimately left to the contracting authority.

([289]) The formalised version of Annex 1 for Lot 4, which the French authorities sent to the Commission, had two pages missing. However, the Commission was able to retrieve and confirm the missing information in other tender documents (Annexes 2 and 3).

(1044) Additional round trips are defined in Article 18 of the PSCs, which provides: 'In view of the need to provide the public service, the contracting authority may be required to ask the contractor to carry out additional round trips on an ad hoc basis within the limit of the number set out in Annex 1 (additional round trips) [...]'.

(1045) The Commission observes that additional round trips were planned for only three lots (10 round trips for Lot 1, 30 round trips for Lot 2 and 10 round trips for Lot 5).

(1046) The French authorities state that neither the bidding file nor the answers given by the contracting authority to the candidates' questions during the award procedure show that the candidates were obliged to mobilise additional vessels for the reschedulable and additional round trips. In addition, the French authorities state that, in accordance with Articles 17 and 18 of the draft PSCs, the implementation of reschedulable and additional round trips requires a meeting of the technical committee provided for in Article 10.2 of the PSCs. The committee allows the concession holder concerned by the implementation of those round trips to report on the difficulties which might result from such implementation.

(1047) The Commission notes that the implementation of the additional round trips was nothing new, since the previous PSCs (2021-2022 PSCs), which Corsica Ferries had bid for, also provided for additional round trips, in identical numbers for the three lots. In addition, the economic operators interested in applying had the opportunity to consult information relating to periods of high demand which might require additional round trips.

(1048) The Commission also notes the order of 20 July 2022 by Bastia Administrative Court (recital 274), in which the court held, with regard to additional round trips, that:'... in those circumstances, and given that the information relating to periods of high demand for maritime transport which may justify a request for additional round trips is known to economic operators and that SAS Corsica Ferries is free to consult the data made available to the public, in particular by the Corsican regional transport observatory, as also specified in paragraph 4.1 of the bidding rules, it does not appear from the investigation that the information contained in the bidding file relating to reschedulable and additional round trips is insufficient to enable candidates to assess the extent of the contractors' obligations and to submit a tender. The alleged breach of the rules on publicity and competitive tendering is therefore unlikely to harm the applicant company. It follows that the plea relied on is ineffective' ([290]).

(1049) The Commission notes that the answers to questions from potential candidates concerning round trips did not provide further details on certain aspects of the bidding file, but generally referred the candidates to the tender documents, which were considered sufficiently clear ([291]). However, all candidates had access to the same information through the Q&A section, in line with the principles of transparency, non-discrimination and equal treatment.

(1050) The Commission considers that the tender documents in no way suggested that it was necessary to keep a specific fleet for additional or reschedulable round trips. This is confirmed by the previous PSCs and the bids submitted. Moreover, this was not viable from a practical and economic point of view, since the public service compensation does not cover the costs of immobilising vessels, which would have remained inactive most of the time ([292]).

(1051) On the basis of the above, the Commission concludes that the bidding rules were sufficiently clear on this point to allow candidates to submit a tender.

(1052) The Commission further notes that reschedulable and additional round trips are designed as instruments that make it possible to adapt the public service to actual demand or weather conditions, for long-term PSCs, under a mechanism similar to an option clause as referred to in Article 43(1)(a) of the Concessions Directive.

([290]) Bastia Administrative Court order of 20 July 2022, recital 12.

([291]) Corsica Ferries considers that the OTC had indicated in its responses that Annex 1 was a minimum requirement (recital 529). However, the OTC only referred to the tender documents.

([292]) If specific fleets were necessary for reschedulable and additional round trips, this would result in an additional cost for those fleets that is not compatible with the maximum compensation for costs relating to public service obligations.

(1053) The Commission notes that the consultation documents did not prohibit candidates from making proposals, and that the successful tenders complied with the provisions of the bidding rules and the draft contract concerning reschedulable and additional round trips.

(1054) The fact that Corsica Linea and the Corsica Linea - La Méridionale consortium proposed dates for the additional round trips, based on their experience of freight needs and the needs presented by the OTC in the bidding file, does not mean that the round trips would necessarily be carried out on those same dates, thus precluding the OTC from being able to request round trips on other dates. The dates of these additional round trips continue to be decided by the technical committee, as provided for in Article 10.2 of the contract, and communicated to the concession holder one week in advance.

(1055) The programme proposed by the concession holder is therefore in no way binding on the contracting authority, which decides on the date of a round trip according to needs. This finding was demonstrated by the example of the additional round trips actually carried out in 2023 for Lot 1, the only lot for which additional round trips took place (recital 389). Of the 30 additional round trips proposed, 28 were carried out. Of these, 3 additional round trips were carried out on dates not planned in the provisional programme. In addition, the OTC did not trigger additional round trips for five of the 'provisional' dates. Furthermore, the Commission notes that in 2023 the OTC did not trigger any reschedulable round trips.

(1056) On the basis of the above, the Commission concludes that the successful tenders comply with the provisions of the bidding rules and the draft PSC as regards reschedulable and additional round trips, and that there was no favourable treatment with respect to the round trip schedule proposed by Corsica Linea and the Corsica Linea - La Méridionale consortium.

7.3.6.3. Conclusion

(1057) On the basis of this information, the Commission cannot conclude that Corsica Ferries was affected by any barriers to entry that prevented it from bidding and caused it to suffer discriminatory treatment.

7.3.7. *Absence of discrimination as regards the method for calculating compensation*

(1058) According to paragraph 20 of the SGEI Framework, where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.

(1059) Since the provision of the public service on each of the routes is assigned to a single undertaking or group of undertakings (i.e. Corsica Linea, La Méridionale or the Corsica Linea - La Méridionale consortium, see Table 13), the Commission considers that there can be no discrimination in this case within the meaning of paragraph 20 of the SGEI Framework. In any event, the Commission notes that the compensation was calculated according to the same principles for each PSC (Section 3.7.2).

(1060) Furthermore, the interpretative communication on the Cabotage Regulation also contains specific provisions on the application of the principle of non-discrimination in maritime cabotage. It provides that Member States must not impose tailor-made obligations on a given shipping company that would prevent other Union shipowners from entering the market or apply other obligations with that effect ([293]). The communication draws attention in particular to two types of contractual clause concerning the conditions for taking over vessels from previous public service operators ([294]) and the conditions relating to the crew ([295]).

(1061) In the present case, the PSCs do not impose any obligations specifically intended for a given shipping company, in particular they do not impose obligations relating to the take-over of the vessels of the outgoing operator or relating to the crew.

([293]) Section 5.3.2.
([294]) Section 5.3.2.1.
([295]) Section 5.3.2.2.

(1062) The interested parties did not submit comments on this point.

(1063) The PSCs therefore comply with paragraph 20 of the SGEI Framework and Article 4(1) of the Cabotage Regulation.

7.3.8. *Amount of compensation*

(1064) According to paragraph 21 of the SGEI Framework, the amount of compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit.

(1065) Paragraph 22 states the amount of compensation can be established on the basis of either the expected costs and revenues, or the costs and revenues actually incurred, or a combination of the two, depending on the efficiency incentives that the Member States wish to provide from the outset, in accordance with paragraphs 40 and 41.

(1066) Paragraph 23 specifies that where the compensation is based, in whole or in part, on expected costs and revenues, they must be specified in the entrustment act. They must be based on plausible and observable parameters concerning the economic environment in which the SGEI is being provided. They must rely, where appropriate, on the expertise of sector regulators or of other entities independent from the undertaking. Member States must indicate the sources on which these expectations are based. The cost estimation must reflect the expectations of efficiency gains achieved by the SGEI provider over the lifetime of the entrustment.

(1067) As stated in Article 30 of the PSCs (recital 293), the maximum financial compensation paid by the OTC to the concession holder for its public service obligations must not exceed what is necessary to cover the net cost of providing the SGEI, taking into account a reasonable profit.

(1068) In the present case, the amount of compensation for the SGEIs is calculated *ex ante*, using the cost allocation methodology, as indicated in the concession holders' provisional operating account for each lot (Annex 9), which forms an integral part of the PSCs. The amount of compensation set out in Annex 9 cannot be increased *ex post*, but is subject to efficiency incentives (recitals 301 and 302) and an *ex post* check (recital 319), which provides for a recovery mechanism in case of overcompensation.

(1069) In the context of the award of the PSCs, the French authorities verified that the financial bids submitted by Corsica Linea and La Méridionale were based on objective and plausible assumptions and complied with the public service obligations, including the minimum capacity in terms of freight and passenger transport and the obligations relating to fares for the transport of freight and passengers.

(1070) Therefore, the Commission considers that paragraphs 21 to 23 of the SGEI Framework have been fulfilled.

7.3.8.1. Net cost necessary to discharge the public service obligations

(1071) According to paragraph 24 of the SGEI Framework, the net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible.

(1072) Although the Commission regards the net avoided cost methodology as the most accurate method for determining the cost of a public service obligation, according to paragraph 27 of the SGEI Framework, there may be cases where the use of that methodology is not feasible or appropriate. In such cases, where duly justified, the Commission can accept alternative methods for calculating the net cost necessary to discharge the public service obligations, such as the methodology based on cost allocation.

(1073) In the present case, the French authorities used the cost allocation methodology (see recitals 307 to 309), which, according to Corsica Ferries, is not justified (recitals 493 to 498).

(1074) *Firstly*, it is worth remembering that, in accordance with the SGEI Framework, both methods (i.e. the net avoided cost methodology and the cost allocation methodology), if applied correctly, are valid methods for calculating the appropriate amount of compensation. Both methods are based on assumptions of additional or direct revenues and costs associated with the provision of the SGEI and are therefore subject to comparable methodological constraints, contrary to Corsica Ferries' claims.

(1075) *Secondly*, the net avoided cost methodology means establishing the costs and revenues of the undertaking in a hypothetical scenario without an SGEI. However, the activities of Corsica Linea and La Méridionale on the routes between Corsica and the mainland depend on the existence of the SGEI. In the context of the operator consultation, they stated that, in the absence of a public service contract, they would not offer any commercial services between Corsica and the French mainland (recital 234). Contrary to Corsica Ferries' assertion, the Commission considers, on the basis of the information set out in recitals 817 to 825 and 870, that the French authorities did not commit a manifest error in taking account of the statements by Corsica Linea and La Méridionale during the operator consultation. Therefore, no relevant hypothetical scenario could be applied in which the operators would operate on the routes between Corsica and the mainland on a commercial basis without the SGEI, meaning that the net avoided cost methodology could not be used.

(1076) Consequently, the arguments raised by Corsica Ferries (recitals 493 to 498) must be rejected.

(1077) With regard to the cost allocation methodology, according to paragraphs 28 and 29 of the SGEI Framework, this method involves calculating the net cost necessary to discharge the public service obligations as the difference between the costs and the revenues for a designated provider of fulfilling the public service obligations, as specified and estimated in the entrustment act. The costs to be taken into consideration include all the costs necessary to operate the SGEI.

(1078) Paragraph 31 of the SGEI Framework states that, where the undertaking entrusted with an SGEI also carries out activities falling outside the scope of the SGEI, the costs to be taken into consideration may cover all the direct costs necessary to discharge the SGEI and an appropriate contribution to the indirect costs common to both the SGEI and other activities. The costs linked to any activities outside the scope of the SGEI must include all the direct costs and an appropriate contribution to the common costs. To determine the appropriate contribution to the common costs, market prices for the use of the resources, where available, can be taken as a benchmark. In the absence of such market prices, the appropriate contribution to the common costs can be determined by reference to the level of reasonable profit ([296]) the undertaking is expected to make on the activities falling outside the scope of the SGEI or by other methodologies where more appropriate.

(1079) In the present case, the public service operators also carry out commercial activities. Consequently, in accordance with paragraph 31 of the SGEI Framework, it is necessary to verify that all the direct costs linked to the SGEI as well as an appropriate contribution to the indirect common costs are taken into account when calculating the amount of compensation.

(1080) Furthermore, it should be recalled that, in the *BUPA* judgment, the Court of Justice stated, referring to the necessity and proportionality of compensation, that '[the] discretion enjoyed by a Member State in defining an SGEI mission and the conditions for its implementation, including the assessment of the additional costs incurred in discharging the mission, which depends on complex economic facts, the scope of the control which the Commission is entitled to exercise in that regard is limited to one of manifest error' and that '[...] review of the proportionality of the compensation for discharging an SGEI mission [...] is limited to ascertaining whether the compensation provided for is necessary in order for the SGEI in question to be capable of being performed in economically acceptable conditions [...] or, whether, on the other hand, the measure in question is manifestly inappropriate by reference to the objective pursued [...]' ([297]).

([296]) The reasonable profit will be assessed from an *ex ante* perspective (based on expected profits rather than on realised profits) in order not to remove the incentives for the undertaking to make efficiency gains when operating activities outside the SGEI.

([297]) Judgment of 12 February 2008, *BUPA*, T-289/03, ECLI:EU:T:2008:29, paragraphs 220 and 222.

(1081) As indicated in recital 308, the direct costs of passenger and freight activities are allocated to the SGEI on the basis of the number of passengers or the volume of freight (in LM) that the concession holders are required to guarantee under the capacity obligations provided for by the PSCs, while the common costs, which account for the majority of the concession holders' operating costs, are allocated to the SGEI in proportion to the capacity (expressed in m^3 of volume) reserved on the vessel for the SGEI activities. This approach results in an approximate share of [60-75] % of the total costs being allocated to the SGEI on all routes (see Table 30), with the exception of the public service between Marseille and Propriano, where 100 % of the total costs are allocated to the SGEI.

(1082) As regards the allocation of costs on the route between Marseille and Propriano, full allocation of costs to the SGEI is justified, as the entire service provided by Corsica Linea is considered to be an SGEI. This is because a complete market failure was identified on this route (recitals 170 and 239).

(1083) For the other routes, as regards the costs directly related to passenger and freight services, which concern only a few cost items (covering around [10-25] % of the total costs per route), the public service operators allocated to the SGEI around [0-20] % of the direct costs related to passenger transport and [80-100] % of the direct freight costs. The Commission verified that these specific allocation keys were justified in view of the SGEI obligations by calculating the ratio between, on the one hand, the number of passengers and volume of freight (in LM) linked to the SGEI as set out in the PSCs and, on the other hand, the total number of passengers and volume of freight (in LM) set out in the provisional operating account of the concession holders Corsica Linea and La Méridionale for each lot (Annex 9). The Commission notes that this ratio corresponds to the specific allocation keys applied to direct costs and therefore concludes that those keys are justified.

(1084) As regards common costs, which make up most of the costs (around [70-90] % of total costs per route), the public service operators allocated around [60-75] % of these costs to the SGEI. In order to verify whether this allocation key is justified, the Commission took into account the following elements.

(1085) *Firstly*, the Commission notes that the PSC obligations mainly concern freight. On the basis of the information provided by the French authorities during the formal investigation procedure, which shows the capacities of the vessels used (in m^3) on the PSC routes, broken down by freight and passenger transport capacity, the Commission notes that the freight capacity of the vessels used by Corsica Linea and La Méridionale as a percentage of the total vessel capacity (in m^3) averages 73 %.

(1086) Given that freight traffic does not follow a regular pattern, as described in recital 976, the Commission considers it reasonable to allocate the common costs of a vessel according to the freight capacity of the vessel reserved by the operator for the public service, in order to be able to cover demand at all times, including during peak periods, when the freight capacity of vessels is generally almost fully utilised ([298]). For these reasons, it is justified to apply a common cost allocation key of around [60-75] % on all routes (taking into account the fact that the provision of a few places for medical passengers, who constitute the minority of maritime transport passengers, is negligible and, in any event, would increase the share of common costs that could be allocated to the SGEI).

(1087) In addition, the Commission notes that the allocation keys will be subject to *ex post* checks, which will take into account the actual use of the vessels for the SGEI and commercial service activities (recital 314). This means that, if the number of commercial passengers or the volume of commercial freight transported is higher than the expected volumes indicated in the provisional operating accounts (Annex 9), the allocation keys, and thus the amount of aid, will be adjusted (while the amount of aid cannot be increased *ex post* (recital 314)).

([298]) The Commission notes that in case of high demand, the vessels used by Corsica Linea and La Méridionale on the routes between Marseille and Ajaccio, Bastia, L'Île-Rousse and Porto-Vecchio should be almost fully utilised (around 90 % of the vessel's freight capacity would be used at peak times).

(1088) *Secondly*, the Commission verified whether the allocation of common costs could also be considered appropriate by reference to the level of reasonable profit that the undertaking would have to achieve on activities outside the scope of the SGEI, i.e. commercial activities. On the basis of the provisional operating accounts for each lot (Annex 9), the Commission considers that the expected profit on commercial services does not exceed a reasonable profit. In particular, the expected level of profit on commercial services (measured as operating margin) is relatively limited (on average [...] %) and does not exceed the market benchmark of 7,8 %, which was established by the French authorities on the basis of an independent study analysing the profitability of a sample of comparable shipping companies (recital 311).

(1089) In view of the above, the Commission considers that the principles established by the French authorities for implementing the cost allocation methodology are valid and in line with paragraphs 28 to 31 of the SGEI Framework. Those principles make it possible to allocate to the SGEI all the direct costs necessary to discharge the public service obligations, as well as an appropriate contribution to the indirect common costs. In addition, the Commission considers that the French authorities provided sufficient evidence to demonstrate that the specific allocation keys are not manifestly incorrect, given that applying them results in a share of costs allocated to the SGEI that is justified and reflects an appropriate contribution of the indirect common costs to the SGEI.

(1090) In conclusion, the Commission considers that the cost allocation methodology was correctly implemented by the French authorities and that the claims made by Corsica Ferries (recitals 484 to 491), according to which the cost allocation keys are not objective and allocate a disproportionate share of the costs to SGEI activities, must be rejected.

7.3.8.2. Revenue

(1091) According to paragraph 32 of the SGEI Framework, the revenue to be taken into account must include at least the entire revenue earned from the SGEI, as specified in the entrustment act, and the excessive profits generated from special or exclusive rights, even if linked to other activities, as provided in paragraph 45 of the Framework.

(1092) In accordance with paragraph 32 of the SGEI Framework, the PSCs require that revenues directly linked to the provision of the SGEI be taken into account when calculating the amount of compensation (recital 293). Theses revenues are set out in Annex 9 to the PSCs (which contains the concession holder's provisional operating accounts) and are calculated on the basis of the obligations relating to freight and passenger transport contained in the PSCs, the applicable fares and the number of round trips required in the PSCs.

(1093) Contrary to Corsica Ferries' claims (recitals 499 to 502), the public service does not confer exclusive rights on the concession holders and, consequently, the profits linked to commercial services must not be taken into account when calculating the compensation, as provided for in paragraph 45 of the SGEI Framework. As indicated in recitals 728 to 988, the Commission considers that there is a genuine SGEI for the maritime transport of passengers and freight between Marseille and France, as established by the French authorities. In addition, the PSCs do not prohibit other operators from offering commercial services between Marseille and Corsica under the unilateral PSO scheme. The PSCs therefore do not confer any exclusivity or special rights on the concession holders.

(1094) Finally, Corsica Ferries appears to misinterpret the Commission's position on whether public service contracts grant exclusivity to public service operators (recital 501). The fact that the French competition council and the competition authority were able to recognise in the past that the contractors under previous public service contracts benefited *de facto* from market exclusivity does not in any way demonstrate that the PSCs grant special or exclusive rights to the PSC contractors. Moreover, in its decision concerning the State aid granted under the 2007-2013 PSCs, the Commission did not consider that the PSCs had granted special or exclusive rights to their contractors ([299]), contrary to what Corsica Ferries seems to imply.

([299]) Decision 2013/435/EU.

(1095) In any event, paragraph 45 of the SGEI Framework merely establishes that, where exclusive rights are conferred on the public service operator, the excessive profits generated by the special or exclusive rights, even those linked to other activities, must be taken into account. However, as mentioned in recital 1088, the expected profits on commercial services do not exceed a reasonable profit.

(1096) Lastly, as stated in Article 32 of the PSCs (recital 296), the public service operators cannot freely dispose of the profits generated by their non-SGEI activities. They are required to reinvest the profits generated by those activities with a view to achieving objectives of improving the environmental quality of the SGEI. Unused surpluses are to be repaid in full to the contracting authority upon expiry of the contract. Therefore, even if the PSCs conferred an exclusive right on concession holders (which they do not) and even if that exclusive right resulted in an excessive profit (which it does not), the French authorities' approach is in line with paragraph 46 of the SGEI Framework, which requires that commercial profits must be allocated in whole or in part to the financing of the SGEI. This is guaranteed by the obligations laid down in Article 32 of the PSCs.

7.3.8.3. Reasonable profit

(1097) The provisions on reasonable profit are set out in paragraphs 33 to 38 of the SGEI Framework.

(1098) Paragraph 33 defines reasonable profit as the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the service of general economic interest for the whole duration of entrustment act, taking into account the level of risk. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation mechanism. However, paragraph 34 states that, where duly justified, profit level indicators other than the rate of return on capital can be used to determine what the reasonable profit should be, such as the average return on equity over the entrustment period, the return on capital employed, the return on assets or the return on sales.

(1099) Paragraph 35 of the Framework states that, whatever indicator is chosen, the Member State must provide the Commission with evidence that the projected profit does not exceed what would be required by a typical company considering whether or not to provide the service, for instance by providing references to returns achieved on similar types of contracts awarded under competitive conditions.

(1100) As mentioned in recital 310, Article 39 of the PSCs provides that reasonable profit corresponds to the ratio of current earnings before tax and interest to turnover on SGEI activities including compensation, as presented in Annex 9 (the operating margin). For each route, the reasonable profit must not exceed 2,13 % throughout the duration of the contract.

(1101) This maximum profit is derived from the financial bids proposed by the PSC contractors (Annex 9) and was compared by the French authorities with the average operating margin of other shipping companies in Europe (recital 311). The contractual provisions relating to reasonable profit also stipulate that the maximum rate of profit must not be revised upwards under any circumstances, except in the event of market disruption and subject to an additional independent study justifying a revision of this rate.

(1102) The Commission notes, first of all, that the operating margin indicator, instead of the rate of return on capital, is a reasonable and duly justified indicator for estimating the level of profit in the present case.

(1103) The French authorities explained that, in the present case, it is not possible to calculate the rate of return on capital, which is defined in the SGEI Framework as the internal rate of return that the company makes on its invested capital over the lifetime of the project, for shipping companies that lease or charter vessels, because there is no initial investment for the specific services under the PSCs. The Commission further notes that accounting data (e.g. the operating margin) have also been used in previous SGEI decisions to estimate the level of reasonable profit ([300]).

(1104) Corsica Ferries challenges the calculation of reasonable profit on the basis of current pre-tax income (or operating margin) because, in its view, the data relating to SGEI costs are not easily observable in the beneficiaries' profit and loss account, but require a questionable allocation of the various cost items between SGEI and non-SGEI activities (recital 504). However, the Commission notes that the SGEI operators are required to provide a detailed breakdown of their estimated and actual costs in Annex 9. In addition, the Commission considers that the cost allocation principles and specific cost allocation keys in Annex 9 for obtaining the estimated costs related to the SGEI are justified and reasonable, as explained in recitals 1079 to 1089.

(1105) Moreover, as indicated in the opening decision, the use of a comparative study to estimate the level of reasonable profit is an appropriate method ([301]). The Commission also notes that Corsica Ferries did not dispute the relevance of the results of that market survey in its comments.

(1106) Given that the PSCs provide for a maximum profit of 2,13 %, i.e. a level considerably lower than estimated by the comparative study commissioned by the French authorities, and that this amount of profit cannot in principle be increased *ex post*, the Commission considers that the profit established in the PSCs does not exceed a reasonable level and the PSCs are therefore in line with paragraphs 33 to 38 of the SGEI Framework.

7.3.8.4. Efficiency incentives

(1107) According to paragraph 39 of the SGEI Framework, in devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.

(1108) Paragraphs 40 and 41 leave a margin of discretion to the Member States as to the form to be taken by such incentives. However, paragraphs 42 and 43 provide that any efficiency incentive mechanism must be based on objective and measurable criteria set out in the entrustment act and subject to transparent *ex-post* assessment carried out by an entity independent from the SGEI provider. Furthermore, efficiency gains should be achieved without prejudice to the quality of the service provided and should meet the standards laid down in Union legislation.

(1109) As set out in recital 302, the efficiency mechanism applied to the compensation for operating costs is set out in Article 35.3 of the PSCs. In practice, the efficiency mechanism is included in the indexation of the compensation for operating costs, in so far as the amount of compensation increases less than real inflation. In addition, Article 35.4 of the PSCs requires that the actual amount of compensation be paid on the basis of the annual report submitted by the public service providers to the OTC. In accordance with Article 46 of the PSCs, the annual report must include the updated operating account in the same format as the provisional operating

([300]) See, for example, Commission Decision 2012/321/EU of 25 January 2012 on the measure SA.14588 (C 20/09) – implemented by Belgium in favour of De Post - La Poste (now bpost) (OJ L 170, 29.6.2012, p. 1, ELI: http://data.europa.eu/eli/dec/2012/321/oj); the decision of 1 August 2014 in case SA.35608 – Hellenic Post – Compensation for the financing of the universal postal service (OJ C 348, 3.10.2014, p. 48); and the decision of 29 January 2016 in case SA.41702 – Ireland – Risk Equalisation Scheme (OJ C 104, 18.3.2016, p. 2).

([301]) This methodology was applied in the Commission Decision (EU) 2022/348 of 17 June 2021 on the measures SA.32014, SA.32015, SA.32016 (2011/C) (ex 2011/NN) implemented by Italy and the Region of Tuscany for Toremar and its acquirer Moby (OJ L 64, 2.3.2022, p. 6, ELI: http://data.europa.eu/eli/dec/2022/348/oj).

account (Annex 9), taking into account the indexation of costs, accompanied by a note comparing and explaining the differences between actual and projected revenue and costs. According to the French authorities, the audit is carried out by an external auditor, selected by the OTC, following a tendering procedure. The actual amount of compensation is therefore based on a transparent *ex post* assessment carried out by an entity independent of the SGEI provider.

(1110) Furthermore, the Commission notes that the mechanism for *ex post* control of the amount of compensation, as set out in Article 35.1 of the PSCs, also provides for certain efficiency incentives. Article 35.1 of the PSCs provides that, in the event of overcompensation (in particular if the capacity of the vessels reserved for the SGEI is used for commercial services), half of any surplus compensation paid may be kept by the concession holders, up to a maximum of 5 % of the compensation. The fact that the SGEI operators are allowed to keep part of the overcompensation, where appropriate, encourages them to use the capacity of the vessel in the most efficient way possible. In particular, it provides an incentive to use capacity that is in principle reserved for the SGEI for commercial services, if this capacity would otherwise remain unused, thereby reducing the costs of the SGEI.

(1111) In the light of the above, the Commission considers that paragraphs 40 to 43 of the SGEI Framework are fulfilled.

(1112) Corsica Ferries argues that the efficiency mechanism, as set out in Article 35.3 of the PSCs, does not fulfil its objective because the compensation formula as defined in Article 35.3 of the PSCs is manifestly incorrect (recitals 512 and 513). In particular, Corsica Ferries argues that applying the indexation formula will result in public compensation being granted to the contractor companies at an indexed level above inflation. However, the Commission considers this claim to be unfounded.

(1113) As explained by the French authorities, the figures in the concession holders' provisional operating account (Annex 9) for each lot are based on the nominal values for 2023. Each year, the nominal amount of compensation for operating costs is updated to reflect real values (i.e. inflation-adjusted), based on the formula set out in Article 35.3 of the PSCs. The formula in Article 35.3 of the PSCs ensures that the compensation actually paid in a year increases less than inflation.

(1114) On the basis of the above, the Commission concludes that the requirements for the efficiency mechanism referred to in paragraphs 39 to 43 of the SGEI Framework are fulfilled and that Corsica Ferries' claim is unfounded.

7.3.8.5. Provisions applicable to undertakings also carrying out activities outside the scope of the SGEI or providing several SGEIs

(1115) According to paragraph 44 of the SGEI Framework, where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services in line with the principles set out in paragraph 31. Where an undertaking is entrusted with the operation of several SGEIs because the granting authority or the nature of the SGEI is different, the undertaking's internal accounts must make it possible to verify whether there has been any overcompensation at the level of each SGEI.

(1116) As mentioned in recital 293, Article 30 of the PSCs stipulates that the contractor's internal accounts must indicate separately the costs and revenues associated with the SGEI and those related to other services, taking into account the keys for allocating all the direct costs necessary for discharging the SGEI and an appropriate contribution to the indirect costs common to both the SGEI and the commercial activities. The Commission notes that the PSCs contain, in Annex 9, the allocation keys for each of the contractors' cost items. Article 46 of the PSCs also provides that each year the contractors must produce an annual activity report (including an updated Annex 9) showing separately the actual revenues and costs related to the SGEI and those related to commercial activities, which will be examined by the OTC.

(1117) The Commission therefore considers that paragraph 44 of the SGEI Framework is complied with.

7.3.8.6. Overcompensation

(1118) According to paragraph 49 of the SGEI Framework, Member States must ensure that undertakings do not receive compensation in excess of the amount determined in accordance with the requirements set out therein. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years.

(1119) As described in recitals 312 to 317, the French authorities will carry out an annual *ex post* check of the amount of compensation paid to the contractors to ensure that there is no overcompensation that may result from the actual use of the vessels.

(1120) Firstly, it should be noted that the amount of compensation for each lot calculated *ex ante* in the provisional operating account (Annex 9) is based on the minimum number of annual round trips, or basic traffic, required under the SGEI (i.e. including reschedulable round trips, but excluding additional round trips).

(1121) As regards basic traffic, the compensation is calculated on the basis of the allocation keys, which will be fixed for the entire duration of the contract (recital 307), except where, following the *ex post* check, there is a discrepancy between the allocation key set out in Annex 9 and the allocation key resulting from the actual operation of the SGEI. This mechanism thus makes it possible to reduce, if necessary, the amount of compensation for operating, investment and fuel costs *ex post* according to the actual use of the vessels. This means that, in the event that the capacity of the vessel reserved for SGEI activities is in fact used for the commercial service, the allocation keys in Annex 9, and therefore the compensation, will be adjusted.

(1122) Moreover, crossings not made will not be compensated (recital 315).

(1123) The OTC carries out an *ex post* check on the calculation of the compensation on the basis of the concession holders' annual report, which includes the updated operating account in the same format as the provisional operating account (Annex 9), accompanied by a memo comparing and explaining the differences between actual and forecast revenue and costs. Reimbursement by the contractor to the CdC will be made if there is a difference between the amount of compensation resulting from the provisional operating account and the amount resulting from the updated operating account.

(1124) As regards additional round trips, the entire service is considered to be an SGEI. As indicated in recital 306, Article 38.1 of the PSCs provides that the compensation for an additional round trip, if carried out, is the lower of (i) the expected amount of compensation per round trip indicated in Annex 9 (provisional operating account), and (ii) the amount resulting from the updated operating account, which includes actual net costs incurred in operating an additional round trip and is part of the annual report. The Commission considers that this approach is reasonable to avoid overcompensation.

(1125) On the basis of the above, the Commission considers that the approach taken by the French authorities is appropriate to exclude the risk of overcompensation.

(1126) As regards the repayment of any surplus compensation, in accordance with Article 35.1 of the PSCs, half of any surplus compensation paid may be kept by the concession holders up to a maximum of 5 % of the compensation. Corsica Ferries claims that this would lead to overcompensation (recital 505).

(1127) The Commission considers that this claim should be rejected. As indicated in recital 1110, the fact that the SGEI operators are allowed to keep part of the overcompensation, where appropriate, encourages the public service operators to use the capacity of the vessel in the most efficient way possible. As regards crossings that are not carried out, it should be noted that a round trip can be cancelled by the OTC only in the event of force majeure or unforeseeable circumstances, in agreement with the concession holders (recital 291). Consequently, the fact that the beneficiaries of the measures are not compensated at least for the fixed costs associated with a cancelled round trip can be considered rather prudent. In any event, the amount that the public service operators may keep in the event of overcompensation is limited to 5 % of the compensation.

(1128) As set out in recitals 503 to 511, Corsica Ferries puts forward additional arguments to demonstrate that the terms of the PSCs are insufficient for excluding any risk of overcompensation. Those arguments must be rejected.

(1129) *Firstly*, Corsica Ferries points out that the SGEI Framework requires that the profits linked to commercial activities be taken into account for the purposes of calculating the amount of compensation only if the SGEI confers special or exclusive rights on operators and if those profits exceed a reasonable profit. However, as set out in recitals 1016 to 1096, these two circumstances are not established in the present case.

(1130) *Secondly*, as set out in recitals 1079 to 1089, the cost allocation keys applied are objective and sufficiently justified to minimise the risk of overcompensating the provision of SGEI services.

(1131) *Thirdly*, the term 'key resulting from operations' is explicit and must be understood in the light of the general principles of cost allocation defined by the French authorities and presented to tenderers in the tendering procedure for the PSCs (recital 308). In any event, the term is defined in more detail in Articles 35.1 and 37.1 of the PSCs as 'an allocation key which would result from actual operations (actual costs and revenues, actual operation of the vessels, etc.)'.

(1132) *Fourthly*, contrary to Corsica Ferries' claim, the commercial profits generated by the beneficiaries of the measures, which, according to Article 32 of the PSCs (recital 296), must be reinvested with a view to pursuing the objectives of improving the environmental quality of the SGEI, do not constitute unlawful investment aid. First, commercial profits do not constitute state resources. Second, as mentioned above, the cost allocation keys are well defined, such that any cross-subsidisation of investments financed by commercial profits can be excluded.

(1133) Finally, it is also necessary to reject the argument put forward by Corsica Ferries that the contractors benefit from an unrealised capital gain on the vessels at the end of the PSCs, which results from the fact that the depreciation and lease payments, which are compensated under CFI, exceed the economic depreciation of the vessels over the same period. While the Commission acknowledges that there may be a difference between the economic life of an asset in a particular case and the period over which an asset is depreciated by an undertaking, it is not manifestly incorrect to use for the calculation of the amount of compensation, as in the present case, depreciation resulting from the application of the same depreciation principles as those that the undertaking uses for accounting purposes and which are consistent with the practices in the maritime sector.

(1134) In particular, during the formal investigation procedure, the French authorities confirmed that in the final version of Annex 9, the method applied to calculate the depreciation of vessels is linear depreciation, and the depreciation period was set by the candidates according to the lifetime of a vessel in the maritime freight and passenger transport sector, which is on average 30 years.

7.3.8.7. Conclusion on the amount of compensation

(1135) On the basis of the considerations set out in recitals 1071 to 1133, the Commission considers that the French authorities fulfilled the conditions laid down in Section 2.8 of the SGEI Framework regarding the amount of compensation, concerning in particular net cost, the cost allocation methodology, reasonable profit, efficiency incentives and overcompensation.

7.3.9. *Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union*

(1136) According to paragraph 51 of the SGEI Framework, the requirements set out in sections 2.1 to 2.8 of the Framework are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interests of the Union.

(1137) According to paragraph 52 of the SGEI Framework, it is conceivable, however, that in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union. In that case, in accordance with paragraph 53 of the SGEI Framework, the Commission will examine whether such distortions can be mitigated by requiring conditions or requesting commitments from the Member State.

(1138) Paragraph 54 of the SGEI Framework states that serious competition distortions such as to be contrary to the interests of the Union are only expected to occur in exceptional circumstances. The Commission should restrict its attention to those distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market, for example, because they deny undertakings in important sectors of the economy the possibility of achieving the scale of operations necessary to operate efficiently.

(1139) Paragraphs 55 to 59 of the SGEI Framework present five situations in which the Commission should carry out an in-depth analysis of distortions of competition as provided for in paragraph 52 of the SGEI Framework.

(1140) Paragraph 55 of the SGEI Framework considers that such distortions may arise, for instance, where the SGEI entrustment either has a duration which cannot be justified by reference to objective criteria (such as the need to amortise non-transferable fixed assets) or bundles a series of tasks (typically subject to separate entrustments with no loss of social benefit and no additional costs in terms of efficiency and effectiveness in the provision of the services). In such a case, the Commission would examine whether the same public service could equally well be provided in a less distortive manner, for instance by way of a more limited entrustment in terms of duration or scope or through separate entrustments.

(1141) In the present case, the Commission considers that the duration of the entrustment is justified on the basis of objective criteria (Section 7.3.4). Furthermore, the PSCs meet a clearly identified public service need and provide for proportionate public service obligations to meet those needs. Thus, the PSCs could not have a more limited scope. Finally, the French authorities provided for a public service contract for each maritime route affected by the public service needs for freight and passenger transport, such that they provided for separate entrustments. There is therefore no need in the present case to carry out an in-depth analysis of distortions of competition on the basis of paragraph 55 of the SGEI Framework.

(1142) Paragraph 56 of the SGEI Framework considers that a more detailed assessment may be necessary where the Member State entrusts a public service provider, without a competitive selection procedure, with the task of providing an SGEI in a non-reserved market where very similar services are already being provided or can be expected to be provided in the near future in the absence of the SGEI. Those adverse effects on the development of trade may be more pronounced where the SGEI is to be offered at a tariff below the costs of any actual or potential provider, so as to cause market foreclosure. The Commission, while fully respecting the Member State's wide margin of discretion to define the SGEI, may therefore require amendments, for instance in the allocation of the aid, where it can reasonably show that it would be possible to provide the same SGEI under equivalent conditions for the users, in a less distortive manner and at lower cost for the state.

(1143) In the present case, the Commission observes that the French authorities did not award the PSCs without a public procurement procedure. Therefore, paragraph 56 of the SGEI Framework is not applicable in the present case. In any event, the Commission considers that the French authorities clearly established several public service needs on the routes between Corsica and the port of Marseille that no other similar commercial service from/to the ports of Toulon/Nice was able to satisfy. They also established that there was no alternative approach that was less restrictive of competition at a lower cost to the state. There is therefore no need in the present case to carry out an in-depth analysis of distortions of competition on the basis of paragraph 55 of the SGEI Framework.

(1144) The Commission also notes that the PSCs mainly concern maritime transport services for non-towed freight, in respect of which it is not disputed that there is a complete market failure between Corsica and the French mainland, and for which only the port of Marseille has sufficient handling capacity.

(1145) The Commission also notes that the transport of towed freight for which France has identified partial substitutability between the ports of Toulon and Marseille concerns only 20 % of total demand for towed freight and 4 % of total demand for freight ([302]). Given that this volume is limited, the market distortion is minimal and has no real effect on competition.

(1146) In addition, the PSC for the Marseille-Propriano route, which also includes passenger transport, also addresses a complete market failure for services to Propriano. This PSC cannot therefore lead to market foreclosure or restriction, or to a discriminatory measure, within the meaning of the SGEI Framework and the Cabotage Regulation.

(1147) It should also be noted that the port of Marseille has ample capacity to enable an operator, such as Corsica Ferries, to offer services from that port. None of the evidence submitted to the Commission during the formal investigation procedure suggests otherwise.

(1148) Paragraph 57 states that closer scrutiny is also warranted where the entrustment of the service obligation is connected with special or exclusive rights that seriously restrict competition in the internal market to an extent contrary to the interests of the Union.

(1149) In the present case, the Commission considers that the PSCs do not grant any special or exclusive rights. Therefore, paragraph 57 is not applicable to the present case.

(1150) Paragraph 58 states that the Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets.

(1151) In the present case, the Commission finds that the PSCs in question do not involve an infrastructure that is not replicable, nor does their financing enable the concession holders to finance the creation or use of such infrastructure. Paragraph 58 is therefore not applicable to the present case.

(1152) Finally, according to paragraph 59, if distortions of competition are a consequence of the entrustment hindering effective implementation or enforcement of Union legislation aimed at safeguarding the proper functioning of the internal market, the Commission will examine whether the public service could equally well be provided in a less distortive manner, for instance by fully implementing the sectoral Union legislation.

(1153) In the present case, the Commission notes that the PSCs do not hinder the effective implementation or enforcement of the legislation in force, since the French authorities strictly complied with the principles set out in the sectoral legislation in force, namely the Cabotage Regulation.

(1154) There is therefore no need in the present case to carry out an in-depth analysis of distortions of competition on the basis of paragraph 55 of the SGEI Framework.

([302]) The estimate of freight demand is based on historical data (recital 224), which show that towed freight accounted for only about 20 % of the total freight transported between Marseille and Corsica between 2016 and 2020 (recital 54). Given that 20 % of the demand for towed freight is considered substitutable between Marseille and Toulon, overall only 4 % of total freight demand is considered substitutable between Marseille and Toulon.

7.3.10. *Requirements for the publication of certain information relating to the SGEI*

(1155) According to paragraph 60 of the SGEI Framework: 'For each SGEI compensation falling within the scope of this communication, the Member State concerned must publish the following information on the internet or by other appropriate means:

— the results of the public consultation or other appropriate instruments referred to in paragraph 14;

— the content and duration of the public service obligations;

— the undertaking and, where applicable, the territory concerned;

— the amounts of aid granted to the undertaking on a yearly basis.'

(1156) In the present case, the Commission notes that the French authorities published the information required under paragraph 60 of the SGEI Framework ([303]), with the exception of the annual amounts of aid granted to the beneficiaries, which will be published after that information has been audited.

(1157) The Commission therefore considers that the conditions of paragraph 60 of the SGEI Framework have been fulfilled.

7.3.11. *Conclusion on the compatibility of the measures*

(1158) On the basis of the above, the Commission concludes that the measures comply with the SGEI Framework and the Cabotage Regulation. The PSCs are therefore compatible with the internal market.

8. **CONCLUSIONS**

(1159) The Commission finds that, in breach of Article 108(3) TFEU, France unlawfully implemented the PSCs, which constitute State aid under Article 107(1) TFEU. However, the PSCs are compatible with the internal market,

HAS ADOPTED THIS DECISION:

Article 1

1. The financial compensation granted by France to Corsica Linea and La Méridionale (separately or jointly) under the five public service contracts relating to maritime services for Corsica from/to the port of Marseille for the 2023-2030 period, totalling EUR 853.6 million, constitutes State aid under Article 107(1) of the Treaty on the Functioning of the European Union.

2. The State aid referred to in paragraph 1, and unlawfully implemented by France pursuant to Article 108(3) of the Treaty on the Functioning of the European Union, is compatible with the internal market within the meaning of Article 106(2) of the Treaty on the Functioning of the European Union.

([303]) For the results of the public consultations, see the following link: https://www.isula.corsica/Synthese-des-resultats-des-consultations-publiques-sur-le-transport-maritime-entre-la-Corse-et-le-continent-francais_a4936.html?preview=1 (accessed on 18 October 2024) and for the other points, the following link: https://www.isula.corsica/assemblea/docs/rapports/2022E6370-.pdf (accessed on 18 October 2024).

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 26 November 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President