II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION (EU) 2020/1411

of 2 March 2020

on the State aid No C 64/99 (ex NN 68/99) implemented by Italy for the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group)

(notified under document C(2020) 1108)

(Only the Italian 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 the provision(s) cited above [1], and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. Commission Decision 2005/163/EC

(1) Following numerous complaints, in 1999 the Commission decided to initiate the procedure laid down in Article 108 (2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of aid paid to six companies of the former Tirrenia Group, namely Tirrenia di Navigazione S.p.A. ('Tirrenia'), Adriatica di Navigazione S.p.A. ('Adriatica'), Caremar – Campania Regionale Maritima S.p.A. ('Caremar'), Saremar – Sardegna Regionale Marittima S.p.A ('Saremar'), Toremar – Toscana Regionale Marittima S.p.A. ('Toremar') and Siremar – Sicilia Regionale Marittima S.p.A. ('Siremar'). At that time these companies were controlled by the public company Finmare that held the share capital of Tirrenia, which in turn owned the regional companies Adriatica, Caremar, Saremar, Siremar and Toremar.

(2) The aid took the form of subsidies paid directly to each of the companies in the group to support the maritime transport services those companies provided under six public service agreements concluded with the Italian State in 1991 ('the Initial Conventions'). The purpose of the Initial Conventions was to guarantee the provision of maritime transport services, the majority of them connecting mainland Italy with Sicily, Sardinia and other, smaller, Italian islands.

(3) By letter dated 6 August 1999, the Commission informed Italy of its decision to initiate the formal investigation procedure ('the Opening Decision'). By letter dated 28 September 1999, the Italian authorities submitted their comments on the Opening Decision.

[1] OJ C 306, 23.10.1999, p. 2.

(4) Following the publication of the Opening Decision in the *Official Journal of the European Union* ([2]), several private operators submitted their comments to the Commission. Those comments were forwarded to the Italian authorities to give them the opportunity to react.

(5) On 18 October 1999, Italy brought an action for annulment against the Opening Decision before the Court of Justice, in respect of the part stipulating that the aid be suspended. The case was registered under case number C-400/99. In addition, on 19 October 1999 Tirrenia, Adriatica, Caremar, Saremar, Siremar and Toremar brought before the General Court an action for annulment of the Opening Decision as a whole, by virtue of Article 230(4) of the EC Treaty [now Article 263(4) TFEU]. This application was registered under case number T-246/99.

(6) By judgment of 10 May 2005 in case C-400/99, the Court of Justice annulled the Opening Decision 'to the extent to which it entailed suspension of the tax treatment applied to the supply of fuel and lubricating oil for vessels of the Tirrenia Group', until notification to the Italian authorities of the decision closing the procedure in relation to the undertaking concerned ([3]). For the remainder, the application was dismissed.

(7) By judgment of 20 June 2007 in case T-246/99 ([4]), the General Court rejected the application presented by Tirrenia and Adriatica, Caremar, Saremar, Siremar and Toremar for annulment of the Opening Decision as a whole.

(8) During the investigation phase, the Italian authorities asked for the Tirrenia Group case to be split up so that priority could be given to reaching a final decision concerning Tirrenia. This request was motivated by the Italian authorities' wish to privatise the group, beginning with Tirrenia, and their intention to speed up the process in relation to that company.

(9) With regard to this request, the Commission noted that, while Tirrenia acted as group leader in terms of the Group's financial and commercial strategy, the then six member companies were legally independent and operated in geographically distinct market segments subject to varying degrees of competition, both from private Italian operators and from operators from other Member States. The Commission also noted that the subsidies paid by the Italian authorities, pursuant to the Initial Conventions referred to in recital 2, were calculated to cover the net operating loss on the routes served by each of the said companies and that they were granted directly to those companies without going through Tirrenia. Lastly, the other aid measures covered by the procedure – investment aid and aid of a fiscal nature – required separate analysis in respect of each company of the Group. Accordingly, the Commission decided that it could accede to the Italian authorities' request, and by Decision 2001/851/EC ([5]) it closed the procedure initiated in respect of the aid awarded to the Tirrenia ('the 2001 Decision').

(10) The procedure remained open with regard to the aid granted by Italy to the remaining five companies in the Tirrenia Group (i.e. Adriatica, Caremar, Saremar, Siremar and Toremar, 'the Regional Companies'). During various bilateral meetings between 2001 and 2003, the Italian authorities supplied information on each of the routes operated by these companies, indicating the particular features of the markets in question, the traffic trend, the presence of competing private companies, if any, and changes in the amount of the public financing granted to each of the companies.

(11) In addition, in January, February and September 2003 a number of complainants, notably certain private operators competing with Caremar in the Gulf of Naples, submitted additional information to the Commission, containing new data to be taken into account in the investigation procedure. The Italian authorities were invited to submit their comments on these additional issues. A bilateral meeting was held on 20 October 2003, as a result of which the Italian authorities made certain commitments regarding a number of high-speed connections operated by Caremar in the Gulf of Naples. These undertakings were formalised by letter of 29 October 2003, which reached the Commission on 31 October 2003, and confirmed by a letter dated 17 February 2004. In respect of Adriatica, the Italian authorities submitted additional information to the Commission by fax dated 23 February 2004.

([2]) See footnote 1.

([3]) Judgment of 10 May 2005, *Italian Republic v Commission of the European Communities*, C-400/99, ECLI:EU:C:2005:275, paragraph 34.

([4]) Judgment of 20 June 2007, *Tirrenia di Navigazione SpA and Others v Commission of the European Communities*, T-246/99, ECLI:EU:T:2007:186.

([5]) Commission Decision 2001/851/EC of 21 June 2001 on the State aid awarded to the Tirrenia di Navigazione shipping company by Italy (OJ L 318, 4.12.2001, p. 9).

(12) Finally, by Decision 2005/163/EC ([6]) ('the 2005 Decision'), the Commission declared the compensation granted by Italy to the Regional Companies to be partially compatible with the internal market, partially compatible conditional on the observance of certain undertakings by the Italian authorities, and partially incompatible. The Commission imposed recovery of the part of the aid, which was declared incompatible with the internal market.

(13) In particular, Articles 1, 2, 3, 4 and 5 of the 2005 Decision state:

— 'Article 1

Without prejudice to the provisions of paragraph 2, the aid granted by Italy to Adriatica as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86 (2) of the Treaty.

The aid granted to Adriatica for the period January 1992 to July 1994 in relation to the Brindisi/Corfu/Igoumenitsa/Patras connection is incompatible with the common market.

Italy shall take all necessary steps to recover from Adriatica the aid referred to in paragraph 2 granted to that company unlawfully.

Recovery shall be effected without delay in accordance with the procedures stipulated under Italian law, provided that these permit the immediate and effective execution of this decision.

The aid to be recovered shall yield interest from the date on which it was made available to the recipient to the date on which it is recovered. The interest shall be calculated on the basis of the reference rate used to calculate the equivalent regional aid subsidy on a compound basis, as stipulated in the Commission Communication on the interest rates to be applied when aid granted unlawfully is being recovered.

As of 1 January 2004, separate accounts must be kept for all the public service activities imposed by Italy on the Adriatica company on each of the routes concerned.

— Article 2

The aid granted by Italy to Siremar, Saremar and Toremar as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty.

As of 1 January 2004, separate accounts must be kept for all the public service activities imposed by Italy on Siremar, Saremar and Toremar on each of the routes concerned.

— Article 3

The aid granted by Italy to Caremar as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty.

Italy shall give an undertaking that, by no later than 1 September 2004, it will:

(a) abolish the aid granted to Caremar for the provision of scheduled high-speed passenger transport services on the Naples/Capri route;

(b) reduce, in terms of places on offer, the capacity of the scheduled high-speed passenger transport services on the Naples/Procida/Ischia route from 1 142 260 to 633 200 places during the winter period and from 683 200 to 520 400 places during the summer period;

(c) limit the aid granted to Caremar for the provision of scheduled high-speed passenger transport services on the Naples/Procida/Ischia route to covering the net operating loss on the services;

(d) have separate accounts kept for all the public service activities imposed by Italy on Caremar on each of the routes concerned.

— Article 4

The capacity reduction undertakings specified in Article 3 shall be included in the interministerial decree adapting the regional companies' five-year plan for the period 2005-2008.

([6]) Commission Decision 2005/163/EC of 16 March 2004 on the State aid paid by Italy to the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group) (OJ L 53, 26.2.2005, p. 29).

— Article 5

The Commission shall be notified in advance of any permanent change, whether partial or total, to the level of services offered by Adriatica, Siremar, Saremar, Toremar or Caremar such as would entail an increase in the aid'

1.2. **General Court's judgment annulling the 2005 Decision**

(14) Three actions challenging the 2005 Decision have been brought before the General Court, respectively by (i) Tirrenia, which in 2004 had acquired the ongoing business of Adriatica (Case T-265/04); (ii) Caremar, Saremar, Siremar, and Toremar (Case T-292/04); and (iii) a competitor, Navigazione Libera del Golfo S.p.A. (Case T-504/04).

(15) By judgment of 4 March 2009 in Joined Cases T-265/04, T-292/04 and T-504/04 ('the 2009 Judgment') ([7]) the General Court annulled the 2005 Decision.

(16) In particular, the General Court ruled that the Commission had not sufficiently stated reasons for qualifying the aid as new, rather than existing, as claimed by the applicants. In particular, it considered that the Commission had not adequately justified why it considered that the aid did not pre-date the entry into force of the EC Treaty in Italy, as the Italian authorities had argued during the procedure that the aid in question was based on the provisions of Royal Decrees adopted in 1936. Furthermore, the Court considered that the Commission had not sufficiently addressed the Italian authorities' allegations made during the formal investigation procedure to the effect that the subsequent amendments to the relevant legal framework exclusively resulted in a reduction in the overall aid amount ([8]).

(17) Secondly, the General Court ruled that the Commission had failed to apply Article 4(3) of Council Regulation (EEC) No 3577/92 ([9]) ('the Maritime Cabotage Regulation') stipulating that existing public service contracts may remain in force up to their expiry date. The General Court considered that the compensation paid to the Regional Companies of the Tirrenia Group under the Initial Conventions for the operation of the cabotage routes constituted existing aid, insofar as the Commission had already concluded that such compensation did not exceed what was necessary to finance the public service obligations ([10]).

1.3. **Procedure after the annulment of the 2005 Decision**

(18) By letter dated 7 April 2010, the Commission invited the Italian authorities to submit their comments on the annulment of the 2005 Decision and provide all information required to assess exhaustively the measures in question. In particular, it asked the Italian authorities to provide (i) clarifications on the operation by Adriatica and Saremar of the international routes, namely the period of operation, the legal act laying down the public service obligations and the features of the service: regularity, capacity, frequency, type of ship, as well as any subsequent modifications in the public service obligations; and (ii) a description of the compensation mechanism and of all subsequent modifications of the method of calculation of compensation and return on invested capital, as well as of the effect of such modifications on the level of the compensation.

(19) On the same date, the Commission also asked the interested parties to the procedure leading to the adoption of the 2005 Decision to provide their comments in this respect. The Commission only received comments from the beneficiaries of the measures subject to the 2005 Decision. These comments were forwarded to the Italian authorities to give them the opportunity to react.

(20) As the Italian authorities did not respond to the letter of 7 April 2010, by letter dated 22 June 2010, the Commission reminded the Italian authorities to provide the information requested.

(21) By letter dated 27 July 2010, the Italian authorities provided certain clarifications on the legislation applicable to public service regimes in the maritime sector in Italy.

([7]) Judgment of 4 March 2009, *Tirrenia di Navigazione SpA and Others v Commission of the European Communities*, T-265/04, ECLI:EU:T:2009:48.

([8]) Points 97 to 134 of the 2009 Judgment.

([9]) Council Regulation (EEC) No 3577/92 of 7 December 1992 on the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

([10]) Points 140 to 148 of the 2009 Judgment.

(22) By letter dated 22 December 2010, the Commission asked the Italian authorities to provide the following additional information:

(a) The annual compensation granted to Adriatica/Tirrenia, Saremar, Toremar, Siremar and Caremar during the period 2001-2008 (including the breakdown of costs taken into account for each of the companies);

(b) For the 1992-2008 period, the level of the profit, the methodology of calculation and justification that this level can be considered as reasonable taking into account the companies' risks in providing the public service;

(c) According to the Conventions concluded by Adriatica, Saremar, Toremar, Siremar and Caremar with the Italian State in 1991, the routes and ports to be served, the type and capacity of the vessels assigned to the maritime connections in question, the frequency of service and the fares to be paid was to be detailed in five-year plans. The Italian authorities were asked to submit the five-year plans covering the periods 2000-2004 and 2005-2008, which had not been provided to the Commission at the time of the 2005 Decision;

(d) The Italian authorities were asked to indicate whether the conditions imposed by the 2005 Decision ([11]) had been respected.

(23) By letter dated 29 June 2011, the Commission again invited the Italian authorities to provide the information requested. The Commission explicitly put the Italian authorities on notice that, if the requested information was not submitted by that deadline, it would issue an information injunction in accordance with Article 10(3) of Council Regulation (EC) No 659/1999 ([12]) ('the Procedural Regulation').

(24) By letter dated 19 July 2011 the Italian authorities provided certain clarifications, concerning points (a), (c) and (d) of the Commission request of 22 December 2010. Notably, they provided the annual compensation granted to Adriatica during the period 2001-2004, and to Saremar, Toremar, Siremar and Caremar during the period 2001-2008, confirmed the observance of the conditions imposed by the 2005 Decision, and explained that, rather than adopting five-year plans for the 2000-2004 and 2005-2008 periods, ad hoc rationalisation measures had been taken, with a view to bringing the services more closely into line with the needs of the local communities, without however making substantive changes to the public service system. As regards the level of profit, the Italian authorities explained that, given the considerable time elapsed since the adoption of the 2005 Decision, and in particular, the timeframe and complexity of the information requested, they could not readily retrieve this information from the Ministry's archives. Thus, no complete reply to the Commission letter dated 22 December 2010 was submitted.

(25) In June 2012, a meeting took place with the Italian authorities in order to complete the case file and allow the Commission to finalise the assessment of the measures in question. During this meeting the Commission requested detailed data, notably to establish that the companies concerned had not benefited from overcompensation.

(26) Given that the information provided by the Italian authorities following this meeting was not sufficient to allow the Commission to complete its assessment, a new request for information was sent to Italy on 7 November 2012, concerning:

(a) the compensation and reasonable profit granted to Adriatica/Tirrenia, Saremar, Toremar, Siremar and Caremar for the period 1992-2008;

(b) the list of international routes operated by Adriatica/Tirrenia and Saremar respectively under the Initial Conventions, and the duration of their operation;

(c) the effective enforcement of the recovery provisions of the 2005 Decision;

([11]) Namely, (i) the obligation to keep, as of 2004, separate accounts for each of the public service routes serviced by Adriatica/Tirrenia, Siremar, Saremar Toremar, and Caremar; (ii) the abolition of aid to Caremar for the provision of high-speed passenger transport services on the Naples/Capri route; (iii) the limitation of aid to Caremar for the provision of high-speed passenger transport services on the Naples/Procida/Ischia route to covering the net operating loss on the route; (iv) the reduction of the capacity of the scheduled high-speed passenger transport services on the Naples/Procida/Ischia route.

([12]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

(d) the observance of the conditions laid down in Article 2(1) of Commission Decision 2005/842/EC ([13]) ('the 2005 SGEI Decision');

(e) the public service obligations imposed on Adriatica for the operation of the Genoa/Termini Imerese route, the competitive situation on the route and the duration of the operation by Adriatica/Tirrenia of the route under the public service regime after 2004;

(f) whether any of the companies had been in difficulty within the meaning of the Community Guidelines on aid for rescue and restructuring firms in difficulty ('the R&R Guidelines') ([14]) and for which period.

(27) By letter dated 7 December 2012, the Italian authorities provided incomplete answers to the questions raised by the Commission. In particular, Italy answered those questions in the following manner:

(a) regarding the compensation and reasonable profit for 1992-2008, the Italian authorities provided:

(i) the accounts per line for each company for the period 1999-2001;

(ii) the annual rate of profit granted to Adriatica in the period 1999-2003 and to the remaining Regional Companies in the period 1998-2003. Saremar's annual rate of profit in 1999 was not provided;

(iii) the amount of losses effectively compensated each year in the period 2004-2008 for the operation of the routes operated by Adriatica/Tirrenia;

(iv) the accounts per line for each company for the period 2004-2008, with the exception of Saremar. The accounts per line were only provided for 2005, 2006 and 2007 in the case of Toremar and only 2006 for Siremar. The annual rate of profit for the years 2004-2008 was not provided for any of the Regional Companies;

(b) regarding the list of international routes operated by Adriatica/Tirrenia and Saremar under the Initial Conventions and the duration of their operation, Italy did not provide the end dates as concerns the operation of the Trieste/Durrës route. No documentary evidence was provided to support the claim that the start of operation of the Santa Teresa di Gallura/Bonifacio route dated back to before 1989;

(c) regarding the recovery of aid declared incompatible by the 2005 Decision, Italy confirmed recovery of the incompatible aid granted to Adriatica from January 1992 to July 1994 for the operation of the Brindisi/Corfu/I-goumenitsa/Patras connection, quantified at EUR 8 651 600 in total (EUR 3 207 810 principal and EUR 5 443 790 interests starting from 1 January 1992) at 31 December 2006. The aid was paid back by the beneficiary only on 26 March 2007. No reference was made to any interest paid for the period 1 January 2007-26 March 2007;

(d) regarding observance of the conditions laid down in Article 2(1) of the 2005 SGEI Decision, no information was provided;

(e) regarding the Genoa/Termini Imerese route, Italy clarified that this route was suspended in 2005 and suppressed in 2006. No information was provided on the competitive situation on the route;

(f) regarding the potential qualification of the companies as in difficulty under the R&R Guidelines, Italy confirmed that the companies had not benefitted from rescue aid in the relevant period, without however providing a definite confirmation as to whether any of the companies could have been considered in difficulty at any time during the Initial Conventions.

(28) A further reminder was sent to the Italian authorities on 28 January 2013 asking them to submit all information previously requested without delay. The Commission again put the Italian authorities on notice that if the complete requested information were not submitted by that deadline, it would issue an information injunction in accordance with Article 10(3) of the Procedural Regulation.

(29) On 11 March 2013 the Commission decided to enjoin Italy pursuant to Article 10(3) of the Procedural Regulation to supply the information requested by the letters of 22 December 2010 and 7 November 2012.

([13]) Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty [now 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 (OJ L 312, 29.11.2005, p. 67).

([14]) OJ C 244, 1.10.2004, p. 2.

(30) On 10 April 2013 Italy replied to the information injunction. Italy provided the operating costs/revenues and annual subsidy (as difference between cost and revenues, no margin for the operator) for all companies after 2004. Italy did not address the remaining requests in the Commission's injunction decision.

(31) On 16 October 2015 the Commission asked Italy to provide additional information regarding the merger of Adriatica with Tirrenia, namely details on the sale of Adriatica's assets and the conditions attached to the merger. On 4 November 2015, with letter dated 22 October 2015, the Italian authorities replied that by decision of 18 March 2004, Tirrenia had acquired the ongoing business of its subsidiary and that the merger neither affected the activities carried out by Adriatica under the initial Conventions nor brought any change to the compensations envisaged therein.

(32) On 18 October 2018 the Commission asked Italy to provide clarifications with regard to the compensation paid for the route Bari/Durrës and the exact amount of aid (principal and interest) recovered by the Italian authorities for the operation of the route Brindisi/Corfu/Igoumenitsa/Patras in the years 1992-1994. Italy replied on 21 December 2018, clarifying that no compensation had been paid for the services provided on the route Bari/Durrës in the years 2002-2008 and confirming that the recovery of EUR 8 651 600 of incompatible aid granted to Adriatica from January 1992 to July 1994 for the operation of the Brindisi/Corfu/Igoumenitsa/Patras did not include interest for the period 1 January 2007-26 March 2007.

1.4. **State aid cases after the expiry of the Initial Conventions**

(33) As of January 2009, Tirrenia, Siremar, Saremar, Toremar and Caremar provided maritime transport services under the Initial Conventions prolonged as follows:

(a) Decree Law No 207 of 30 December 2008, converted into Law No 14 of 27 February 2009 laid down the prolongation of the Initial Conventions up to the end of 2009;

(b) Article 19*ter* of Decree Law No 135 of 25 September 2009, converted into Law No 166 of 20 November 2009 ('the 2009 Law'), further prolonged the Initial Conventions until 30 September 2010, when Italy intended to finalise the privatisation process of the Tirrenia Group companies;

(c) Law No 163 of 1 October 2010 converting Decree Law No 125 of 5 August 2010 finally provided for a further prolongation of the Initial Conventions up to the end of the privatisation process.

(34) By virtue of the 2009 Law, the acquirers of the companies were to be entrusted with new Conventions/public service contracts.

(35) On 5 October 2011, having received several complaints, the Commission opened the formal investigation procedure in respect of several measures adopted by the Italian State in favour of the companies of the former Tirrenia Group, including the compensation paid to the companies under the prolongation of the Initial Conventions as referred to above, and potential aid involved in the privatisations ([15]). An extension of the formal investigation procedure was adopted on 19 December 2012 ([16]). Those measures are being investigated separately under cases SA.32014, SA.32015 and SA.32016 and are not therefore covered by the present decision.

1.5. **Scope of the current decision**

(36) This decision only covers the subsidies received by the Regional Companies during the period 1992-2008 and is without prejudice to any other ongoing State aid cases, including the formal investigation procedure concerning the public service compensation paid to those companies as of 2009 under the prolongation of the Initial Conventions (see Cases SA.32014, SA.32015 and SA.32016).

(37) This decision only concerns State aid aspects and is without prejudice to the application of other provisions of the Treaty, particularly regarding the law on public contracts and service concessions.

([15]) OJ C 28, 1.2.2012, p. 18.
([16]) OJ C 84, 22.3.2013, p. 58.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. The beneficiaries and the markets on which they operate

2.1.1. *Adriatica*

(38) Adriatica operated international routes between Italy and Greece, Albania and the former Yugoslavia, along with a network of local cabotage connections with Sicily (only freight) and the islands of the Tremiti archipelago.

(39) The bulk of Adriatica's passenger traffic was concentrated on the international connections with Albania and on the cabotage connections with the islands of the Tremiti archipelago ([17]). In terms of freight traffic, over 90 % of Adriatica's overall volume was accounted for by the cabotage connections with Sicily and the international connections (the latter representing 67 % of the company's total freight traffic) ([18]).

(40) Adriatica faced different levels of competition on the various routes it operated.

(41) As regards the international connections:

— the route Bari/Durrës (Albania) was operated by Adriatica and by other operators all year round, including one Union operator (but only in the high season),

— the route Ancona/Split (Croatia) was operated by Adriatica and three other operators, including since 2001 one Union operator (but only in the high season),

— the route Bari/Dubrovnik (Croatia) was operated by Adriatica only in 1997-1998 along with one non-Union operator,

— the route Bari/Bar (Montenegro) was operated by Adriatica only in 1997-1998 along with two non-Union operators,

— the route Brindisi/Corfu/Igoumenitsa/Patras (Greece) was operated by Adriatica until 2004 (but discontinued between 2000 and 2004) ([19]) along with other operators, including Union operators,

— on the routes Ancona/Durrës (Albania), Ancona/Bar (Montenegro) and Trieste/Durrës (Albania), Adriatica faced no competition.

(42) As regards the cabotage connections:

— on the connections with a number of islands in the Tremiti archipelago, Adriatica faced competition from other Italian operators mostly in the high season,

— on the freight routes Genoa/Termini Imerese and Ravenna/Catania, Adriatica was in competition with other Italian operators,

— on the freight routes Venice/Catania and Livorno/Catania Adriatica faced no competition.

2.1.2. *Saremar*

(43) Saremar operated local cabotage connections with the islands to the north-east and south-west of Sardinia, along with the international route Santa Teresa di Gallura/Bonifacio between Sardinia and Corsica.

(44) On these routes, Saremar's operations accounted for 64 % of the passenger transport market and 70 % of the freight market.

([17]) Of the 596 943 passengers carried by Adriatica in 2000, 397 146 travelled on routes in the middle and lower Adriatic (334 639 of them between Italy and Albania) and 161 024 on the connections with the Tremiti archipelago.

([18]) Of the 779 223 linear metres of freight carried by Adriatica in 2000, 306 124 were carried on routes in the middle and lower Adriatic (of which 235 542 between Italy and Albania) and 473 099 on the connections with Sicily.

([19]) Adriatica suspended the activities on this route in October 1999 following a request of the Italian Ministry of Transport. Between 2000 and 2004 Adriatica did not provide services on this line with own vessels and confined its activities to ensuring – by means of contracts with third parties – the passenger service covered by the International Convention of 7 February 1970 concerning the Carriage of Passengers and Luggage by Rail (CIV), of which Adriatica was member.

(45) Apart from the Santa Teresa di Gallura/Bonifacio route (that measures 10 nautical miles), the routes operated by Saremar (La Maddalena/Palau, Carloforte/Calasetta, Carloforte/Portovesme) were quite short, measuring an average of five nautical miles. This, together with the frequency of the daily trips, made these maritime connections not unlike a suburban transport system intended to provide the inhabitants of the neighbouring islands with transport and supply ([20]). The special nature of this market also derived from the local geography and meteorological conditions at sea, which necessitated the use of a particular type of ship not suitable for use elsewhere for other types of shipping.

(46) Saremar faced competition from other Italian operators on three of the four routes it operated, including on the connection between Sardinia and Corsica.

2.1.3. *Toremar*

(47) Toremar operated the maritime cabotage routes between the mainland and the Tuscan islands (Elba, Gorgona, Capraia, Pianosa and Giglio). The company essentially ran a network of local services whose frequency and timetables intended to meet the supply and mobility requirements of the islands' populations. The features of the network of services provided by Toremar made it comparable to a suburban local transport services network.

(48) Two of the six routes operated by Toremar were also operated by other Italian operators all year round.

2.1.4. *Siremar*

(49) Siremar operated local connections between the ports of Sicily and the smaller islands around Sicily (Aeolian islands, Pelagian islands, Egadi islands, Ustica and Pantelleria).

(50) The connections with the Aeolian islands archipelago to the north of Sicily extended as far as the peninsula (Naples). This was a purely local network of routes. The generally short trips, the frequency of service and the timetable were intended to serve the mobility requirements of the islands' residents. The Aeolian islands, which are home to 12 000 permanent residents, 9 000 of which live on the main island of Lipari, were at that time served by five connections operated by Siremar from the Sicilian port of Milazzo. Siremar provided the service all year round using mixed (passenger/vehicle) vessels and high-speed passenger craft. One Italian operator competed with Siremar on four of the five routes, using mixed vessels of small capacity, while another competed with the high-speed services on three routes in the off-season and four in the high season.

(51) As regards the connection with the three islands of the Egadi archipelago Siremar operated year-round connections from the Sicilian port of Trapani, using one mixed (passenger/vehicle) vessel and two high-speed craft. Two private Italian operators were present on this market: the first provided a freight-only service while the second provided high-speed services.

(52) Siremar faced no competition from private operators on the other routes it operated from the ports of Palermo and Agrigento. Siremar was thus the only carrier catering to the mobility requirements of the inhabitants of the islands in question.

2.1.5. *Caremar*

(53) Caremar operated a network of local maritime connections between the mainland ports of the Gulf of Naples (Naples, Sorrento and Pozzuoli) and the Partenopee islands (Capri, Ischia, Procida) and between the mainland ports of Formia and Anzio (Lazio) and the minor islands of Ponza and Ventotene. The services it provided was essentially designed to meet the mobility requirements of the local communities and were comparable to a suburban transport network in terms of frequency and timetable, particularly as regards the Gulf of Naples.

(54) In the Gulf of Naples, Caremar operated in competition with other private Italian operators on the Capri/Naples, Capri/Sorrento, Ischia/Naples and Procida/Naples routes.

(55) Conversely, Caremar faced no competition on the connections it operated with the islands of Ponza and Ventotene, which it served all year round using mixed passenger/vehicle vessels. It faced competition, however, from a private operator for the high-speed services it provided on the Ponza/Formia and Ventotene/Formia routes.

([20]) On the four scheduled routes operated by the company, there was an average of one sailing per hour between 6 a.m. and 10 p.m.

2.2. **Public service compensations**

2.2.1. *The legislative framework*

(56) In order to comply with the 2009 Judgment, the applicable legal framework at national level is described in detail in recitals 57-93.

2.2.1.1. Legislation not examined in the 2005 Decision

— Royal Decrees No 2081 and No 2082 of 7 December 1936

(57) Royal Decrees No 2081 and No 2082 of 7 December 1936 ('the 1936 Decrees') instituted a number of national interest routes (*linee di interesse nazionale*) and laid down provisions on the financial interventions required to implement their operation.

(58) In order to ensure a required level of service on the national interest routes, Royal Decree No 2081 of 7 December 1936 ('Decree 2081/1936') set up four companies: Italia (based in Genoa), Lloyd Triestino (based in Trieste), Tirrenia (based in Naples) and Adriatica (based in Venice). According to Royal Decree No 2082 of 7 December 1936 ('Decree 2082/1936'), a newly created publicly owned company (*Finmare*) would hold the majority shareholding in these companies.

(59) The national interest routes were grouped into four sectors on the basis of a geographical criterion. Even though some national interest routes were national connections between the mainland and the major Italian islands, most of them were international routes connecting Italy with the American and African continents. Pursuant to Article 3 (4) of Decree 2081/1936, the provision of maritime services in each of these four sectors was entrusted for a twenty-year period (as from 1 January 1937) to the four newly set up companies as follows:

(a) Sector I (America): Italia;

(b) Sector II (Africa beyond the Suez and the Gibraltar channels, Asia beyond the Suez channel, and Australia): Lloyd Triestino;

(c) Sector III (Tyrrhenian Sea and Libya, Italic Periplus, Western Mediterranean Sea, northern Europe beyond the Gibraltar channel): Tirrenia;

(d) Sector IV (Adriatic Sea and Eastern Mediterranean Sea): Adriatica.

(60) Article 6 of Decree 2081/1936 stipulated the possibility to subsequently extend the list of national interest routes by Ministerial Decree, provided that any new route was allocated to the companies set up in the 1936 Decrees.

(61) The same article laid down that, where necessary for the provision of maritime services on the routes in question, a public contribution to the abovementioned companies could be granted on the basis of public service contracts with a twenty-year duration. It was therefore established that the level of the public subsidies would be set in public service contracts with a twenty-year duration.

(62) Pursuant to Article 7 of Decree 2081/1936, the public contribution could be reviewed every four years under a number of conditions. This provision aimed at ensuring that the companies operated more than 75 % of the routes entrusted to them, and that the average profit margin granted for their operation ranged between 4 % and 8 %. The 1936 Decrees did not spell out the total budget of the financing scheme.

(63) Royal Decree No 781 of 12 May 1938 laid down the possibility to amend by Ministerial Decree the list of national interest routes provided in Article 2 of Decree 2081/1936 (and approved by Ministerial Decree of 5 January 1937). Ministerial Decree of 20 December 1938 introduced certain modifications to the list of routes.

(64) The public service contracts concluded in accordance with Decree 2081/1936 expired on 31 December 1956. The Italian legislator subsequently extended the contracts until 30 June 1962 ([21]).

— Law No 34 of 5 January 1953 and Law No 178 of 26 March 1959

(65) Law No 34 of 5 January 1953 ('Law 34/1953') and Law No 178 of 26 March 1959 ('Law 178/1959'), regulating local postal and commercial shipping services, authorised the Ministry of Merchant Shipping to launch public tenders for the entrustment to private companies of the transport of mail and postal packages services and the provision of commercial services of a purely local nature.

(66) Law 34/1953 laid down four subsidised sectors to be entrusted with separated public tenders: (a) Tuscan archipelago; (b) Partenopee and Pontine islands; (c) Eolie islands; (d) Egadi islands, Pelagie islands, Ustica and Pantelleria. Law 178/1959 added the following subsidised sectors: (e) Median Adriatic Sea; (f) High Adriatic Sea.

(67) Pursuant to Article 4 of Law 34/1953, the subsidies granted by the State for the operation of the above-mentioned services were to be agreed in public service contracts with a twenty-year duration. The same provision applied also to the routes covered by Law 178/1959.

— Law No 600 of 2 June 1962

(68) Law No 600 of 2 June 1962 ('Law 600/1962') reorganised the maritime public service regime in Italy.

(69) More specifically, Article 2 of Law 600/1962 laid down that new public service contracts were to be concluded between the Ministry of Merchant Shipping and the Italia, Lloyd Triestino, Tirrenia and Adriatica companies. These contracts would have twenty-year durations and include: (i) the list of national interest routes;, (ii) detailed public service obligations imposed on the companies operating the routes; and (iii) detailed rules on the compensation that the State could grant for the operation of the routes in question. They would enter into force on 1 July 1962.

(70) The total amount of public compensation to be granted to all the operators entrusted with the operation of the routes was fixed by Article 6 of Law 600/1962. The contribution to be granted to each operator could be reviewed every two years in case of alteration of the income and costs of the operator, having regard to the criteria indicated in Article 8 thereof. In order to introduce an efficiency incentive, it was foreseen that the contribution could be revised upwards or downwards provided that the variations in certain revenue and expenditure items, stated in the law, exceeded in absolute value 1 % of the gross revenue. The revision could only affect the surplus part of that amount.

2.2.1.2. Legislation examined in the 2005 Decision

— Law No 684/1974 and Presidential Decree No 501/1979

(71) Law No 684 of 20 December 1974 on the restructuring of maritime services of major national interest ('Law 684/1974') repealed Decree 2081/1936 and Law No 600/1962, as well as any contrary or incompatible disposition, and provided for the termination as of 31 December 1974 of the agreements concluded under Law 600/1962.

(72) Law 684/1974 introduced a distinction between freight lines (Article 4), passenger lines (Article 6), and connections with major and minor Italian islands (Article 8).

(73) With reference to maritime connections with major and minor Italian islands, Article 8 required the compliance with requirements concerning the economic and social development of the regions concerned, particularly the Mezzogiorno. To this end, the same article provided that the companies of the then Finmare Group entrusted with the provision of such services were paid subsidies pursuant to public service contracts of twenty-year duration.

([21]) Pursuant to Decree Law No 1379 of 20 December 1956, Decree Law No 444 of 25 June 1957, Law No 351 of 26 May 1959, Law No 32 of 2 February 1961 and Law No 40 of 2 February 1962.

(74) According to Article 9, the public service contracts had to include a list of the routes to be serviced, the frequency of the service, the type of vessels to be dedicated to each route and the amount of the public contribution. This amount could be subject to yearly review if at least one of the cost elements taken into consideration for its calculation registered a variation higher than 5 % compared to the previous year.

(75) As regards passenger lines, Article 6 laid down the termination of the passenger connections operated by Italia, Lloyd Triestino, Adriatica and Tirrenia within three years from the entry into force of the law (these maritime services were classified by the law as *Gestione stralcio dei servizi passeggeri*). Article 7 recognised the possibility to grant compensation ensuring the economic equilibrium of those four companies in relation to those services during the said three-year period, on the basis of annual conventions.

(76) As to freight lines, Article 4 of Law 684/1974 authorised the Minister of Merchant Shipping to grant subsidies to companies of the Finmare Group either launching new maritime routes (Article 4(a)), or operating existing routes (Article 4(b)), in case of impossibility of the latter to achieve economic balance. Both types of subsidies could be granted for a maximum period of five years and the subsidy regarding existing routes had to be granted on the basis of annual conventions.

(77) Law 684/1974 did not provide for a global budgetary allocation for the different financing schemes it had set up.

(78) Presidential Decree No 501 of 1 June 1979, implementing Law 684/1974 as amended ('Decree 501/1979') ([22]), provided for detailed rules on the application of Law 684/1974. Article 3 of Decree 501/1979 clarified that, for the purpose of granting the compensation provided for by Article 7 of Law 684/1974, all national and international passengers routes run by Italia, Lloyd Triestino, Tirrenia and Adriatica had to be taken into account.

(79) Article 26 of Decree 501/1979 set out that the annual compensation for passenger lines (*Gestione stralcio dei servizi passeggeri*) had to be established on the basis of expected costs and revenues. According to Article 35 of that Decree the compensation for freight lines could be reviewed by 30 June of each year in order to ensure the economic equilibrium of each line. Article 9 of Decree 501/1979 specified the various elements to be taken into account for the calculation of the subsidy paid to the companies according to Articles 4(b), 7 and 8 of Law 684/1974.

(80) Decree 501/1979 also stipulated that the departure and arrival times on each of the routes served by the companies were to be approved by ministerial decree and required the companies to replace their ships older than 18 years, unless this obligation was expressly waived by the Ministry. Furthermore the vessels used had to be individually assigned to each public service route. This constraint, which obliged the companies periodically to renew their fleet, constituted a specific obligation for the companies.

(81) In addition to the ordinary services, Article 40 of Decree 501/1979 empowered the Minister for Merchant Shipping to arrange for the provision of additional services to satisfy extraordinary requirements in the public interest or to account for increases in traffic.

— Law No 169 of 19 May 1975

(82) Law No 169 of 19 May 1975 on the reorganisation of local postal and commercial shipping services ('Law 169/1975') reorganised the local postal and commercial public service regime.

(83) In particular, Article 1 laid down the setting up of three Regional Companies, namely Caremar, Siremar and Toremar, and entrusted the latter with public service obligations regarding the transport of mail and postal packages, as well as the provision of commercial services of a purely local nature. Article 1 also required that Tirrenia maintained a participation of at least 51 % in the share capital of each of these companies. Article 2 of Law 169/1975 authorised the Minister of Merchant Shipping to grant subsidies to the Regional Companies as agreed in public service contracts with twenty-year duration.

([22]) By Law No 373 of 23 June 1977 on the restructuring of maritime services of major national interest.

— Law No 856 of 5 December 1986

(84) Law No 856 of 5 December 1986 on regulations for the restructuring of the public fleet (Finmare Group) and measures regarding private shipping ('Law 856/1986') provided for certain alterations to the maritime public service regime.

(85) In particular, Article 1 set out that loss making freight transport lines essential for the national economy had to be subject to a programme of restructuring and financial support by the State. Article 2 provided for the granting of a start-up subsidy for a maximum duration of five years (starting on 1 January 1985) for those routes. In case of acquisition of a new ship a five-year start-up subsidy was granted, limited to the amount of the investment (depreciation charge and interests).

(86) Regarding the connections with minor and major islands, Article 11 amended the criteria for the calculation of the subsidies. In particular, the balancing subsidy had to be calculated on the basis of the difference between revenues and costs incurred in the provision of the service, determined with reference to average and objective parameters, and had to include a reasonable return on invested capital. The public service contracts had to include specific details about the elements to be taken into consideration in the calculation of the subsidy, together with the complete list of the subsidised routes, the frequencies and the ship to be used. The subsidies were to be approved by the Ministers of Merchant Shipping, of Public Participations and of Treasury. Paragraph 7 laid down that an additional subsidy could be granted for the first five-year period in order to ensure the economic balance of the beneficiaries.

(87) Pursuant to Article 13, the operation by Lloyd Triestino of the maritime links in the Upper Adriatic Sea with the Istrian coast had to be transferred to Adriatica. Furthermore, pursuant to paragraph 4 of that Article, the mixed links existing on 1 January 1986 and exploited by Adriatica ([23]) became subject to the rules contained in Articles 8 and 9 of Law 684/1974 and subsequent amendments (which concern the links with major and minor Italian islands). As a result, Article 11 of Law 856/1986 also became applicable to the international connections operated by Adriatica.

(88) Article 15 of Law 856/1986 provided for the setting up of a publicly owned regional company (Saremar) entrusted with the provision of postal and commercial services between Sardinia, Corsica and the neighbouring minor islands previously operated by Tirrenia.

(89) Article 12 of Law 856/1986 stipulated that the service tariffs were to be set by Ministerial Decree on a proposal from the companies themselves. Residents and migrant workers enjoyed preferential rates.

(90) Like Law 684/1974, Law 856/1986 did not set out a global budgetary allocation for the financing schemes it concerned.

— Decree Law No 77 of 4 March 1989 as converted into law by Law No 160 of 5 May 1989

(91) The last innovations in the legal framework applicable to the Initial Conventions, as regards both passenger transport and freight transport, were introduced by Decree Law No 77 of 4 March 1989 concerning urgent provisions regarding maritime transport and concessions ('Decree Law 77/1989'), as converted into law by Law No 160 of 5 May 1989.

(92) In particular, Article 9 of Decree Law 77/1989 stipulated that as of 1 January 1990 the lines considered essential in order to ensure passengers and freight transportation could benefit from a balancing subsidy. The routes to be served and the frequency of service were to be determined by the public authorities on the basis of technical proposals from the companies entrusted with the operation of the service, which to that end had to submit a service plan every five years.

(93) As regards the links with the islands, Article 9(3) also laid down that the amount of the balancing subsidy had to be set in the public service contracts taking as reference average and objective parameters as resulting from the tariffs applied by the national railway company (*Ferrovie dello Stato*) for equivalent services and distances.

([23]) Notably, the links between Trieste and other ports in the Italian region of Friuli Venezia Giulia, and between the western and eastern coast of the median and low Adriatic sea as well as between the Ionian sea and the Eastern Mediterranean.

2.2.2. *The Initial Conventions*

(94) The Initial Conventions are public service contracts concluded in July 1991 by the Italian State with each of the five Regional Companies of the former Tirrenia Group. These agreements were identical for all companies belonging to the former Tirrenia Group, including Tirrenia. By virtue of Article 2, the Initial Conventions applied retroactively with effect from 1 January 1989 and would expire on 31 December 2008. However, the Initial Conventions provided for the economic relations for the years 1989, 1990 and 1991 to be determined by ad hoc measures, which are not covered by this Decision.

(95) Under the terms of Article 3 of the Initial Conventions, the amount of the annual subsidy was established on the basis of an application which the beneficiary submitted in February of each financial year. The application was subject to inter-ministerial consultations and subsequently approved in the following month of May by ministerial decree. The purpose of the annual subsidy was to enable the company to cover losses resulting from the shortfall between its operating costs and revenues.

(96) Article 5 of the Initial Conventions detailed the various revenue and cost elements to be taken into consideration for the calculation of the compensation, as well as the return on invested capital, pursuant to Article 11 of Law No 856/1986.

2.2.3. *The five-year plans*

(97) Article 1 of the Initial Conventions provided for five-year plans to specify the routes and ports to be served, the type and capacity of the vessels assigned to the maritime connections in question, the frequency of service and the fares to be paid, including subsidised fares, particularly for residents of the island regions.

(98) The first five-year plan (1990-1994) was approved by Ministerial Decree of 29 May 1990, and applied retroactively as of 1 January 1990. The second plan, covering the period 1995-1999 and approved by Decree of 14 May 1996, left the routes and frequencies largely unchanged.

(99) The third plan (covering the period 2000-2004), submitted by the companies to the Italian authorities in September 1999, had not been approved at the time of adoption of the 2005 Decision. Pending the adoption of this plan, a Decree of 8 March 2000 entitled the companies of the Tirrenia Group to maintain the services specified in Article 9 of Law No 160/1989 under the conditions agreed in the 1994-1999 five-year plan in force in 1999.

(100) Following annulment of the 2005 Decision, the Italian authorities informed the Commission, that, rather than formally adopting five-year plans for the 2000-2004 and 2005-2008 periods, they took ad hoc rationalisation measures, with a view to bringing the services more closely in line with the needs of the local communities, without however making substantive changes to the public service system. The Italian authorities clarified that longer-term planning had no longer been possible due to budget concerns.

2.2.4. *The annual compensation*

2.2.4.1. The compensation assessed under the 2005 Decision

(101) The annual subsidy corresponded to the net loss in the operation of the services referred to in the five-year plan, to which a variable amount corresponding to the return on capital invested was added. The net operating loss derived from the revenues earned during the period and the costs incurred for the operation of the routes.

(102) The Initial Conventions provided for the annual balancing subsidy to be paid as follows:

(a) an advance payment of 70 % of the amount of subsidy granted the previous year, payable in March of each year;

(b) a second payment in June of each year, equal to 20 % of that subsidy;

(c) the difference between the amounts paid and the shortfall between operating costs and revenues during the year in progress constituted the balance, paid at the end of the year. Where a company received an amount greater than the net cost of the services provided (revenue minus losses), the latter was required to reimburse the difference within 15 days following approval of the balance sheet.

(103) The cost elements taken into account for the purpose of calculating the annual compensation were: agency commission/acquisition costs, port taxes/port transit costs and other traffic costs, operating costs, depreciation, net financial charges, administration costs and other costs. These cost elements, as annexed to the Initial Conventions, were the same for all the Regional Companies.

(104) The operating costs included the cost of the crew, maintenance, insurance, fuel and mineral oils. The 'administration' item essentially included the cost of shore personnel and administrative premises.

(105) According to the data provided by the Italian authorities, the Regional Companies' costs (in ITL million) and the amount of subsidy between 1992 and 2001 ([24]) were as follows ([25]).

Adriatica

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agency commission, etc.	9 750,0	11 940,0	12 432,0	13 915,0	14 224,0	13 949,0	16 307,0	16 376,0	12 702,0	17 451,6
Port taxes, etc.	12 268,0	13 249,0	15 137,0	19 357,0	20 292,0	20 915,0	24 007,0	23 503,0	21 241,0	31 257,2
Operating costs	64 942,0	66 079,0	78 385,0	83 169,0	90 140,0	97 448,0	96 426,0	83 486,0	80 622,0	100 151,6
Depreciation	15 086,0	17 502,0	22 761,0	23 706,0	23 719,0	23 727,0	23 463,0	23 286,0	23 351,0	29 053,7
Net financial charges	4 626,0	- 125,0	11 185,0	9 483,0	4 963,0	- 3 031,0	- 8 050,0	- 12 440,0	- 11 453,0	- 4 172,7
Administration	16 318,0	15 685,0	15 720,0	14 653,0	13 938,0	13 952,0	14 688,0	14 877,0	14 735,0	14 194,8
Other costs	4 028,0	- 139,0	2 913,0	2 051,0	2 819,0	7 371,0	8 968,0	2 021,0	- 3 942,0	- 4 116,5
Total costs (A)	**127 018,0**	**124 191,0**	**158 533,0**	**166 334,0**	**170 095,0**	**174 331,0**	**175 809,0**	**151 109,0**	**137 256,0**	**183 819,8**
Operating revenue (B)	64 772,0	79 716,0	80 324,0	95 114,0	95 422,0	94 995,0	114 210,0	126 403,0	109 786,0	155 616,1
Net profit (B – A)	**- 62 246,0**	**- 44 475,0**	**- 78 209,0**	**- 71 220,0**	**- 74 673,0**	**- 79 336,0**	**- 61 599,0**	**- 24 706,0**	**- 27 470,0**	**- 28 203,7**
Return on invested capital	8 258,0	10 615,0	7 819,0	9 304,0	7 935,0	5 788,0	5 271,0	3 646,0	4 377,0	6 147,7
Amount of annual subsidy	**70 504,0**	**55 090,0**	**86 028,0**	**80 524,0**	**82 608,0**	**85 124,0**	**66 870,0**	**28 352,0**	**31 847,0**	**34 351,4**

Saremar

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agency commission, etc.	697,0	1 108,0	1 386,7	1 672,9	1 566,7	1 624,0	1 233,0	1 786,4	1 405,8	1 319,0
Port taxes, etc.	2 308,0	2 505,0	1 929,8	1 898,4	1 776,8	2 099,1	2 508,0	2 096,4	2 250,0	2 265,4
Operating costs	22 213,0	24 077,0	23 570,7	23 433,8	26 129,1	26 664,2	28 112,0	29 883,9	23 914,8	20 094,0
Depreciation	3 099,0	3 733,0	3 976,8	3 959,8	3 611,8	3 300,5	3 352,0	3 400,4	3 369,0	3 559,1
Net financial charges	7,0	- 906,0	- 862,7	- 895,0	- 2 233,5	- 2 451,6	- 3 011,0	- 2 933,8	- 313,0	119,5
Administration	3 574,0	3 503,0	3 627,1	3 538,0	3 619,4	3 589,9	3 851,0	3 843,8	3 401,0	3 508,7
Other costs	1 621,0	1 918,0	1 666,8	997,8	502,9	1 827,3	3 557,0	2 141,7	2 272,0	239,9
Total costs (A)	**33 519,0**	**35 938,0**	**35 295,2**	**34 605,7**	**34 973,2**	**36 653,4**	**39 602,0**	**40 218,8**	**36 299,6**	**31 105,6**
Operating revenue (B)	7 464,0	8 365,0	9 383,8	11 396,6	11 533,5	11 746,7	11 744,0	12 425,6	12 652,0	13 456,1
Net profit (B – A)	**- 26 055,0**	**- 27 573,0**	**- 25 911,4**	**- 23 209,1**	**- 23 439,7**	**- 24 906,7**	**- 27 858,0**	**- 27 793,2**	**- 23 647,6**	**- 17 649,5**

([24]) The costs in 2001 were provided by the Italian authorities in EUR 1 000. For the purposes of these tables they were converted in ITL, taking into account the conversion rates for the EUR adopted by the Council of the European Union for effect on 1 January 1999, i.e. 1 EUR = 1 936,27 ITL.

([25]) Data taken from the PricewaterhouseCoopers study *'Valutazione dei criteri di predisposizione dei conti economici gestionali per linea e stagionalitá relativi agli esercizi 1992-1999'*, supplemented by the Italian authorities to include the years 2000 and 2001. The study reproduces the analytical accounts of the Tirrenia Group companies and assesses the operating costs and revenues for each of the routes.

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Return on invested capital	1 342,0	2 641,0	1 606,2	1 781,6	1 560,4	1 172,8	973,0	738,8	828,0	1 075,6
Amount of annual subsidy	**27 397,0**	**30 214,0**	**27 517,6**	**24 990,7**	**25 000,1**	**26 079,5**	**28 831,0**	**28 532,0**	**24 475,6**	**18 725,1**

Toremar

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agencycommission,etc.	3 743,0	4 651,0	4 897,0	4 767,7	4 932,8	5 356,3	3 687,0	2 433,0	3 660,0	1 808,7
Port taxes, etc.	3 279,0	3 141,0	2 871,5	3 050,7	3 380,1	3 512,1	4 311,0	3 839,9	4 513,0	4 596,3
Operating costs	26 980,0	27 398,0	30 740,3	32 605,1	34 738,3	34 875,0	34 539,0	36 411,1	31 448,0	30 796,0
Depreciation	5 218,0	5 210,0	5 171,1	5 164,7	5 176,0	5 180,8	5 151,0	5 158,3	5 169,0	5 634,4
Net financial charges	- 264,0	- 2 273,0	- 2 456,6	- 2 784,1	- 3 860,2	- 4 706,8	- 4 777,0	- 4 326,5	- 3 590,0	- 3 595,1
Administration	3 535,0	3 107,0	3 424,8	3 259,3	3 259,3	3 553,8	3 291,0	3 655,4	3 632,0	3 631,1
Other costs	1 020,0	3 673,0	3 048,5	1 923,9	2 889,8	1 133,9	4 599,0	668,9	843,0	2 031,7
Total costs (A)	**43 511,0**	**44 907,0**	**47 696,6**	**47 987,3**	**50 516,1**	**48 905,1**	**50 801,0**	**47 840,1**	**45 675,0**	**44 903,1**
Operating revenue (B)	27 406,0	30 750,0	32 759,6	31 968,5	32 483,3	31 200,8	29 996,0	32 362,0	34 577,0	35 573,5
Net profit (B – A)	**- 16 105,0**	**- 14 157,0**	**- 14 937,0**	**- 16 018,8**	**- 18 032,8**	**- 17 704,3**	**- 20 805,0**	**- 15 478,1**	**- 11 098,0**	**- 9 329,5**
Return on invested capital	1 367,0	2 145,0	1 312,1	1 408,0	1 285,0	936,5	718,0	588,1	1 993,0	3 033,6
Amount of annual subsidy	**17 472,0**	**16 302,0**	**16 249,1**	**17 426,8**	**19 317,8**	**18 640,8**	**21 523,0**	**16 066,2**	**13 091,0**	**12 363,1**

Siremar

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agencycommission,etc.	3 180,0	3 786,0	3 398,9	3 224,1	3 146,6	3 501,1	3 691,5	4 799,0	4 065,7	3 604,4
Port taxes, etc.	5 545,0	5 338,0	5 622,1	5 837,5	6 181,2	6 421,2	6 793,1	6 982,9	7 604,8	7 532,9
Operating costs	56 391,0	55 740,0	56 771,1	59 664,1	65 284,6	76 630,0	81 153,8	85 560,1	73 500,7	77 345,1
Depreciation	10 174,0	11 203,0	10 767,7	10 991,8	10 968,5	10 918,0	11 008,6	12 494,6	13 734,1	14 419,6
Net financial charges	- 1 415,0	- 5 007,0	- 5 044,9	- 5 621,5	- 7 387,7	- 8 690,0	- 10 215,8	- 7 687,0	- 4 226,3	3 516,1
Administration	4 462,0	4 064,0	4 179,8	4 522,4	4 845,4	5 251,0	4 479,9	4 515,3	4 903,9	4 418,4
Other costs	1 206,0	721,0	2 855,0	2 329,1	2 896,0	3 505,6	9 652,0	3 946,2	3 298,2	3 270,4
Total costs	**79 543,0**	**75 845,0**	**78 549,7**	**80 947,5**	**85 934,6**	**97 536,9**	**106 563,1**	**110 611,1**	**102 881,1**	**114 106,7**
Operating revenue (B)	26 903,0	30 444,0	32 845,7	33 847,0	32 724,0	35 203,5	37 244,8	40 274,2	43 335,0	47 314,3
Net profit (B – A)	**- 52 640,0**	**- 45 401,0**	**- 45 704,0**	**- 47 100,5**	**- 53 210,6**	**- 62 333,4**	**- 69 318,3**	**- 70 336,9**	**- 59 546,1**	**- 66 792,4**
Return on invested capital	2 874,0	5 334,0	3 336,0	4 363,7	3 888,4	3 155,1	2 599,3	2 211,2	3 940,0	4 248,2
Amount of annual subsidy	**55 514,0**	**50 735,0**	**49 040,0**	**51 464,2**	**57 099,0**	**65 488,5**	**71 917,6**	**72 548,1**	**63 486,1**	**71 040,6**

Caremar

Cost elements	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agency commission, etc.	2 154,0	2 673,0	2 715,5	2 600,3	2 396,6	2 632,0	2 751,0	2 734,4	3 079,0	2 348,89
Port taxes, etc.	4 528,0	4 349,0	4 215,1	4 084,4	4 162,3	4 447,0	4 329,0	4 706,1	4 700,0	5 084,26
Operating costs	43 883,0	47 402,0	48 865,1	52 137,0	53 544,6	56 343,0	57 042,0	59 544,8	50 765,0	50 419,89
Depreciation	5 076,0	5 253,0	5 481,4	5 329,5	5 634,4	5 740,0	5 382,0	6 263,9	6 574,0	6 767,84
Net financial charges	- 1 664,0	- 5 562,0	- 1 045,2	- 1 485,8	- 3 480,7	- 4 335,0	- 3 024,0	- 3 973,2	- 2 422,0	- 2 218,77
Administration	4 205,0	4 415,0	5 829,9	5 650,2	5 385,4	5 121,0	5 885,0	5 036,0	4 628,0	5 514,30
Other costs	1 805,0	5 207,0	3 303,9	3 074,0	3 761,7	3 804,0	4 778,0	- 140,0	2 790,0	400,42
Total costs	**59 987,0**	**63 737,0**	**69 365,7**	**71 389,6**	**71 404,3**	**73 752,0**	**77 143,0**	**74 172,0**	**70 114,0**	**68 316,83**
Operating revenue (B)	20 543,0	22 810,0	25 470,9	24 519,9	26 613,7	30 420,0	31 920,0	30 896,5	32 594,0	33 378,00
Net profit (B – A)	**- 39 444,0**	**- 40 927,0**	**- 43 894,8**	**- 46 869,7**	**- 44 790,6**	**- 43 332,0**	**- 45 223,0**	**- 43 275,5**	**- 37 520,0**	**- 34 938,83**
Return on invested capital	26,0	1 538,0	1 690,0	2 173,2	1 867,4	1 516,9	1 287,0	986,6	2 291,0	3 463,41
Amount of annual subsidy	**39 470,0**	**42 465,0**	**45 584,8**	**49 042,9**	**46 658,0**	**44 848,9**	**46 510,0**	**44 262,1**	**39 811,0**	**38 402,24**

(106) With regard to the return on invested capital, absolute amounts are available for the entire period (1992-2001). Moreover, Italy provided the Commission with the rate of return on invested capital accepted from 1998 to 2001, showing that in those years it varied in the same range as inflation and interested rates, from 1,6 % to 8 %.

Year	Adriatica	Saremar	Toremar	Siremar	Caremar
1998	-	7,1 %	1,90 %	2,70 %	3,30 %
1999	2,30 %	-	1,60 %	2,10 %	2,50 %
2000	2,20 %	6,10 %	5,90 %	4,90 %	3,90 %
2001	2,30 %	8,00 %	8,00 %	5,00 %	6,70 %

(107) In addition, Italy submitted the accounts per line for each company for the period 1992-2001 and clarified the factors that, for each company, affected the cost levels and – as a result – the compensation.

(108) In particular, for Adriatica, the international connections with former Yugoslavia and Albania saw significant variations in traffic from one year to another because of the political situation in the region. The sizeable variations in the amount of the annual subsidy (last row) were justified by the Italian authorities on account of the fluctuations in the net operating costs of the international connections with Albania and former Yugoslavia, on which services were interrupted given the political situation in the Balkans. In addition, the discontinuation in 2000 of the connections with Greece brought a reduction in operating costs. Conversely, the net operating costs and the annual subsidy requirement for the cabotage connections with the Tremiti archipelago generally remained stable between 1992 and 2001.

(109) For Saremar, the relative stability of operating costs between 1992 and 2001 results from the nature of the services the company provided – essentially cabotage connections between Sardinia and the neighbouring islands – which primarily met the requirements of the local communities and were therefore not subject to major variations in supply and demand. The services provided by the company remained largely unchanged – in terms

of frequency and timetables – since the Initial Conventions entered into force ([26]) and remained virtually unchanged throughout any given year. This situation explains the relatively stable level of the annual subsidy received by Saremar.

(110) Toremar operated local connections with the islands of the Tuscan archipelago which were subject to few variations in supply and demand, justifying the relative lack of variability of the costs. The services the public company provided in 2000 were the same – in terms of frequency and timetables – as those provided in 1992 ([27]) and remained largely unchanged throughout the year irrespective of seasonal variations in demand. The level of the annual subsidy over the years was rather stable.

(111) The services provided by Siremar were considered comparable in nature to those provided by Saremar and Toremar: supply had remained stable since the public service agreement entered into force and was scarcely affected by seasonal variations. The company's high operating costs relative to its revenues were explained by the number of routes (18 scheduled routes) operated in order to meet the mobility requirements of the inhabitants of the 14 islands situated off Sicily.

(112) As regards Caremar, the services provided remained largely unchanged since the agreement with the State had entered into force ([28]). The rise in operating costs was paralleled by an increase in revenue from the routes operated, allowing for the annual subsidy to be kept at a relatively stable level.

2.2.4.2. The compensation following the annulment of the 2005 Decision

(113) Following annulment of the 2005 Decision, Italy complemented the information on the compensation received by the Regional Companies in the period 2002-2008. In particular, it provided: (i) the costs incurred in the operation of the public service routes; (ii) the net loss in the operation of the services; (iii) the absolute amounts of the return on invested capital; (iv) the amount of annual subsidy granted to the companies.

(114) Italy also confirmed, during a meeting held with the Commission in June 2012, that the cost items taken into account for the calculation of the compensation had remained unchanged since 1991.

(115) The data provided (in EUR 1 000) were as follows:

Adriatica

Year	(A) Total Costs	(B) Operating Revenue	(C) Net Profit (B – A)	Return On Invested Capital	Amount Of Annual Subsidy
2002	100 412,0	76 199,0	- 24 213,0	2 533,0	26 746,0
2003	107 741,0	81 396,0	- 26 345,0	1 958,0	28 303,0
2004 ([1])	69 465,0	57 198,0	- 12 267,0	NA	NA
2005	66 261,0	56 959,0	- 9 302,0	NA	NA
2006	53 040,0	55 405,0	2 365,0	NA	NA
2007	55 489,0	59 626,0	4 137,0	NA	NA
2008	62 751,0	61 069,0	- 1 682,0	NA	NA

([1]) Since Tirrenia, by decision of 18 March 2004, had acquired Adriatica's ongoing business, some data are not available for Adriatica from 2004 onwards.

([26]) In 1992 Saremar carried out a total of 18 000 trips on the four routes it operates. In 2000 the number of trips was around 20 000.
([27]) In 2000 Toremar carried out a total of 9 097 trips on its network of routes, compared with 8 300 in 1992.
([28]) In 2000 Caremar carried out 12 872 trips on its routes (15 650 in 1992).

Saremar

Year	(A) Total Costs	(B) Operating Revenue	(C) Net Profit (B – A)	Return On Invested Capital	Amount Of Annual Subsidy
2002	20 393,0	7 026,0	- 13 367,0	604,0	13 971,0
2003	20 292,0	6 992,0	- 13 300,0	649,0	13 949,0
2004	21 387,0	6 910,0	- 14 477,0	709,0	15 186,0
2005	22 146,0	7 290,0	- 14 856,0	679,0	15 535,0
2006	22 663,0	8 161,0	- 14 502,0	801,0	15 303,0
2007	21 240,0	8 078,0	- 13 162,0	893,0	14 055,0
2008	21 526,0	8 138,0	- 13 388,0	855,0	14 243,0

Toremar

Year	(A) Total Costs	(B) Operating Revenue	(C) Net Profit (B – A)	Return On Invested Capital	Amount Of Annual Subsidy
2002	27 774,0	18 164,0	- 9 610,0	1 448,0	11 058,0
2003	30 571,0	18 559,0	- 12 012,0	1 399,0	13 411,0
2004	32 920,0	18 277,0	- 14 643,0	1 300,0	15 943,0
2005	34 889,0	17 583,0	- 17 306,0	1 261,0	18 567,0
2006	37 355,0	21 364,0	- 15 991,0	1 597,0	17 588,0
2007	36 880,0	22 621,0	- 14 259,0	1 691,0	15 950,0
2008	35 981,0	24 280,0	- 11 701,0	1 699,0	13 400,0

Siremar

Year	(A) Total Costs	(B) Operating Revenue	(C) Net Profit (B – A)	Return On Invested Capital	Amount Of Annual Subsidy
2002	62 540,0	23 951,0	- 38 589,0	1 750,0	40 339,0
2003	65 845,0	22 349,0	- 43 496,0	1 743,0	45 239,0
2004	66 288,0	23 283,0	- 43 005,0	1 935,0	44 940,0
2005	85 183,0	22 011,0	- 63 172,0	1 907,0	65 079,0
2006	94 096,0	23 198,0	- 70 898,0	1 935,0	72 833,0
2007	90 501,0	22 585,0	- 67 916,0	2 092,0	70 008,0
2008	96 842,0	23 448,0	- 73 394,0	2 060,0	75 454,0

Caremar

Year	(A) Total Costs	(B) Operating Revenue	(C) Net Profit (B – A)	Return On Invested Capital	Amount Of Annual Subsidy
2002	41 931,0	17 850,0	- 24 081,0	1 654,0	25 735,0
2003	47 568,0	21 257,0	- 26 311,0	1 556,0	27 867,0
2004	49 847,0	20 178,0	- 29 669,0	1 438,0	31 107,0
2005	55 910,0	21 380,0	- 34 530,0	1 391,0	35 921,0
2006	59 859,0	25 600,0	- 34 259,0	1 863,0	36 122,0
2007	59 618,0	26 565,0	- 33 053,0	1 895,0	34 948,0
2008	61 481,0	28 065,0	- 33 416,0	1 874,0	35 290,0

(116) According to the Italian authorities the changes over time in the individual cost elements of the Regional Companies were due primarily to external factors such as inflation and changes in interest rates, which impact not only the prices on the market but also the expected rate of return on invested capital. For calculating the aforementioned rate, the banks' interest rates and the average borrowing rates for naval credits were taken into account.

(117) With regard to the rate of return on invested capital, Italy provided the Commission with the rates accepted from 2002 to 2003 but was not able to provide these rates for 2004-2008.

Year	Adriatica	Saremar	Toremar	Siremar	Caremar
2002	1,80 %	5,80 %	6,10 %	3,90 %	5,70 %
2003	1,70 %	12,20 %	6,80 %	3,40 %	6,00 %

(118) Italy also provided to the Commission Tirrenia's accounts per line as of 2004, in order to identify the costs incurred by the latter in the operation of the national/international routes previously served by Adriatica. It was however underlined that those values should be regarded as a mere estimation of the actual costs incurred on each line, given that certain costs elements taken into account could not be divided per route.

(119) Based on this information Tirrenia's results (in EUR) on the international routes previously operated by Adriatica were as follows:

Year	Ancona – Durrës	Ancona – Bar	Bari – Durrës	Ancona – Split
2004	- 3 267 000	- 653 000	4 041 000	- 3 021 000
2005	NA	NA	3 701 256	- 4 249 739
2006	NA	NA	5 503 024	- 145 514
2007	NA	NA	7 119 285	NA
2008	NA	NA	4 308 702	NA

2.2.5. *Investments scheduled in the five-year plans and the business plan*

(120) In addition to specifying the routes to be served and the required frequency, the five-year plans also specified the investments the beneficiaries intended to make over the period in order to guarantee the service on the routes in question. In its investigation, the Commission sought to establish in particular the way in which the costs of vessel acquisition and depreciation were taken into account for the purposes of calculating the annual subsidy.

(121) The Commission also wanted to check whether the additional investments planned for the Regional Companies of the former Tirrenia Group under the business plan adopted by Tirrenia in March 1999 for the period 1999–2002 contained any element of aid. The business plan had the following main objectives:

(a) to enable the companies to cope with the changed conditions which had resulted from the liberalisation of the Italian cabotage market (1 January 1999) and prepare them for the expiry in 2008 of the Initial Conventions concluded with the State;

(b) to reduce the costs of the services provided pursuant to the abovementioned Initial Conventions;

(c) to support the Group's development and make best use of available resources;

(d) to create the conditions for the privatisation of the companies.

(122) The business plan included changes to the requisite investment in the services covered by the Initial Conventions, to be used for the decommissioning of old ships, the transfer of other vessels within the Group and new investments totalling ITL 700 billion (approximately EUR 361,5 million) ([29]).

2.3. **Preferential fiscal treatment**

(123) Decree Law No 504 of 26 October 1995 introduced certain preferential fiscal arrangements for mineral oils used as fuel for shipping. In accordance with Article 63(3) of that Decree, excise duties were reduced for lubricants used on board.

(124) In the Opening Decision, the Commission had expressed some doubts about the way this fiscal relief was being applied to vessels laid up in Italian ports for maintenance purposes. The Commission wanted reassurance that this measure did not discriminate against other maritime operators whose ships were in the same situation.

3. **COMMENTS FROM INTERESTED PARTIES**

3.1. **Comments preceding the adoption of the 2005 Decision**

3.1.1. *Comments from the Tirrenia Group companies*

(125) The Tirrenia Group companies submitted their comments on the Opening Decision by letter dated 22 November 1999. Primarily, the companies contested the new aid qualification of the compensation paid pursuant to the Initial Conventions and hence the legitimacy of the decision to initiate the formal investigation procedure. They asserted, in particular, that the Commission had been informed long before of the existence of public service compensation arrangements and that it had never raised any objections to them. They also contended that the amount of annual compensation paid to the public companies was strictly proportionate and limited to the additional net cost of the public service obligations. It was therefore considered that such payment did not hamper competition with other market operators.

(126) At the same time Tirrenia, Adriatica, Caremar, Saremar, Siremar and Toremar brought an action for annulment before the General Court by virtue of Article 263(4) TFEU (see also recital 5).

3.1.2. *Comments from private operators*

(127) The Commission received comments from various private operators competing on a number of routes served by Caremar, Saremar and Toremar. These could be summarised as follows:

(a) the Tirrenia Group companies practised an aggressive commercial policy on the routes on which competition from private operators was focused, taking the form of voyages at dumped prices, discounts and deferred payment systems, the only reasonable justification being that they had received public financing;

([29]) Conversion rate: 1 EUR = 1 936,27 ITL.

(b) the public service obligations lacked transparency, and the Tirrenia Group companies' ability to alter the extent of such obligations, particularly in terms of the routes served and the specific timetables and frequencies, should be considered contrary to the very nature of public service obligations;

(c) given that services were being provided by private operators on certain routes served by the Tirrenia Group companies, the need for a public service seemed highly debatable;

(d) the financing arrangements for investments carried out since 1995, or scheduled in the business plan, contained elements of aid, including in terms of the more favourable access to private financing enjoyed by the Tirrenia Group companies;

(e) the Tirrenia Group companies enjoyed preferential fiscal treatment for mineral oils used on board their vessels when calling at Italian ports.

3.2. **Comments following the annulment of the 2005 Decision**

(128) Following the annulment of the 2005 Decision by the General Court, the Commission invited interested parties to the procedure to provide their comments on the abovementioned annulment and its implications (see also Section 1.3).

(129) The Commission only received comments from the beneficiaries of the measures under investigation. The latter stated in essence that the Commission should take into consideration all relevant elements of fact and law, including the additional grounds submitted by the applicants in the context of the Court proceedings and consequently conclude that the measures at stake:

(a) do not constitute aid; or

(b) constitute existing aid, insofar as the maritime public service regime in Italy (i) pre-dated the entry into force of the EC Treaty; (ii) was subject to implicit or explicit authorisation from the European Commission ([30]); and (iii) in any event preceded the entry into force of the Maritime Cabotage Regulation.

4. **COMMENTS FROM THE ITALIAN AUTHORITIES**

4.1. **Comments preceding the adoption of the 2005 Decision**

4.1.1. *Subsidies paid in respect of public service obligations*

(130) By letter dated 29 September 1999, the Italian authorities provided their comments on the decision to initiate the formal investigation procedure. In their opinion, Article 4 of the Maritime Cabotage Regulation allowed the Initial Conventions concluded with each company of the Tirrenia Group to remain fully in force until their expiry at the end of 2008. Consequently, the system of public service obligations deriving from the Initial Conventions could not be put into question by the decision to initiate the procedure.

(131) The Italian authorities also contested the new aid qualification of the aid within the meaning of Article 108(3) TFEU and that such aid could have affected trade between Member States before the Italian market was opened up to cabotage on 1 January 1999.

(132) Apart from these general comments, the Italian authorities stressed that the presence of private operators on the routes served by the Tirrenia Group companies was often a recent and limited phenomenon, confined to a small number of routes and concentrated in the high season. Moreover, the method of calculating the annual compensation, which consisted in deducting profit accrued during summer from losses accumulated during winter, limited the amount of compensation to the strict minimum.

(133) Consequently, according to the Italian authorities, the compensation was necessary and strictly proportionate in respect of the public service obligations, whose definition falls within the discretion of the Member State.

([30]) The Italian authorities have argued that the Commission had been informed of the subsidies to the Tirrenia Group companies long before the formal investigation procedure had been opened. Moreover, in 1992 the Commission for administrative purposes reclassified the case as existing under number E 5/1992. Up to 1995 all correspondence between the Commission and Italy referred to the file under the E number. In 1995 the Commission referred back to the NN number.

(134) Regarding Adriatica's infringement of the competition rules on the connection operated between Italy and Greece, the Italian authorities emphasised that the Commission's decision concerning the infringement was not at that time definitive. They insisted that the two procedures were strictly independent of each other, that the aid was in any event not used to finance anti-competitive behaviour, that to declare it incompatible would be equivalent to an additional sanction and that to recover it would compromise both Adriatica and the overall privatisation process.

4.1.2. *The investments scheduled in the business plan*

(135) The Italian authorities stressed that the investments scheduled in the business plan were designed to reduce the cost of the services while maintaining a high level of quality. They also contended that the methods for financing the planned investments contained no element of aid inasmuch as the said investments would be financed partly from the companies' own resources and partly by means of bank loans negotiated on normal market conditions.

4.1.3. *Preferential fiscal treatment*

(136) The Italian authorities provided details of the legal framework governing the fiscal treatment of mineral oils used as fuels for shipping. The information supplied to the Commission showed that, through a general decision of 2 March 1996 taken pursuant to Decree Law No 504/1995, the preferential fiscal treatment provided for by the Decree Law was extended to fuels and lubricants used by any vessel laid up in a port for maintenance operations.

(137) At the same time, as mentioned at recital 5, Italy lodged an appeal before the Court against the decision to initiate the procedure, in respect of the part stipulating that the grant of unlawful aid be suspended.

4.2. **Comments following the annulment of the 2005 Decision**

(138) In April 2010 the Commission asked the Italian authorities to provide their comments on the annulment by the General Court of the 2005 Decision and clarify certain aspects concerning the international routes operated by Adriatica and Saremar. The Commission asked also to provide a detailed description of the compensation mechanism for the operation of the routes in question, including all subsequent modifications brought to the method of calculation of compensation and return on invested capital.

(139) The Italian authorities restated that the measures in question should be qualified as existing aid, as already stated and evidenced under the framework of the formal investigation procedure. They claimed that both the award criteria and the means of calculation of the compensation for the discharge of the public service obligations had been regulated by Decree 2081/1936, subsequently repealed by Law 684/1974, and Decree 2082/1936. In fact Article 2 of Decree 2081/1936 instituted the national interest routes and Article 6 laid down that the additional costs incurred by the companies in the operation of the routes in question would be covered by the State under twenty-year agreements.

(140) The Italian authorities claimed that the subsequent amendments to the legislative framework regulating the maritime public service regime had only made the public service obligations entrusted to the beneficiaries stricter on the one side, and updated the mechanisms for the calculation of the compensation in order to limit the public contribution, on the other side.

(141) In fact, the Italian authorities underlined that Law 856/1986 introduced the annual balancing subsidy as the difference between revenues and costs incurred in the operation of the service, based on objective parameters rather than historical costs and including a reasonable rate of return. The Italian authorities concluded that this innovation in the legislative framework was particularly relevant as it provided efficiency incentives to the companies.

(142) According to the Italian authorities, the same considerations would apply with respect to the compensation to the Regional Companies. In particular, the Italian authorities confirmed that the imposition of public service obligations had been introduced by Law 34/1953, laying down the following four subsidised sectors:

(a) Tuscan archipelago (Toremar);

(b) Partenopee and Pontine islands (Caremar);

(c) Eolie islands (Siremar);

(d) Egadi islands, Pelagie islands, Ustica and Pantelleria (Siremar).

(143) The connections with the minor Sardinian islands and Corsica were allegedly operated by Tirrenia pursuant to the Ministerial Decree of 5 January 1937, which introduced in the third traffic sector of national interest routes the links with La Maddalena, Palau, Bonifacio, Carloforte, Calasetta and Portovesme. These were actually the connections operated by Saremar, set up in 1988 by separation from Tirrenia.

(144) The Italian authorities also underlined that the same Decree included the connections operated by Adriatica with Greece, Albania and the Tremiti islands in Sector IV of the national interest routes (see recital 59).

(145) On this basis, the Italian authorities concluded that there were sufficient elements of continuity between the public service regime subject to the 2005 Decision and the historical regulatory framework of the maritime connections with the islands. In view of the foregoing, the Italian authorities considered that the public service regime pre-dated the entry into force of the EC Treaty and of the Maritime Cabotage Regulation.

5. **ASSESSMENT**

5.1. **Public service compensations**

5.1.1. *Existence of State aid*

(146) According to 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market'.

(147) The criteria laid down in Article 107(1) TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) TFEU, all the above mentioned conditions need to be fulfilled. Namely, the financial support should:

(a) be granted by a Member State or through State resources,

(b) favour certain undertakings or the production of certain goods,

(c) distort or threaten to distort competition,

(d) affect trade between Member States.

(148) *State resources*: The subsidies at issue are clearly granted by the State and through State resources.

(149) *Economic advantage*: In order to conclude on whether or not the compensation for the operation of the public service constitutes an advantage within the meaning of Article 107 TFEU, the Court set out the following criteria in its judgment in the Altmark ([31]) case:

(1) the recipient undertaking must actually have public service obligations to discharge and these obligations must be clearly defined (the first Altmark criterion);

(2) the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner (the second Altmark criterion);

(3) the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (the third Altmark criterion);

(4) where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be 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 (the fourth Altmark criterion).

([31]) Judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, ECLI:EU:C:2003:415.

(150) The fourth Altmark criterion is deemed to be fulfilled if the recipients of the compensation have been chosen following a tender procedure, which allows for the selection of the tenderer capable of providing the services at the least cost or, failing that, the compensation has been calculated by reference to the costs of an efficient undertaking.

(151) In this case the beneficiaries have not been chosen following a public tender procedure. Nor has Italy evidenced that the level of compensation was 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.

(152) As the Altmark criteria are cumulative, failure to satisfy the fourth criterion is sufficient to establish the presence of an economic advantage granted to the Regional Companies of the former Tirrenia Group.

(153) *Selectivity*: The subsidies at issue are selective, being directed at certain undertakings providing maritime transport services.

(154) *Distortion of competition and effect on trade*: When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid. It is sufficient that the recipient of the aid competes with other undertakings on markets open to competition. In the present case, the beneficiaries operate in competition with other undertakings providing maritime transport services in the Union, in particular since the entry into force of Council Regulation (EEC) No 4055/86 ([32]) and the Maritime Cabotage Regulation, liberalising the market of international maritime transport and maritime cabotage, respectively. Therefore, the public compensation under scrutiny is liable to affect Union trade and distort competition within the internal market.

(155) Based on the foregoing, the Commission considers that the compensation paid by the Italian authorities to the Regional Companies of the Tirrenia Group for the operation of cabotage and international connections between 1992 and 2008 constitutes State aid within the meaning of Article 107(1) TFEU.

5.1.2. *Nature of the aid concerned: existing or new aid?*

(156) Having established that the compensation paid by the Italian authorities to the Regional Companies of the Tirrenia Group for the operation of cabotage and international connections between 1992 and 2008 constitutes State aid within the meaning of Article 107(1) TFEU, the Commission must assess whether this State aid is existing aid or new aid.

(157) For this purpose, a distinction has to be made between cabotage connections and international connections.

5.1.2.1. Cabotage connections

(158) As regards the operation of cabotage connections, by the 2009 Judgment the General Court partly annulled the 2005 Decision on the ground that the Commission had erroneously applied Article 4(3) of the Maritime Cabotage Regulation, which stipulates that 'existing public service contracts may remain in force up to the expiry date of the relevant contract'.

(159) In the 2009 Judgment, the General Court interpreted this article as a typical grandfathering clause ([33]) and concluded that the compensation that is 'necessary' ([34]) for the financing of the public service obligations is existing aid under Article 4(3) of the Maritime Cabotage Regulation and, as such, not subject to the compatibility assessment.

([32]) Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1).

([33]) I.e. a clause that, for reason of legal stability, excludes from the application of new rules certain ongoing legal relations for a given period.

([34]) Points 147-148 of the 2009 Judgment.

(160) The General Court referred to points 60-66 of the Court of Justice's judgment of 10 May 2005 in case C-400/99 ([35]), where the Grand Chamber made clear that:

> '[…] Article 4 of Regulation No 3577/92, […], provides, in paragraph 3, that the public service contracts existing as at 1 January 1993 may remain in force until their expiry date. Contracts of that type by their nature contain financial provisions needed to cover the public service obligations for which they provide. In so far as the wording of Article 4(3) of Regulation No 3577/92 concerns the continuation of the contracts at issue, without limiting the scope of that provision to certain aspects of those contracts, the financial provisions necessary to cover the public service obligations mentioned therein are covered by the said Article 4(3). The Commission is therefore wrong to assert that that provision does no more than authorise the possible maintenance of exclusive or special rights deriving from such contracts. Moreover, in the contested decision, the Commission did not take such a restrictive position since there it acknowledged that, within the limits of funding the additional costs of public service obligations, the financing mechanisms of the contracts at issue were covered by Article 4(3) of Regulation No 3577/92 (point (64)';

and that

> '[…] any aid in excess of what is necessary to cover the public service obligations provided for in the contracts at issue cannot come within the scope of Article 4(3) of Regulation No 3577/92, precisely because it is not necessary for the stability, and therefore the maintenance, of those contracts. They cannot therefore, on the basis of that provision, be regarded as existing aid (point (65)';

(161) In order to determine whether a measure is new or existing aid on the basis of Article 4(3) of the Maritime Cabotage Regulation, the Commission needs to interpret the scope of aid that is 'necessary to cover the public service obligations provided in public service contracts existing as at 1 January 1993' within the meaning of the abovementioned judgment. The Commission understands that the scope of such necessity test must be broader than the proportionality test that the Commission carries out when assessing the compatibility of an aid measure under Article 106(2) TFEU. If the two tests had the same scope, new aid that does not fulfil Article 4(3) of the Maritime Cabotage Regulation could never be declared compatible with the internal market on the basis of Article 106(2) TFEU, since it would automatically not be proportionate within the meaning of the latter provision. Therefore, the Commission understands that by regarding as existing aid any aid that was 'necessary to cover the public service obligations provided in public service contracts existing as at 1 January 1993', the Court of Justice encompassed in that notion any compensation directly linked to the public services obligations provided in the public contract. Such direct connection exists, for instance, when the contract establishes the amount of the compensation or the methodology for its calculation, or, in any event, when it is clear that the public services contract would not have been concluded absent the compensation.

(162) Therefore, the Commission will treat as new aid only the compensation for the operation of the cabotage connections that has no legal basis in the public contracts existing at the date of entry into force of the Maritime Cabotage Regulation.

(163) In the present case, the Initial Conventions were concluded in July 1991, before the entry into force of the Maritime Cabotage Regulation, and there was a direct link between the compensation and the public service obligations provided therein.

(164) The purpose of the annual subsidy established in the Initial Conventions was to enable the Regional Companies to cover losses resulting from the shortfall between their operating costs and revenue. As mentioned in recital 103, the costs elements relevant for the compensation, as detailed in Article 5 of the Initial Conventions, were: acquisition, advertising and accommodation costs, loading and unloading and manoeuvring costs, cost of shore administrative personnel, ship maintenance costs, administrative costs, insurance costs, rent and leasing costs, fuel, taxes and depreciation costs. All these cost elements pertained to the provision of the public services and were defined by the public authorities, leaving the companies with no leeway.

(165) Moreover, the Initial Conventions concluded between the Italian State and each of the five Regional Companies were identical to the Initial Convention concluded between the Italian State and Tirrenia (see recital 94) and took into consideration the same cost elements. In its 2001 Decision regarding Tirrenia, the Commission acknowledged that these cost elements were strictly necessary for the provision of the public services, because they reflected the fixed and variable costs directly linked to the provision of the services qualified by the public authorities as services of

([35]) Judgment of 10 May 2005, *Italian Republic v Commission of the European Communities*, C-400/99, ECLI:EU:C:2005:275.

general interest and which, as such, were covered by the Initial Convention ([36]). With specific regard to ship depreciation, the Commission considered that it could be regarded as necessary for the provision of those services to the extent that the ships in question were used exclusively for the services covered by the Initial Conventions ([37]). The above considerations apply *mutatis mutandis* to the Regional Companies.

(166) In view of the direct link existing between the compensation and the operation of the cabotage routes served by the Regional Companies under the Initial Conventions, the Commission concludes that the said compensation was necessary to cover the additional costs of the public service obligations provided in the Initial Conventions.

(167) The above conclusion would not change even if the Commission were called upon to verify whether the annual compensation paid to the Regional Companies was the minimum needed to provide the public service. The analysis of (i) the compensation calculation mechanism; (ii) the company's revenues; and (iii) the additional costs incurred for the operation of cabotage connections under the Initial Conventions shows that the compensation paid to these companies under the Initial Conventions was strictly proportional to the additional cost entailed by the public service task entrusted to the beneficiaries.

(168) First, the level of annual compensation was calculated taking into account the operating profits recorded by each of the Regional Companies on the routes covered by the Initial Conventions, which were deducted from the losses accumulated on the routes as a whole (Article 3 of the Initial Conventions). This method of calculation, that provided for profits made during the high season to reduce the losses accumulated during the off-season, served to limit the amount of subsidy paid to the public companies, so that the resulting level of annual compensation was lower overall than it would have been if the accumulated losses were simply added together route by route.

(169) Second, the company's revenue was subject to a dual constraint in terms of fares, namely the preferential fares for certain social categories and the need for the company to obtain the public authorities' approval for any change in fares. The information supplied by the Italian authorities showed that the Regional Companies were not free to adapt their fares to take account in particular changes in operating costs ([38]). In the 2001 Decision, the Commission already acknowledged that this twin constraint, which lead to an appreciable reduction in the companies' income and affected the level of annual compensation, should not be qualified as an aggressive commercial policy, characterised by predatory pricing.

(170) Third, the Italian authorities supplied the Commission with information on the costs incurred between 1992 and 2008 by the Regional Companies in the operation of the public service routes. Namely, as concerns the operation of the public service during 1992-2008, Italy provided:

— the total costs, operating revenues and return on invested capital registered by all Regional Companies ([39]) between 1992-2008 and the correspondent amount of annual subsidy,

— the accounts per line for each company for the period 1992-2001 and 2004-2008,

— the rate of return on invested capital granted to Adriatica for 1999-2003, Saremar for 1998 and 2000-2003, and to Toremar, Siremar and Caremar for 1998-2003 (varying from 1,6 % to 12,2 %).

(171) The data supplied (see tables in recital 115) show that costs between 2002 and 2008 have largely remained below the average costs incurred in the operation of the routes in the reference period assessed in the 2005 Decision (1992-2001).

([36]) See recital 33 of the 2001 Decision.
([37]) *Ibidem*.
([38]) According to Article 12 of Law 856/1986 the tariffs for the transport of passengers and freight were determined yearly by the State. The companies concerned could propose to the State the variations in the fares that they deemed necessary. These proposals were subject to inter-ministerial consultation.
([39]) As regards Adriatica, for the period 2004-2008 (when the company was taken over by Tirrenia) the Italian authorities provided the total costs and operating revenues registered by Tirrenia (on the former Adriatica routes).

(172) As regards the return on invested capital, the various elements of invested capital had been detailed in the Initial Conventions and the rates of return had been determined with reference to market rates so as to reflect a proper return for each element. Despite the absence of data regarding the rate of return on invested capital allowed to the companies during 2004-2008, the Commission notes that, with few exceptions, the rate of return on invested capital has consistently decreased between 2001 and 2003 (see tables in recitals 106 and 117). This trend, combined with the overall stability of the absolute amounts of the return on invested capital over the 2001-2008 period (see tables in recitals 105 and 115) ([40]), makes it reasonable to assume that the compensation paid to the companies for the operation of the public service obligations remained proportionate throughout the duration of the Initial Conventions. In view of the above, the Commission maintains its assessment in the 2005 Decision that the return to the beneficiaries was set at a reasonable level.

(173) Taking into account the direct link between the compensation paid and the public service obligations enshrined in the Initial Conventions and, *ad abundantiam*, the proportionality of the compensation, the Commission concludes that the compensation granted in respect of the cabotage connections until 2008 constitutes existing aid pursuant to Article 4(3) of the Maritime Cabotage Regulation.

(174) As the compensation for the discharge of public service obligations on the cabotage connections constitutes existing aid and the 2005 Decision was annulled by the General Court in its entirety, including the conditions imposed therein concerning the operation of cabotage connections by Caremar, the Commission does not need to further assess whether those conditions have been ultimately complied with by the beneficiary in the implementation of the 2005 Decision, nor whether they had been necessary in the first place. The compensation for the discharge of public service obligations on the cabotage connections constitutes existing aid, but it is no longer in force. Therefore, there is no point in the Commission proposing appropriate measures to Italy under Article 108(1) TFEU, since such measures could only amend the aid measure for the future. It follows that there is no point in the Commission examining the compatibility of such existing aid, which is no longer in force.

5.1.2.2. International connections

(175) The provision of transport services on international maritime connections falls within the scope of Regulation (EEC) No 4055/86 that does not contain any grandfathering clause similar to Article 4(3) of the Maritime Cabotage Regulation.

(176) Under Article 1(1)(b) of Council Regulation (EU) 2015/1589 ([41]) ('the new Procedural Regulation') existing aid is '[…], all aid which existed prior to the entry into force of the TFEU in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the TFEU in the respective Member States'.

(177) Article 4(1) of Commission Regulation (EC) No 794/2004 ([42]) ('the Implementing Regulation') defines alteration of existing aid as 'any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market. However an increase in the original budget of an existing aid scheme by up to 20 % shall not be considered an alteration to existing aid'.

([40]) The absolute amounts of return on invested capital in 2001 and 2008 were as follows: Saremar – EUR 555 500 in 2001 and EUR 855 000 in 2008; Toremar – EUR 1 566 700 in 2001 and EUR 1 699 000 in 2008; Siremar – EUR 2 194 000 in 2001 and EUR 2 060 000 in 2008; Caremar – EUR 1 739 700 in 2001 and EUR 1 874 000 in 2008. For Adriatica data are available only until 2004 before its acquisition by Tirrenia.

([41]) 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), which replaces as of 14 October 2015 the Procedural Regulation.

([42]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1), as amended by Regulation (EU) 2015/2282.

(178) According to established case law ([43]), not every alteration to existing aid should be regarded as changing the existing aid into new aid, it is only where the alteration affects the actual substance of the original aid that the latter is transformed into a new aid. This assessment has to be done by reference to the provisions regulating the aid, its modalities and its limits ([44]). However, the prolongation of an aid measure constitutes a new aid ([45]).

(179) As recalled by the General Court in the 2009 Judgment, alterations do not concern the substance where they do not amend the legislation that established the aid as regards the nature of the advantages or the substance of the activity to which the advantage applies ([46]).

Alterations to the public service regime

(180) Of the five Regional Companies of the then Tirrenia Group, only Adriatica and Saremar operated international routes under the Initial Conventions.

(181) The Commission has to assess whether the compensations granted to these companies for the provision of international maritime transport services constitutes new aid or existing aid in the meaning of Article 1 of the new Procedural Regulation. For this purpose the Commission has to verify whether since the entry into force of the Treaty the aid measure has been affected by substantial changes in the nature of the advantage, the objective pursued, the beneficiary or the source of financing. These changes would involve new aid.

(182) The Commission notes that the financing of the public service obligations concerning international connections has undergone a number of significant changes in several aspects as detailed below.

(a) Subjects receiving aid

(183) The 1936 Decrees entrusted four companies (Italia, Lloyd Triestino, Tirrenia, and Adriatica) with public service obligations regarding the national interest routes, which included both national and international passenger and freight routes. These decrees provided an exhaustive list of companies entrusted with the operation of national interest routes. The Regional Companies were incorporated and entrusted with the provision of postal and commercial services of a purely local nature only at a later stage, namely, Caremar, Toremar and Siremar pursuant to Law No 169/1975 and Saremar pursuant to Law 856/1986, following the repeal of Decree 2081/1936 (see recitals 83 and 88).

(b) Routes

(184) Most international routes subject to the current assessment were introduced under the public service regime after the entry into force of the EC Treaty.

(185) As regards Adriatica, the 1936 Decrees explicitly laid down only the operation of the Bari/Durrës route. However, this was only a passenger route whereas the Bari/Durrës link subject to the present assessment is a mixed (passengers and freight) route.

(186) No route from the Italian ports of Ancona or Bari to either Bar (Montenegro) or Split (Croatia) was set out by the 1936 Decrees. According to the Italian authorities, Adriatica started operation of the Ancona/Split route in 1978 and of the Ancona/Bar route in 1997.

(187) The Trieste/Durrës connection was introduced in 1983 to develop trading relations between Albania and the countries of Western Europe. There was no route from Trieste to Albania in the lists of routes adopted on the basis of the 1936 Decrees.

([43]) See judgment of 9 August 1994, *Namur-Les Assurances du Crédit SA v Office National du Ducroire and the Belgian State*, C-44/93, ECLI:EU:C:1994:311, paragraphs 13 and 16, and judgment of 30 April 2002, *Gibraltar v Commission*, Joined Cases T-195/01 and T-207/01, ECLI:EU:T:2002:111, paragraph 111.

([44]) Judgment of 9 August 1994, *Namur-Les Assurances du Crédit SA v Office National du Ducroire and Belgian State*, C-44/93, ECLI:EU:C:1994:311, paragraph 28, and judgment of 16 December 2010, *Netherlands v Commission*, Joined Cases T-231/06 and T-237/06, ECLI:EU:T:2010:525, paragraph 180. See also judgment of the EFTA Court of 22 August 2011, *Konkurrenten.no v EFTA Surveillance Authority*, E-14/10, paragraph 57.

([45]) See also judgment of 25 March 2009, *Alcoa Trasformazioni v Commission*, T-332/06, ECLI:EU:T:2009:79, paragraph 132; judgment of 11 June 2009. *Italy v Commission*, judgment, T-222/04, ECLI:EU:T:2009:194, paragraphs 99-101; judgment of 20 September 2011, *Regione autonoma della Sardegna and o. v Commission*, Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08, ECLI:EU:T:2011:493, paragraph 176-179; judgment of 22 March 2012, *Italian Republic v European Commission*, C-200/11 P, ECLI:EU:C:2012:165, paragraphs 30-31.

([46]) Paragraphs 123 and 124 of the 2009 Judgment.

(188) The same is valid for the Brindisi/Corfu/Igoumenitsa/Patras route. The Italian authorities could not provide the Commission with documentary evidence clearly establishing when the Brindisi/Corfu/Igoumenitsa/Patras connection was set up. Italy claims that the Brindisi/Corfu/Igoumenitsa/Patras route falls within the scope of the 1936 Decrees given that, at that time, there was one specific connection to Greece amongst the national interest routes of the Sector IV identified in Decree 2081/1936 (covering connections with Greece, Albania and the Tremiti islands). The Commission cannot accept the argument of the Italian authorities. There was no specific route from Brindisi in the lists adopted on the basis of the 1936 Decrees. According to a letter of the Italian authorities dated 29 October 2002, the Brindisi/Corfu/Igoumenitsa/Patras route had only been introduced by Adriatica in 1978. By the same letter, the Italian authorities clarified that Adriatica had never operated under the public service regime the Bari-Greece route, but rather the link to Greece from Brindisi. Thus, the Italian authorities themselves considered the two routes as two separate relevant markets.

(189) As regards Saremar, the list of national interest routes set up by the 1936 Decrees included a passenger link between Sardinia and Corsica (La Maddalena/Palau/Bonifacio), initially operated by Tirrenia. In contrast, the route subsequently operated by Saremar pursuant to Law 856/1986 was a mixed route (passengers and freight). The Santa Teresa di Gallura/Bonifacio connection assessed in the present decision was not included in the list of national interest routes.

(190) In addition to the above, the Commission notes that after 1989 the routes to be served were no longer indicated by law since according to Law 160/1989 they were to be determined by the public authorities on the basis of technical proposals from the companies.

(c) Duration of the financing scheme

(191) As already mentioned above, the 1936 Decrees provided for a twenty-year entrustment on four newly established companies (Italia, Lloyd Triestino, Tirrenia, Adriatica) of the operation of certain national interest lines as well as for the possibility to grant the operators a subsidy over the same period on the basis of public service contracts.

(192) The 1936 Decrees did not provide for the possibility to extend those public service contracts, or the compensation to be granted to the operators for the operation of the services in question, beyond the initial twenty-year period. Those contracts expired on 31 December 1956, and were extended several times until the entry into force of Law 600/1962.

(193) Law 600/1962 provided for the conclusion of new public service contracts with a twenty-year duration, spelling out the national interest routes to be operated and the compensations to be granted to each company for the operation of the lines.

(194) Law 684/1974 introduced a different duration, depending on the type of service considered: freight routes could be financed for a maximum period of five years whilst passenger routes could be financed for a maximum period of three years (only connections with the Italian islands could benefit from compensation over a further twenty-year period, but this did not concern international connections).

(195) Law 856/1986 further altered the features of the public service regime. Article 13(4) of Law 856/1986 made the rules contained in Articles 8 and 9 of Law 684/1974, and subsequent amendments, applicable to the mixed routes between the western and eastern coast of the median and low Adriatic, as well as between the Ionian sea and the Eastern Mediterranean, existing on 1 January 1986 and operated by Adriatica. As a result, Adriatica could receive compensation for the operation of the international connections on the basis of public service contracts of twenty-year duration. The law did not clarify the rules applicable to the international line operated by Saremar. However, the Commission notes that the Initial Convention treated the operation of this route as a cabotage connection and provided for its financing over a twenty-year period, as any other public service cabotage connection entrusted to Saremar.

(196) Law 856/1986 clarified that loss making freight transport lines could benefit from public financial support only for a five-year period (starting on 1 January 1985 or from the acquisition of a new ship).

(d) Budgetary allocation

(197) As mentioned above, the 1936 Decrees did not provide for a global budget of the financing scheme.

(198) In contrast, Article 6 of Law 600/1962 provided for a global budgetary allocation, subject to limited adjustments in line with Articles 7 and 8 therein.

(199) The subsequent laws did not provide for a global budgetary allocation for the different financing schemes they dealt with.

(e) Calculation of compensation

(200) The system for calculation of the subsidies was revised several times. In particular, from a compensation calculated on expected costs and revenues agreed in public service contracts subject to review every four years (1936 Decrees), the subsidy evolved into a fixed contribution subject to limited adjustments in line with Articles 7 and 8 of Law No 600/1962 in order to provide the company with an efficiency incentive.

(201) Subsequently Law 684/1974, as implemented by Decree 501/1979, distinguished between freight lines (Article 4), passenger lines (Article 6) and connections with major and minor Italian islands (Article 8). On that basis:

— With regard to connections with the Italian islands, the amount of the public compensation set out in public service contracts of twenty-year duration could be subject to yearly review if at least one of the cost elements taken into consideration for its calculation reported a variation higher than 5 % compared to the previous year,

— With respect to passenger lines, the companies Italia, Lloyd Triestino, Adriatica and Tirrenia could receive, on the basis of annual conventions, a compensation for the maritime services provided during the three year period allowed for the termination of the activities. The annual compensations had to be established on the basis of expected costs and revenues and be aimed at ensuring the economic balance of the companies. To that end, the compensation could be reviewed at the end of the year,

— As to freight lines, the companies of the then Finmare Group either launching new maritime routes or operating existing routes could receive, for a maximum period of five years, a public compensation aimed at ensuring the economic balance of the companies. To this extent, the compensation had to be reviewed by 30 June of each year. The compensation for the operation of existing routes could only be granted on the basis of annual conventions.

(202) In summary, as regards freight and passenger lines, Law 684/1974 and Decree 501/1979 did not lay down either an efficiency incentive mechanism or the possibility to grant the operator a reasonable profit on the public services provided. Moreover, Law 684/1974, as implemented by Decree 501/1979, introduced for the first time a distinction between freight and passenger lines and set up a different compensation mechanism for the two types of service. The said piece of legislation did not clarify which mechanism would apply to mixed lines (freight and passengers).

(203) Law 856/1986 further amended the compensation mechanism. As regards freight lines essential for the national economy, Article 2 provided for the granting of a start-up subsidy for a maximum duration of five years (as of 1 January 1985). With respect to the mixed connections between the western and eastern coast of the median and low Adriatic sea as well as between the Ionian sea and the Eastern Mediterranean existing on 1 January 1986 and operated by Adriatica, pursuant to Articles 11 and 13 of Law 856/1986, the balancing subsidy had to be calculated on the basis of the difference between revenues and costs incurred in the provision of the service, determined with reference to average and objective parameters and had to include a reasonable return on invested capital. The public service contracts had to include details about the elements to be taken into consideration in the calculation of the subsidy, together with the complete list of the subsidised routes, ships to be used and frequencies. The subsidies were to be approved by the Ministers of Merchant Shipping, of Public Participations and of Treasury.

(204) Law 856/1986 did not clarify what compensation mechanism would apply to the connection between Sardinia and Corsica transferred by Tirrenia to Saremar. However, the initial Convention treated this line as a cabotage connection and provided for its financing according to the same rules.

(205) Finally, Article 9(1) of Decree Law 77/1989 stipulated that as of 1 January 1990 the lines considered essential to ensure passenger and freight transport services, and to be identified by the State upon proposal of the interested companies, would benefit of a balancing subsidy. As regards the connections with the islands, the amount of the balancing subsidy had to be set in the public service contracts taking as reference the tariffs applied by the national railway company for equivalent services and distances.

(f) Withdrawal of previous public service contracts and abrogation of legislation

(206) All public service contracts on passenger and freight transport signed pursuant to the 1936 Decrees ([47]) were withdrawn in 1962 and replaced with new contracts based on the new legal framework.

Conclusion on the compensation granted for the international connections

(207) The Commission cannot accept the argument of the Italian authorities that the subsidies paid to Adriatica and Saremar for the operation of international connections should be qualified as existing aid on the ground that the public service regime pre-dated the entry into force of the EC Treaty and of the Maritime Cabotage Regulation.

(208) The reference to the Maritime Cabotage Regulation is irrelevant because this Regulation does not concern international lines.

(209) Moreover, in light of the elements outlined above (recitals 180-206), the Commission considers that the original aid scheme underwent substantial alterations affecting its very nature and therefore became an entirely new aid scheme. Such alterations cover many, if not all, essential features of the original legal framework set up by the 1936 Decrees, and they totally reshaped that framework.

(210) First, the start of operation of most of the international routes examined in the present decision did not pre-date the entry into force of the EC Treaty. The only exception is the Bari/Durrës route operated by Tirrenia. However, the Commission notes that, whereas the Bari/Durrës link subject to the present assessment is a mixed (passengers and freight) route, the one included in the list of national interest routes was only a passenger route. Furthermore, the passenger route linking Sardinia to Corsica laid down by the list of national interest routes was La Maddalena/Palau/Bonifacio and was originally operated by Tirrenia. The Commission notes that the mixed routes subsequently operated by Saremar, set up pursuant to Article 15 of Law 856/1986, were two distinct routes, namely La Maddalena/Palau and Santa Teresa di Gallura/Bonifacio.

(211) Second, the legal basis for granting compensation for the operation of the international lines was repealed after the entry into force of the EC Treaty.

(212) Third, the mechanism to calculate the amount of compensation for the operation of the routes under the public service regime, including the profit margin, as well as its revision, were significantly altered several times.

(213) Fourth, the period over which compensation could be granted was repeatedly extended.

(214) Fifth, the budgetary resources allocated to the financing of the public service connections was not established in 1936. A global amount was introduced for the first time in 1962 but subsequently abandoned in 1974.

(215) Sixth, the compensation mechanism for cabotage routes foreseen in Articles 8 and 9 of Law 684/1974 became applicable to the international lines operated by Adriatica only by virtue of Article 13(4) of Law 856/1986. In this respect, the Commission points out that, even considering the cost-based compensation granted pursuant to Law 684/1974 similar to the compensation based on the method provided by the 1936 Decrees, the same cannot be argued for the framework introduced by Law 600/1962, which imposed the granting of an amount fixed *ex ante* and included efficiency incentives, and which was in force for almost 13 years.

(216) The Italian authorities claimed that the amendments introduced after the entry into force of the EC Treaty had the purpose of limiting the amount of public contribution. However, the elements stipulated in recitals 209 to 215 above show that those amendments did not merely decrease the compensation granted to the companies, but they fundamentally changed the nature of the aid measure. Actually, all those alterations were capable of influencing the compatibility of the compensation with the internal market as they modified its potential effects on competition. In summary, rather than keeping the compensation mechanism unaltered, Italy set up several different compensation systems for public service international routes after the entry into force of the EC Treaty.

([47]) Decree 2081/1936 was abrogated in 1974 and Decree No 2082/1936 was abrogated in 2008.

(217) As regards the comments put forward by the beneficiaries in the investigation, the Commission notes that those comments largely overlap with the comments of the Italian authorities. According to the beneficiaries, the Commission had tacitly authorised the measures in question by delaying the opening of the formal investigation procedure for a long time after it had been informed of the subsidies to the Tirrenia Group companies.

(218) However, in the absence of prior notification within the meaning of Article 108(3) TFEU, the Commission's possible knowledge of the various legislative texts instituting the annual subsidies for the operation of maritime services and of the Initial Conventions does not mean that tacit authorisation was given. The fact that the Commission is aware of a certain measure and takes no action in that respect cannot by itself have any impact on the classification of the aid as existing or new ([48]).

(219) Because of the above, the Commission considers the compensation granted for the operation of the international routes as new aid within the meaning of Article 1 of the new Procedural Regulation.

5.1.3. *Compatibility of the aid*

5.1.3.1. General framework

(220) Article 106(2) TFEU provides that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.'

(221) That Article provides derogation from the prohibition of State aid contained in Article 107 TFEU to the extent that the aid is necessary and proportional in that the lack of aid would hinder the performance of the services of general economic interest ('SGEI') under acceptable economic conditions. Under Article 106(3) TFEU it is for the Commission to ensure the application of this Article, by specifying, inter alia, under which conditions it considers the criteria of necessity and proportionality to be fulfilled.

(222) On 31 January 2012, the European Union framework for State aid in the form of public service compensation (2011) ('the 2012 SGEI Framework') and Commission Decision 2012/21/EU ([49]) ('the 2012 SGEI Decision') entered into force. As of this date the compatibility of the aid under the form of public service compensation must be examined in light of the 2012 SGEI Decision and the 2012 SGEI Framework's criteria.

(223) The 2012 SGEI Framework applies to any illegal aid granted before its entering into force on which the Commission takes a decision after 31 January 2012, with the exception of the provisions of paragraphs 14, 19, 20, 24, 39 and 60 (see paragraph 69 of the 2012 SGEI Framework). Consequently, the compatibility of the compensation granted to the Regional Companies up to the expiry of the Initial Conventions on 31 December 2008 falls within the scope of the 2012 SGEI Framework and has to be assessed on the basis of the relevant provisions therein, namely:

(a) the aid should be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) TFEU;

(b) the operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts. Such act (s) should specify the content and duration of the public service obligations; the undertaking entrusted with these obligations and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the undertaking; 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;

([48]) Judgment of 4 September 2009, *Italy v Commission*, judgment, T-211/05, ECLI:EU:T:2009:304, paragraphs 76-78 and judgment of 21 July 2011 *Alcoa Trasformazioni*, C-194/09 P, ECLI:EU:C:2011:497, point 127.

([49]) Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

(c) 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.

(224) The Initial Conventions provided that obligations regarding the routes and ports to be served, the capacity of the vessels assigned to the maritime connections in question, the frequency of service and the fares would be defined in detail by five-year plans submitted by the beneficiaries for approval to the public authorities. On this basis, the Commission finds that the public service obligations imposed on the companies derived simultaneously from the Initial Conventions concluded with the Italian State in July 1991, the legal framework as detailed above and the five-year plans.

(225) The five-year plans laid down the ports and the frequencies to be operated in the high and low seasons, as well as the type of ship to be assigned to each route. The resulting network of services could nonetheless be adapted over each five-year period, in response to changes in demand on the routes in question. The information supplied by the Italian authorities showed that only the local communities concerned could make adaptations in frequencies or timetables, after addressing specific requests to the Ministry of Transport. Such requests were then individually assessed at inter-ministerial level, inter alia, with reference to their financial implications for the operating costs of the company concerned. Any alteration to the network of services over the five-year period was therefore covered by an administrative decision addressed to the beneficiaries.

(226) At the time of adoption of the 2005 Decision, Italy had submitted to the Commission the first two five-year plans, respectively covering the 1990–1994 and 1995–1999 periods. The third plan (covering the period 2000–2004) was not yet approved at the time of adoption of the 2005 Decision. Ministerial Decree of 8 March 2000 entitled the companies to continue operation of the public service under the conditions agreed in the 1994-1999 five-year plan in force in 1999, pending the adoption of the 2000-2004 five-year plan.

(227) As mentioned above, following the annulment of the 2005 Decision by the 2009 Judgment, Italy confirmed that no five-year plan was finally adopted for the 2000-2004 and 2005-2008 periods. Instead, according to the Italian authorities, alterations to the public service obligations imposed on the operators were agreed on an ad hoc basis, with a view to bringing the services more closely into line with the needs of the local communities, without however making substantive changes to the public service system.

(228) Consequently, the Commission notes that no substantial change occurred in the public service regime as compared to the situation presented in the 1994-1999 five-year plan, and thus assumes that the companies continued to provide the services largely under the same public service obligations concerning schedule, frequency, ships, or tariffs until the expiry of the Initial Conventions.

5.1.3.2. Genuine and correctly defined SGEI

(229) According to paragraphs 12 and 13 of the 2012 SGEI Framework, the aid must be granted for a genuine and correctly defined SGEI. In particular, 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.

(230) In the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have wide discretion to define what they regard as an SGEI and, consequently, the definition of such services by a Member State can be questioned by the Commission only in the event of manifest error ([50]).

([50]) See paragraph 46 of the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

(231) According to Article 1(1) of Regulation (EEC) No 4055/86, 'freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended'. However, differently from the Maritime Cabotage Regulation ([51]), Regulation (EEC) No 4055/86 does not provide for possible exceptions to the principle of freedom to provide international maritime transport services.

(232) The Commission takes the view that, irrespective of the lack of an explicit provision regulating the possibility by the Member States to conclude public service contracts as regards maritime transport services between Member States or between Member States and third countries, Regulation (EEC) No 4055/86 does not prevent Member States from taking such actions. In accordance with paragraph 9, second subparagraph of the Community guidelines on State aid to maritime transport (- 'the Maritime Guidelines') ([52]), 'the Commission accepts that, if an international transport service is necessary to meet imperative public transport needs, public service obligations may be imposed or public service contracts may be concluded, provided that any compensation is subject to the above-mentioned Treaty rules and procedures [Treaty rules and procedures governing State aid, as interpreted by the Court of Justice]'.

(233) Therefore, the Commission will limit its assessment to the question whether the international transport connections operated by Adriatica and Saremar were considered necessary by Italy to meet imperative public transport needs.

International routes operated by Adriatica

(234) Adriatica operated international routes between Italy and respectively Greece, Albania, Montenegro and Croatia.

(235) The Commission has to assess whether there were competing operators on these routes offering services similar or comparable to those offered by the public operator and that would meet the requirements laid down by the public authorities. The Italian authorities have not informed the Commission of any substantive change in the public service obligations or the competitive situation on these routes following the annulment of the 2005 Decision.

(236) As detailed below, Adriatica was tasked with a mission of general interest entailing costs that the company would not have incurred had it acted according to its own commercial interest.

— Italy/Greece

(237) The Brindisi/Corfu/Igoumenitsa/Patras maritime connection, which linked the central regions of the European Union with one of its outlying regions, was of vital importance for commercial and tourist traffic, especially in view of the political instability, which had caused disruptions to the alternative land links.

(238) In 1977, at the joint request of the Italian and Greek authorities, this maritime connection was included in the list of rail routes and motor vehicle and shipping services covered by the International Convention of 7 February 1970 concerning the Carriage of Passengers and Luggage by Rail (CIV). To be able to provide the maritime services offered on this route, Adriatica joined the Eurail Community.

(239) Information supplied to the Commission at the meeting of 26 October 2001 showed that, between 1992 and 1999, Adriatica operated an average of 265 journeys a year on this route, carrying a yearly average of 161 440 passengers, 24 376 vehicles and 104 437 linear metres of cargo. As indicated by the Italian authorities in a letter dated 17 February 2004, between 1996 and 1999 Adriatica's competitors did not provide a service offering the same guarantees in terms of the quality of the ships used and, inter alia, the regularity and frequency of service.

([51]) Article 4 of the Maritime Cabotage Regulation provides for the possibility for Member States to conclude public service contracts with shipping companies involved in regular services to, from and between islands or to impose PSOs on them as a condition for the provision of cabotage services. Article 4(2) of that regulation further stipulates that, in imposing PSOs, Member States are to abide by requirements relating to ports to be served, regularity, continuity, frequency, capacity to provide the service, rates charged and crew and that, where applicable, any compensation for PSOs must be available to all Union shipowners.

([52]) Commission Communication C(2004) 43 – Community Guidelines on State aid to maritime transport (OJ C 13, 17.1.2004, p. 3).

(240) Adriatica operated this route until the end of 1999. At the end of the 1995-1999 five-year plan, Adriatica suspended the activities carried out with its own vessels on the Brindisi/Corfu/Igoumenitsa/Patras connection and stopped receiving the public subsidies for the operation of this route. In order to guarantee the passenger services between Brindisi and Patras covered by the CIV Convention, between 2000 and 2004 Adriatica entered into contractual arrangements with other maritime operators.

(241) The Commission considers that the Italian authorities were entitled to cover operating losses in respect of scheduled services to ports serving remote regions of the Union where the operation of market forces would not ensure a sufficient service level. On the basis of the above, the Commission considers that the granting of public subsidies for the operation of this route can in principle be justified.

(242) The Commission concludes that the operation by Adriatica of the maritime connections between Italy and Greece constituted a genuine SGEI.

— Italy/Albania

(243) The connections with Albania started in 1983 when, on the basis of a bilateral Italy-Albania agreement of 1983 ([53]), Adriatica started the mixed passenger and freight route Trieste/Durrës. Between 1991 and 1998, the traffic between Italy and Albania increased exponentially: from 20 096 passengers in 1991 to 357 078 passengers in 1999. The connections operated by Adriatica (Trieste/Durrës, Ancona/Durrës and Bari/Durrës) were necessary to satisfy the transport needs of the local population, especially the lower-income groups, and to maintain good neighbourly relations with Albania. Italy's interest in the latter is explained by the strong historical, political and economic links between the two countries, the several hundred thousand Albanians who immigrated to Italy in the 20th century and the few Italian colonists living in Albania until 1992. Moreover, in the 1990s, Adriatica's ferries had a key role in the logistic and humanitarian support provided by Italy to Albania during the Albanian political crisis, which followed the collapse of the country's regime.

(244) Adriatica was subject to constraints in terms of the routes to be run, their frequency and the tariffs applicable (that were determined *ex ante* by Italy) and in terms of ships/ferries to be used, which had to be authorised by the Italian administration.

(245) On the Trieste/Durrës route (25 hours of travel), Adriatica faced no competition. In the period 1995-1998, Adriatica operated the route twice per week all year round with ferries carrying passengers and freight. The maximum capacity offered was 800 passengers per departure. In 1999, following an amendment to the 1995-1999 five-year plan, approved with Ministerial Decree of 17 July 1998, Adriatica operated only freight transport services on this route. As of 2000 (i.e. at the conclusion of the second five-year plan), Italy decided to discontinue the route because traffic demand on the line started to shrink and it was clear that the private operators entering the market were going to provide sufficient services on the line.

(246) Also on the Ancona/Durrës route (18-19 hours of travel), Adriatica faced no competition. According to the 1995-1999 plan, Adriatica had to operate this route twice a week. In 2001, this route was operated by Adriatica four times per week with five ferries carrying passengers and freight. The maximum capacity offered was 800-1 080 passengers (depending on the type of ferry) per departure. The route was operated until 2004, when Adria Ferries entered the market with sufficient capacity to satisfy market demand (using a ferry with a capacity of 800 passengers and 25 trucks).

(247) On the Bari/Durrës route (8 hours of travel), Adriatica operated in competition with other (EU and non-EU) operators, which however used old ships and provided services that did not guarantee the regularity and reliability required to satisfy the needs of the population. According to the 1995-1999 plan, Adriatica had to operate this route four times per week. In 1998, following an amendment to the plan approved by the Ministry, Adriatica operated this route three times per week. The total capacity offered was 1 080 passengers per departure all year round. Data concerning demand in 2001 show that Adriatica was the only company operating the route that would have been able to satisfy the demand in its entirety all year round (i.e. 530 passengers daily in the low season and 1 050 passengers daily in the high season). Moreover, Adriatica's prices were not below the costs of its competitors. The information submitted by the Italian authorities after the annulment of the 2005 Decision by the General Court shows that the results on the Bari/Durrës route were positive in the period 2004-2008. Even though the Italian authorities were not able to provide the data per line for the years 2002-2003, in their reply of 21 December 2018 they confirmed that Adriatica did not receive any compensation for the operation of the route in the period 2002-2008.

([53]) Article 5 of the Protocol entrusted Adriatica and the Albanian company Transship with organising the arrangements for services on the route.

(248) The Commission concludes that Adriatica was the only company ensuring regular and reliable ferry passenger and freight transport services on the routes Trieste/Durrës (until 2000), Ancona/Durrës (until 2004) and Bari/Durrës (until the end of 2001) and that the maritime services provided by Adriatica on these routes constituted genuine SGEIs. As regards the services provided by Adriatica on the Bari/Durrës route in the period 2002-2008, there is no need to assess the existence of genuine SGEIs for this period, as no aid was granted to Adriatica as a compensation for the provision of these services.

— Italy/Montenegro

(249) On the connection between Italy and Montenegro, Adriatica operated the Ancona/Bar and Bari/Bar routes. Both connections were set up by Adriatica in 1997 on the basis of a request by the Montenegrin authorities for a regular maritime connection between the country's commercial port and the northern and southern ports of Italy, and were suspended in 1999 due to the war in Kosovo. At that time, Italy had an interest in ensuring regular connections to and from Montenegro in order to strengthen regional cooperation and support the democratisation process of the States of the Federal Republic of Yugoslavia (i.e. Serbia and Montenegro). Bar was the Federal Republic of Yugoslavia's only access to the sea.

(250) The Ancona/Bar maritime connection was reactivated in 2000 following the request of the Montenegrin authorities, who in 2001 even asked for an increase of the frequency of the services provided by Adriatica. On this route, which was operated until 2004, Adriatica never faced competition.

(251) The Bari/Bar maritime connection was operated by Adriatica only in 1997 and 1998. On this route Adriatica faced the competition of two operators (the Montenegrin state-owned ferry company and one Slovenian operator) that did not offer the same guarantees in terms of the quality of the ships.

(252) Against this background, the Commission concludes that the maritime services provided by Adriatica between Italy and Montenegro constituted genuine SGEIs as Adriatica was the only company ensuring regular and reliable ferry passenger and freight transport services on these routes.

— Italy/Croatia

(253) On the connection between Italy and Croatia, Adriatica operated the Ancona/Split and Bari/Dubrovnik routes.

(254) Operation of the Ancona/Split maritime connection between Italy and Croatia, granted to private operators in 1960, was transferred to Adriatica by Law No 42 of 27 February 1978. The information supplied by the Italian authorities indicated that the services were interrupted in 1991, and subsequently resumed in 1994 at the express request of the Government of the Republic of Croatia. Moreover, Italy had an interest in ensuring regular connections with Croatia (and in particular the Dalmatian region) considering the significant number of Italians and people of Italian descent living in the region. Despite the fluctuations caused by the Kosovo crisis, traffic developed considerably since 1994. Adriatica used a mixed vessel to make two journeys a week all year round whereas the other operators (one Croatian, one Liberian and one European Union operator) were essentially present only during the summer season and did not meet all the service requirements stipulated by the Italian authorities in the agreement. The route was discontinued in 2006.

(255) The Bari/Dubrovnik maritime connection was operated by Adriatica only in 1997 and 1998. The only competitor in this route was the State-owned Croatian ferry company.

(256) Against this background, the Commission concludes that the maritime services provided by Adriatica between Italy and Croatia constituted genuine SGEIs as Adriatica was the only company ensuring regular and reliable ferry passenger and freight transport services on these routes.

International route operated by Saremar

(257) Saremar operated the international route Santa Teresa di Gallura/Bonifacio between Sardinia and Corsica.

(258) The Commission considers that the operation by Saremar of the Sardinia/Corsica (Santa Teresa/Bonifacio) route meets a genuine need that could not have been satisfied by the market alone.

(259) In particular, on this route Saremar operated two round trips a day all year round using a mixed ship with a total capacity of 560 passengers and 51 motor vehicles. The information supplied by the Italian authorities showed this to be a short-distance (10 nautical miles) cross-border connection of mainly local interest, both for the Sardinian communities and for the neighbouring Corsican communities. The scheduled connection between Santa Teresa and Bonifacio primarily served to ensure the mobility of cross-border workers between southern Corsica and northern Sardinia. The information supplied by the Italian authorities showed that this connection had been expressly requested by the local Sardinian and Corsican communities.

(260) The service provided by the competitor did not to meet the regularity and frequency requirements imposed by the Italian authorities. Moreover, the operator in question was not consistently present throughout the off-season.

(261) Because of the above, the Commission considers that the objective, which is the expression of a legitimate public need expressed by the local and regional authorities concerned, of providing a year-round scheduled service between two insular regions, could not be met by the free play of market forces. The international route operated by Saremar thus constituted a genuine SGEI.

5.1.3.3. Appropriate entrustment act

(262) In line with paragraphs 15 and 16 of the 2012 SGEI Framework, the beneficiaries were explicitly entrusted with the provision of the services in question by means of the Initial Conventions and, for the applicable time-periods, the five-year plans, which clearly specify the content and duration of the public service obligations, the beneficiaries and the compensation mechanism.

(263) The Initial Conventions are public service contracts concluded by the Italian State with each of the five Regional Companies of the former Tirrenia Group. These contracts imposed on the companies the obligation to provide the services (in terms of lines, frequencies, type of vessels and fares – see recital 97) outlined in the five-year plans and set the main rules underlying the compensation mechanism applied in the five-year plans. As mentioned in recitals 95 and 96, the Initial Conventions prescribed that the amount of annual subsidy be established on the basis of an application submitted by the beneficiary and approved by the Ministry. The Initial Conventions detailed the various revenue and cost elements to be taken into consideration for the calculation of the compensation and the return on invested capital. Article 3 of the Initial Conventions provided also arrangements for avoiding and recovering any overcompensation. On the one hand, the Regional Companies were obliged to communicate immediately to the Ministry any relevant change in the results foreseen in the submitted application, so that the compensation could be adjusted promptly. On the other hand, the absence of overcompensation was also controlled *ex post* and the Regional Companies were obliged to return to the State any amount received in excess.

(264) These considerations equally apply to all Regional Companies.

5.1.3.4. Proportionality of the compensation

(265) According to the information provided by Italy, the compensation granted to Adriatica and Saremar for the operation of the international routes corresponded to the net loss recorded on the route.

(266) As regards the reasonableness of the compensation, on the basis of the considerations in recitals 168 and 163-172, Commission considers that the compensation was limited to the net costs incurred in the provision of the services and the return allowed to the operator was reasonable, in line with paragraphs 21 and 22 of the 2012 SGEI Framework. Moreover, at least as of 1 January 2004, separate accounts per line were kept for all the public service activities imposed by Italy on the Regional Companies. Therefore, it can be concluded that the Regional Companies complied with the obligation of transparency introduced by Commission Directive 2006/111/EC ([54]) (see paragraph 18 of the 2012 SGEI Framework).

(267) Concerning specifically the investment scheduled in the five-year plans, the Commission had, in the Opening Decision, expressed doubts on the financing arrangements for the investments needed in order to provide the services subsidised under the Initial Conventions. In particular, the Commission wanted to assess the extent to which the costs of ship acquisition and depreciation entered into the calculation of the annual compensation. In addition, the fact that the Regional Companies were guaranteed a subsidy, which included the cost of depreciation of their fleet until 2008, could have been considered an implicit guarantee on the part of the Italian State, enabling the public operator not to shoulder the economic risk inherent in any investment.

([54]) 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).

(268) The Initial Conventions required the Regional Companies to use vessels less than 20 years old on the subsidised routes and to own these vessels (unless the public authorities expressly granted an exemption). This obligation, which constitutes a public service obligation, led the Regional Companies to renew a substantial part of their fleet over the duration of the Initial Conventions, given the age reached by the vessels used on the routes covered by the first five-year plan (1990-1994). In addition, the type of ship to be used on each of the routes served by the companies was laid down by a ministerial decree approving or amending each five-year plan. The acquisition of any new ship, just like the transfer or decommissioning of the oldest ships, had to be authorised by ministerial decree, which also specified the service to which the vessel had to be assigned. The Regional Companies' investments also had to be in line with the strategy for developing the services provided during the five-year reference period as formulated in the five-year plan approved by the public authority.

(269) In view of these specific rules, the Commission examined whether, during the 1990-1994 and 1995-1999 five-year periods, the acquisition costs and the depreciation costs of the ships used by the Regional Companies on the public service routes fulfilled the requirements stipulated by the Italian authorities and were taken into account in a proportionate manner when calculating the annual compensation. The information supplied by the Italian authorities showed that, when new vessels were introduced, older vessels had simultaneously been decommissioned, with the result that there was no overall increase in capacity linked to the renewal of the Regional Companies' fleets.

(270) With regard to the cost of acquiring new vessels, the same information showed that: (i) these purchases were made partly with the company's own resources and partly by means of bank loans; (ii) the interest rates charged by the credit institutions involved were in line with rates enjoyed during the same period by companies of comparable size and turnover in other sectors of the economy ([55]); (iii) the Regional Companies did not enjoy any direct guarantee from the Italian authorities for the repayment of these loans. The Commission acknowledges that the very existence of an agreement with the State assured investors that their commitments would be honoured and enabled the Regional Companies to modernise their fleets without bearing the economic risks that had to be borne by a commercial operator. This advantage was however intrinsic to the arrangements introduced by the Initial Conventions, which were concluded for a twenty-year period before the Maritime Cabotage Regulation and the Maritime Guidelines entered into force. In addition, as already noted, the new vessels acquired by the Regional Companies under the Initial Conventions were assigned exclusively to the scheduled services specified in the five-year plans. Consequently, this advantage was an integral part of the Initial Conventions.

(271) With regard to the depreciation costs of the ships used by the Regional Companies on the routes covered by the five-year plans, the Commission notes that these are part of the cost elements that, under the terms of Article 5 of the Initial Conventions, entered into the calculation of the annual subsidy. According to criteria laid down in the Initial Conventions, depreciation was calculated linearly over a twenty-year period, with the exception of ultra-high-speed vessels, for which the duration was limited to 15 years. As examination of the analytical accounts of these routes revealed no element of overcompensation, the Commission maintains that the mechanism introduced by the Initial Conventions to consider vessel depreciation when calculating the annual compensation may be authorised under Article 106(2) TFEU.

(272) The provision of SGEI presupposes the use of vessels of a type and capacity specified in advance by the public authorities, whose depreciation may thus be taken into account when calculating the annual compensation, provided that the vessels in question were acquired by the company under normal market conditions and in order to perform the tasks entrusted to it and are used exclusively for scheduled transport services on the routes covered by the agreement.

(273) In the case of the Regional Companies, the Commission notes that all the vessels in question were used exclusively for public services and that, as a result, their depreciation may be fully taken into account in the calculation of the annual subsidy. The same is true for the investments needed to provide the services prescribed by the Italian authorities for the 2000-2004 five-year period, which correspond, in terms of type and capacity, to the commitments entered into by those authorities regarding the level of service.

([55]) For instance, the acquisition of two high-speed craft was financed via a loan taken out with the Banco di Napoli in 1999 for ITL 160 billion at a variable rate equal to the six-month Euribor rate, raised by 0,40 % and repayable over 10 years. The information supplied by the Italian authorities shows that the same credit institution granted loans at the same time to other large companies under virtually identical conditions.

(274) In light of the above, the Commission also observes that the need to amortise the investments required for the provision of the service justified the relatively long duration of the period of entrustment (see paragraph 17 of the 2012 SGEI Framework).

(275) Regarding the additional investments scheduled in the business plan for the period 1999 to 2002, the implementation of this plan was suspended following the initiation of the formal investigation procedure and it was not resumed.

5.1.3.5. Distortion of competition contrary to the interest of the Union

(276) The procedure under Article 108 TFEU must not produce a result which is contrary to the specific provisions of the Treaty ([56]). Therefore, the Commission cannot declare State aid, certain conditions of which contravene other provisions of the Treaty, to be compatible with the internal market. The obligation by the Commission to ensure that Articles 107 and 108 TFEU are applied consistently with other provisions of the Treaty is all the more necessary where those other provisions also pursue, as in the present case, the objective of undistorted competition in the internal market ([57]).

(277) Compliance with the requirements set out in the 2012 SGEI Framework, as assessed above, is usually sufficient to ensure that the aid does not distort competition in a way that is contrary to the interests of the Union (see paragraph 51 of the 2012 SGEI Framework).

(278) However, as regards Adriatica, the Commission notices that, between 30 October 1990 and July 1994, Adriatica was involved in a price fixing cartel for the tariffs for commercial vehicles on the Brindisi/Corfu/Igoumenitsa/Patras route, in contravention of Article 101 TFEU ([58]), while it was receiving aid to operate that route. Following adoption of the 2005 Decision the Court confirmed this assessment ([59]).

(279) The public service compensation paid for the operation of the Brindisi/Corfu/Igoumenitsa/Patras route from January 1992 to July 1994, when the beneficiary was involved in the price fixing cartel prohibited by Article 101 TFEU, cannot be considered compatible with the internal market. While the purpose of the public service compensation was precisely to facilitate the transport of goods and passengers in the Brindisi/Corfu/Igoumenitsa/Patras route, the beneficiary of the aid participated in a price fixing cartel that inhibited the transport of goods in that exact same route. Therefore, Adriatica's participation in the cartel was in direct contradiction with the purpose of the SGEI aid that was granted to Adriatica in order to facilitate maritime transport in that route.

(280) It follows that the finding of incompatible aid and consequently the ordering of recovery of that aid would not constitute a new penalty, as claimed by Italy. Such incompatibility merely results from the aid recipient's participation in a cartel covering services that the recipient was supposed to make more accessible to consumers rather than cartelise them to the detriment of consumers. Given the type of service provided with public compensation, which simultaneously catered for commercial vehicles, passengers and cargo, the beneficiary's involvement in a cartel designed to fix prices for transport of commercial vehicles allows conclusions to be drawn for the connection as a whole. The cartel was aimed at the very commercial vehicle traffic that the Italian authorities wished to facilitate through the subsidy.

(281) Besides, the cartel heavily distorted competition on the relevant market, i.e. in the Brindisi/Corfu/Igoumenitsa/Patras route, whereas the SGEI aid on that same route should have been granted in a manner that would limit the distortions of competition to the minimum. The participation of the beneficiary in a price fixing cartel on that route amplified the distortive effects of the aid and caused it to have significant adverse effects on other Member States and the functioning of the internal market. Moreover, it is plausible that, absent the public subsidies, Adriatica would not have had the economic strength to participate in the cartel.

(282) Finally, at that time Adriatica was fully controlled by a public company. Therefore, that part of the Italian authorities knew about the cartel and its detrimental effects to consumers, while another part of the Italian authorities continued to grant the SGEI aid that was supposed to assist consumers on that same route with as limited distortions to competition as possible.

([56]) See judgment of 21 May 1980, *Commission v Italy*, C-73/79, ECLI:EU:C:1980:129, paragraph 11; judgment of 15 June 1993, *Matra SA v Commission*, C-225/91, ECLI:EU:C:1993:239, paragraph 41; and judgment of 19 September 2000, *Germany v Commission*, C-156/98, ECLI:EU:C:2000:467, paragraph 78.

([57]) Judgment of 15 June 1993, *Matra SA v Commission*, C-225/91, ECLI:EU:C:1993:239, paragraphs 42 and 43.

([58]) Commission Decision 1999/271/EC of 9 December 1998 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34466 – Greek Ferries) (OJ L 109, 27.4.1999, p. 24), confirmed, on this point, by the judgment of 11 December 2003, *Adriatica di Navigazione v Commission*, T-61/99, ECLI:EU:T:2003:335.

([59]) Order of 16 February 2006, *Adriatica di Navigazione v Commission*, C-111/04P, ECLI:EU:C:2006:105.

(283) In view of the above considerations, the Commission concludes that the aid in the form of public service compensation to Adriatica for the operation of the Brindisi/Corfu/Igoumenitsa/Patras route between January 1992 and July 1994 is incompatible with the internal market.

5.2. **The preferential fiscal treatment**

(284) In the 1996-2008 period, the vessels of the Tirrenia Group enjoyed a preferential fiscal treatment for their supply of fuel and lubricating oil used as fuel for shipping.

(285) Italy had introduced this preferential treatment by Decree Law No 504 of 26 October 1995 and extended it to all vessels laid up in a port for maintenance operations following a decision of 2 March 1996.

(286) In its judgment of 10 May 2005 in case C-400/99, the Court of Justice concluded that the fiscal treatment should have not been suspended as constituting unlawful aid, given that in 1996 the Italian authorities had extended the treatment to all vessels docked in a port for maintenance operations.

(287) Irrespective of the question whether such measure constituted State aid, the Commission notes that, following the 2005 Decision, neither the Commission nor Italy acting at the request of the Commission took any action in respect to this measure. Therefore, any decision adopted by the Commission on this point would come after the expiry of the 10-year limitation period ([60]).

(288) In light of the above, the Commission concludes that the preferential fiscal treatment shall be deemed existing aid under Article 17 of the new Procedural Regulation.

6. **CONCLUSIONS**

(289) The public service compensation granted to the Regional Companies of the former Tirrenia Group for the operation of *cabotage* routes until the end of 2008 constitutes existing aid under Article 4(3) of the 1992 Maritime Cabotage Regulation.

(290) The public service compensation granted to Saremar and Adriatica for the operation of *international* routes under the Initial Conventions until the end of 2008 constitutes new aid. Such aid is compatible with the internal market, with the exception of the aid granted to Adriatica for the period from January 1992 to July 1994 for the operation of the Brindisi/Corfu/Igoumenitsa/Patras connection that is incompatible with the internal market because it was closely connected to a cartel prohibited by Article 101 TFEU.

(291) The preferential tax treatment of the supply of fuel and lubricating oil, as applied to the vessels of the Tirrenia Group in the period 1995-2008, constitutes existing aid under Article 17 of the new Procedural Regulation.

7. **RECOVERY**

(292) According to the Treaty on the Functioning of the European Union and the established case law of the Union Courts, the Commission is competent to decide that the Member State concerned shall alter or abolish aid when it has found that it is incompatible with the internal market ([61]). The Union Courts have also consistently held that the obligation on a Member State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ([62]).

(293) In this context, the Union Courts have established that this objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage, which it had enjoyed over its competitors on the internal market, and the situation prior to the payment of the aid is restored ([63]).

(294) In line with the case law, Article 16(1) of Regulation (EU) 2015/1589 states that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'

([60]) As the 2005 Decision (of 16 March 2004) was subject to proceedings before the Court of Justice between 24 June 2004 and 4 March 2009, the 10-year limitation period, started after the last action taken by the Commission on the measure at stake and suspended during the Court proceedings, expired at the end of November 2018 (26 November 2018).

([61]) Judgment of 12 July 1973, *Commission v Germany*, C-70/72, ECLI:EU:C:1973:87, paragraph 13.

([62]) Judgment of 21 March 1990, *Belgium v Commission*, C-142/87, ECLI:EU:C:1990:125, paragraph 66.

([63]) Judgment of 17 June 1999, *Belgium v Commission*, C-75/97, ECLI:EU:C:1999:311, paragraphs 64 and 65.

(295) Thus, given that the measure granted to Adriatica mentioned in recital 290 was implemented in breach of Article 108(3) TFEU, and is to be considered as unlawful and incompatible aid, it shall be recovered in order to re-establish the situation that existed on the internal market prior to their granting. The amount to be recovered shall bear interest until effective recovery.

(296) On 22 July 2004, with effect from 1 September 2004, Adriatica merged with Tirrenia and the latter took over the routes operated by Adriatica. The full assets, liabilities and ongoing contracts were taken over by Tirrenia, which was the sole surviving entity of the merger.

(297) After the adoption of the 2005 Decision, Italy ordered recovery of the aid granted to Adriatica from January 1992 to July 1994 for the operation of the Brindisi/Corfu/Igoumenitsa/Patras connection, quantified by the Italian authorities at EUR 8 651 600 as of 31 December 2006 (EUR 3 207 810 principal and EUR 5 443 790 interest) ([64]). In its recovery order of 28 February 2007, addressed to Tirrenia, Italy the latter that it was liable to pay an additional amount for the period between 1 January 2007 and the actual date of payment of the aforementioned sum. On 26 March 2007, Tirrenia repaid EUR 8 651 600. In its letter of 21 December 2018, Italy confirmed that, after the 2009 Judgment annulling the 2005 Decision, it had not returned the recovered sums to the beneficiary. However, based on the information available to the Commission, it seems that Tirrenia was not asked to repay any additional funds for the interest accrued between 31 December 2006 and 26 March 2007.

(298) Therefore, the Commission notes that the Italian authorities will have to recalculate the total amount of interest due, accrued on the principal aid amount established at EUR 3 207 810, from the dates when the aid was put at the disposal of the beneficiary until the date of full repayment. Then, the Italian authorities shall deduct from the result of this calculation the amount of interest already paid by the beneficiary on 28 February 2007.

(299) The Commission notes that Italy considered in 2007, and still considered as of December 2018, that Tirrenia was liable to repay the aid granted to Adriatica, as described in recital 297. Moreover, Tirrenia accepted this finding by repaying the aid due from Adriatica, as described in recital 297. However, the Commission will also now autonomously analyse the possible economic continuity between Adriatica and Tirrenia, to determine which company is liable to repay the aid.

8. **ECONOMIC CONTINUITY**

(300) Where there has been a subsequent sale or transfer of the beneficiary of unlawful and incompatible State aid, the obligation to repay can be extended to other undertakings to which the beneficiary's shares or business have been transferred (successor undertaking) ([65]). Any undertaking continuing the business of the initial undertaking should be considered as the beneficiary of the State aid, provided that there were aspects of the transfer indicating that the business was in fact being continued. Moreover, in cases of mergers or other forms of business reorganisation, the obligation to repay the aid may be passed on to the surviving entity ([66]). Where, on the contrary, it can be shown that the benefit of the unlawful aid remains with the initial recipient (notwithstanding a transfer of some of its assets), the repayment obligation will remain with the original recipient of aid.

(301) According to the Court decision of 8 May 2003 *Italy and SIM 2 v. Commission* ([67]), on which the Commission founded its decisions on Olympic Airlines, Alitalia and SERNAM ([68]), the assessment of economic continuity between the aid beneficiary and the undertaking to which its assets were transferred is established through a set of indicators. The

([64]) A working group, set up through an Interministerial Decree issued on 3 December 2004, calculated this amount.

([65]) Judgment of 21 March 1991, *Italy v Commission*, C-303/88, ECLI:EU:C:1991:136, paragraph 57. By repaying the aid, the recipient must forfeit the advantage it previously enjoyed on the market, and the pre-aid situation is restored.

([66]) Judgment of the Court of Justice of 7 March 2018, *SNCF Mobilités v Commission*, C-127/16 P, ECLI:EU:C:2018:165, paragraph 113.

([67]) Judgment of the Court of 8 May 2003, *Italian Republic and SIM 2 Multimedia SpA v Commission*, Joined Cases C-328/99 and C-399/00, ECLI:EU:C:2003:252.

([68]) Commission Decision of 17 September 2008, State aid N 321/2008, N 322/2008 and N 323/2008 – Greece – Vente de certains actifs d'Olympic Airlines/Olympic Airways Services; Commission decision of 12 November 2008 State aid N 510/2008 – Italy – Sale of assets of Alitalia; Commission decision of 4 April 2012 SA.34547 – France – Reprise des actifs du groupe SERNAM dans le cadre de son redressement judiciaire.

following factors may be taken into consideration, but do not need to be cumulatively met in order to establish economic continuity between two companies ([69]):

— whether the sale price corresponds to a market price or not,

— the scope of the transfer (assets and liabilities, workforce, the existence of functional bundles of assets),

— the identity of the buyer(s),

— the moment of the transfer (after the initiation of preliminary assessment, the formal investigation procedure or the final decision),

— the economic logic and purpose of the operation.

(302) Adriatica was fully-owned by Tirrenia. Moreover, the ultimate owners of Tirrenia were the same ones as those of Adriatica (i.e. the public company *Fintecna – Finanziaria per i Settori Industriale e dei Servizi SpA*, who was the sole shareolder of Tirrenia as of 30 January 2004). These are strong indications of economic continuity between the two companies, as compared to a different scenario were the owners were unrelated entities.

(303) The sale of Adriatica to Tirrenia was essentially a mere transfer between a subsidiary and its owner, where no tender was organised and no price was paid.

(304) As regards the scope of the transaction, Adriatica was sold as a going concern and Tirrenia took over all of its obligations as per the Initial Convention concluded between Adriatica and the Italian State. The Commission has no indication that Tirrenia introduced any change to the commercial, personnel or production policy of Adriatica after it took over its business directly. The larger the part of the original business that is transferred to a new entity, the higher the likelihood that the economic activity related to these assets is a mere continuation of the previous business, still benefitting from the incompatible aid. In this case, Tirrenia took over the entire set of assets, liabilities and contractual relationships of Adriatica.

(305) As regards the purpose of the transaction, the Commission notes that although it does not have direct evidence that the intention of the transaction was to circumvent the recovery decision and thereby escape its effects, Tirrenia decided to take over Adriatica two days after the adoption by the Commission of the 2005 Decision. The timing thus suggests that the two companies were aware of the ongoing investigation by the Commission and may have factored this into the decision to merge their activities into Tirrenia. Moreover, the economic logic of the transaction was clearly to continue the same activities of Adriatica under the Tirrenia name.

(306) Therefore, the Commission concludes that there is economic continuity between Tirrenia and Adriatica and that the recovery for Adriatica under the present decision needs to be extended to Tirrenia. Indeed, with its continuous operational presence on the market, Tirrenia continued to benefit from the State aid that Adriatica's economic activities received and which continued to distort the market.

(307) Accordingly, when performing the recalculation mentioned at recital 298, Italy may take full account of the repayment by Tirrenia of EUR 5 443 790, which took place on 26 March 2007, to the extent that these funds were not later refunded to Tirrenia,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted to Adriatica, Caremar, Siremar, Saremar and Toremar between 1 January 1992 and 31 December 2008 as a compensation for the operation of domestic routes is existing aid.

2. Without prejudice to the provisions of paragraph 3, the aid granted by Italy to Adriatica and Saremar between 1 January 1992 and 31 December 2008 as compensation for the operation of international routes is compatible with the internal market under Article 106(2) TFEU.

([69]) This set of indicators was confirmed by the General Court in its decision of 28 March 2012, *Ryanair v. Commission*, Case T-123/09, ECLI:EU:T:2012:164, which confirmed the Alitalia decision.

3. The aid to Adriatica for the period January 1992 to July 1994 in relation to the Brindisi/Corfu/Igoumenitsa/Patras connection, unlawfully put into effect in breach of Article 108(3) TFEU, is incompatible with the internal market.

4. The fiscal treatment of mineral oils used as fuel for shipping shall be deemed existing aid given that neither the Commission nor Italy acting at the request of the Commission has taken any action in respect to this measure before the expiry of the limitation period for the recovery of aid provided by Article 17 of Regulation (EU) 2015/1589.

Article 2

1. Italy shall recover the aid referred to in Article 1(3) from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and to Regulation (EC) No 271/2008 ([70]) amending Regulation (EC) No 794/2004.

4. Based on the information at its disposal, the Commission acknowledges that Italy has already recovered from the beneficiary the aid principal and part of the recovery interest due.

Article 3

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.

2. Italy shall ensure that this decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Italy shall submit the following information:

(a) the total amount (principal and recovery interests) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this Decision;

(c) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1(3) has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 5

This decision is addressed to the Italian Republic.

The Commission may publish the amounts of aid and recovery interest recovered in application of this decision, without prejudice to Article 30 of Regulation (EU) 2015/1589.

Done at Brussels, 2 March 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President

([70]) Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 82, 25.3.2008, p. 1).