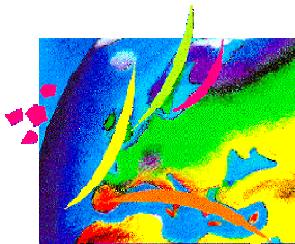




## **Publics Services and Competition: Between the Devil and the Deep Blue Sea ?**



The Islands' Experience in the Field of Transport.



Jean-Didier Hache  
Executive-Secretary for  
CPMR Islands Commission  
[www.crpm.org](http://www.crpm.org)



# Some characteristics of transport in many mountain & island areas

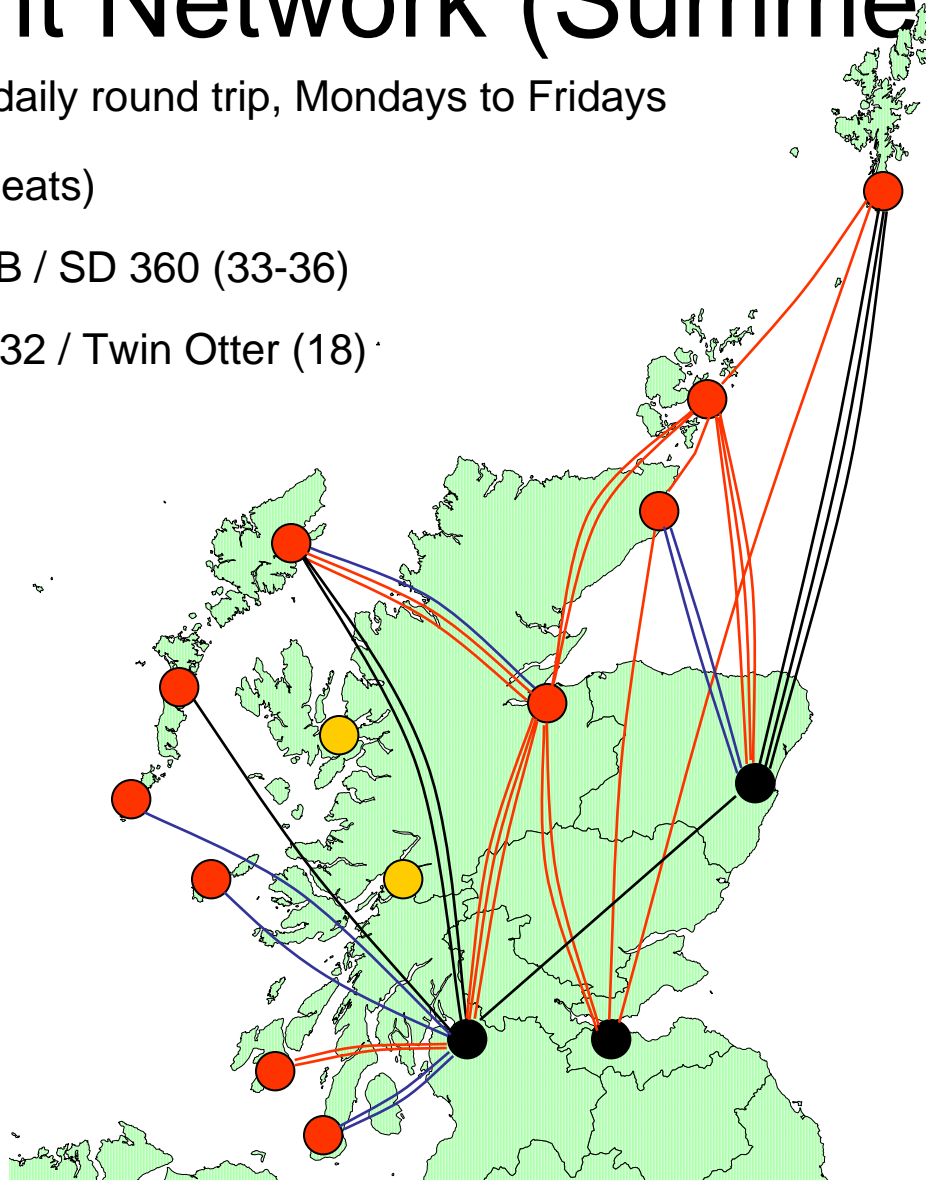
- Demultiplication of airport infrastructures
  - High seasonality of traffic
  - Low density of population
- 
- Many lines with little regular traffic
  - Unattractive market for operators
  - Limited competition, if not de facto monopoly
  - High fares and sometimes indifferent services

# Current Network (Summer 2001)

Each line = 1 daily round trip, Mondays to Fridays

- ATP (66 seats)
- Saab 340B / SD 360 (33-36)
- Jetstream32 / Twin Otter (18)

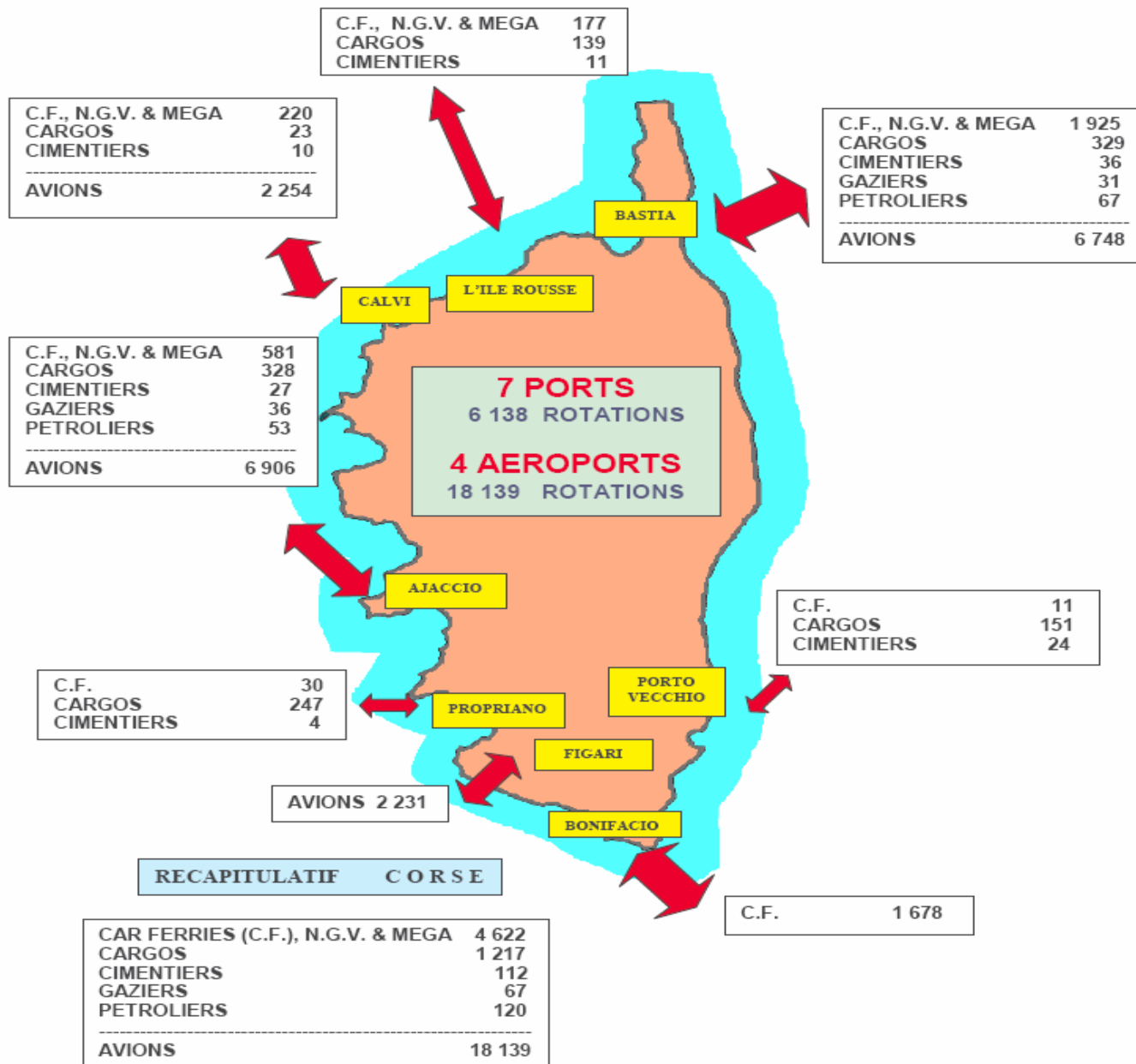
Source: HIAL.



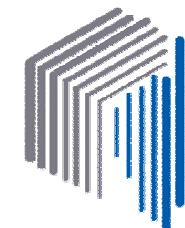
**In the Highlands & Islands of Scotland, 10 airports (in red) service about 400.000 people.**

# CORSE EN 2004 ( Tous modes )

## 24 277 Rotations Commerciales



In a mountainous island such as Corsica, a resident population of 260.000 is serviced by 7 harbours and 4 airports.



Collectivité  
Territoriale  
de Corse

# EU Transport policy aims towards liberalization

- Opening sea services to competition ( 1986)
  - Opening of air services to competition (1992)
  - Opening harbour and airport services to competition [*under discussion or consultation*]
- **How can one open air services to competition and protect uneconomical or fragile routes?**

## Public Service Obligations (PSOs) may be implemented.

*COUNCIL REGULATION (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes*

- Article 4
  1. (a) A Member State, following consultations with the other Member States concerned and after having informed the Commission and air carriers operating on the route, may impose a public service obligation in respect of **scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport in its territory, any such route being considered vital for the economic development of the region in which the airport is located**, to the extent necessary to ensure on that route the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing, which standards air carriers would not assume if they were solely considering their commercial interest. The Commission shall publish the existence of this public service obligation in the Official Journal of the European Communities.

## **In theory, the scope for PSOs is limited.**

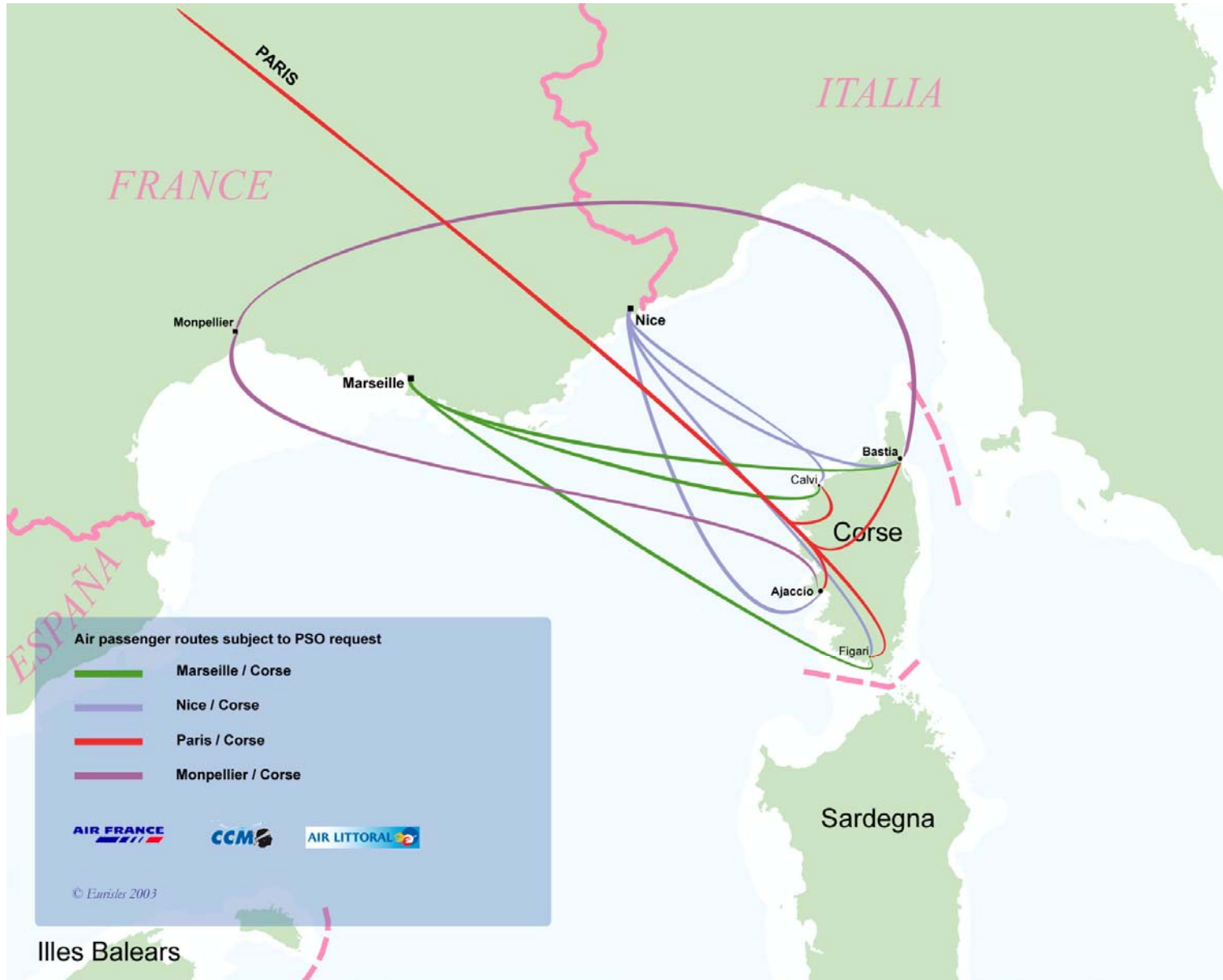
- (b) The adequacy of scheduled air services shall be assessed by the Member States having regard to:
- (i) the public interest;
  - (ii) **the possibility, in particular for island regions, of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;**
  - (iii) the air fares and conditions which can be quoted to users;
  - (iv) the combined effect of all air carriers operating or intending to operate on the route.

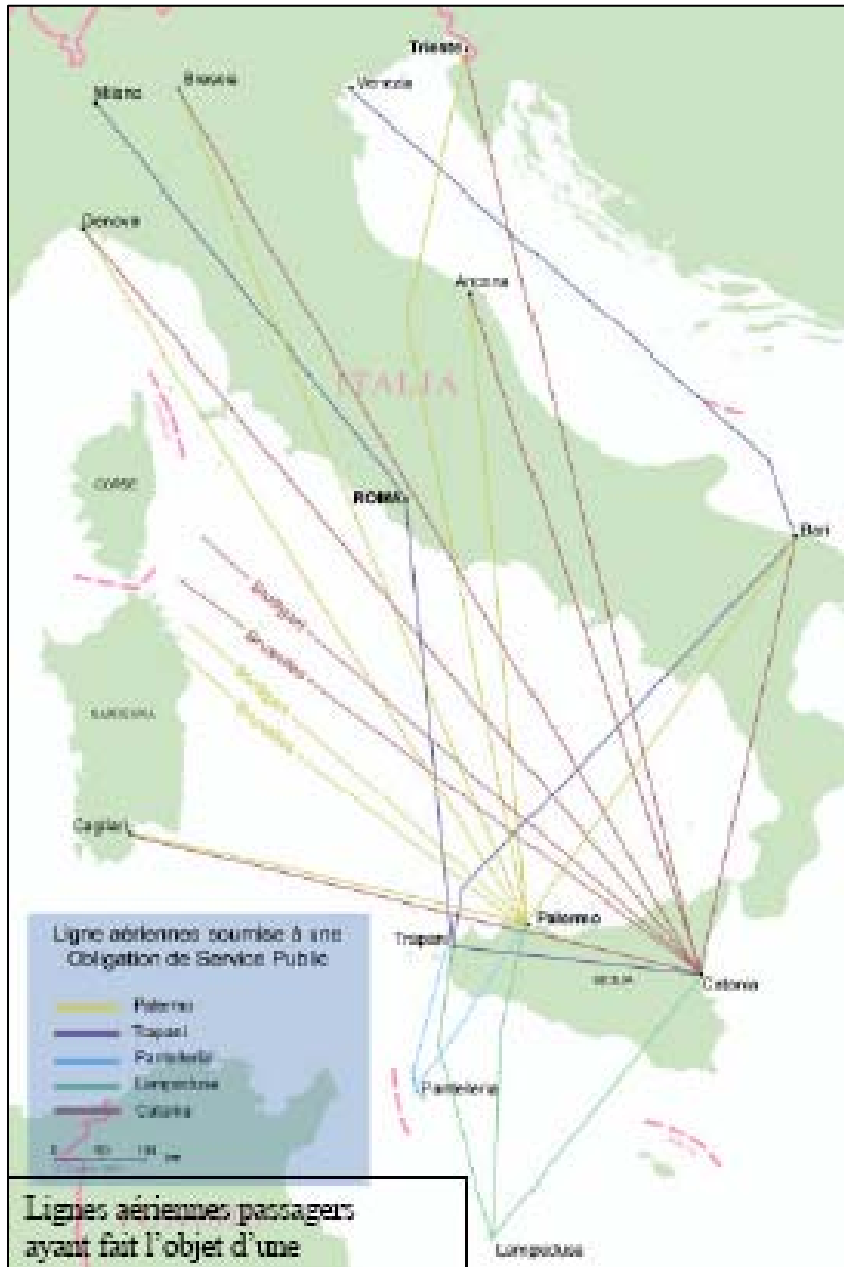
➤ **In practice, point ii) is applied with great flexibility. Many destinations also serviced by train, motorway, etc. have PSO's over their air services.**

## Main points:

- Operators must comply with a number of obligations: **continuity of services, capacity, regularity, pricing.**
- If no operator wants to provide a service, a Member State may restrict the route, or group of routes, to a single operator for **a period of 3 years.**
- « (f) The selection among the submissions shall be made as soon as possible taking into consideration **the adequacy of the service, including the prices and conditions** which can be quoted to users, and **the cost of the compensation** required from the Member State(s) concerned, if any. »
- **Is it the best offer or the lowest offer? In practice the lowest bidder is normally selected**

# AIR PSO





**P.S.Os may be implemented between the airports of two different EU Member States (e.g: Catania with Stuttgart or Brussels)**

# Is the PSO mechanism satisfactory ?

- **Cost and benefits of procedure**
- **Lowest bidder rule**
- **Contract duration**
- **Bundle of routes**

# An expensive procedure for uncertain benefits ?

- The PSO procedure is sometimes described as bureaucratic, costly and time consuming in itself.
- In the remotest areas, and on the least profitable routes, the tendering procedure may not attract many competitors, and probably not the key players who will rather invest on the more profitable segments of the market.
- The tendering procedure may result in a de facto monopoly situation, with only one operator being a serious competitor.

# LOWEST BIDDER RULE

- Lowest bidders having very tight margins may face bankruptcy and stop trading. Meanwhile, the historical operator will have disappeared...
- If the lowest bidder is automatically chosen, this may attract « predators » which will cut costs by all sorts of undesirable ways. For example, they may cut down staff or cease to use local infrastructures or services. This will have serious social or economic consequences in areas which are already deprived.
- These consequences, which have a cost to the public purse, may completely offset the financial benefit of a lower bid.
- ...but on the other hand, a historical operator may indulge in social « blackmail » if its position is threatened by competition!

# Contract duration

- If an operator has exclusivity over a route or a bundle of routes, this is limited to a maximum of 3 years.
- Certain air services require specific types of planes.
- It is not economically viable to invest in such planes for such a short period.

# Bundle of routes

- PSO are normally applied on services which carriers would not normally operate if they were « solely considering their commercial interest »
- So routes which are profitable and under competition should not normally be under PSO
- But, to have a better integrated service, it may make sense to have a same operator providing services over a « bundle » of routes, some profitable, some not.
- This is questioned by the Commission which fears distortions of competition (e.g: Sardinia's case over a bundle of 18 routes)

# Is the tendering procedure compulsory ?

**« Altmark » Ruling of the Court of Justice (July 2003) says that assisting an operator is not State Aids under certain conditions, and that tendering procedure is not compulsory.**

**i.e:**

« 5. Where these four criteria are met, public service compensation does not constitute State aid, and Articles 87 and 88 of the Treaty do not apply. »

- *.[.] **First**, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. [.]*
- *[.] **Second**, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner,*
- *[.] **Third**, 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** [...]*

- *[.] **Fourth**, 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 receipts and a reasonable profit for discharging the obligations..*

**The Commission considers that this  
does not apply to Sea and Air transports**

19. In view of the specific objectives of the common transport policy, the **Commission also considers it expedient for public service compensation in the air and maritime transport sectors to be excluded from the scope of this Decision.** It nonetheless recalls that rules applicable to these sectors are to be found in Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes<sup>7</sup> and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)<sup>8</sup> which lay down conditions for the provision of public services.
20. The Commission nonetheless considers it expedient to apply this Decision in the maritime transport sector, where the public service concerns islands with very small volumes of traffic, that is to say, less than approximately 100 000 passengers per year..

*COMMISSION DECISION on the application of Article 86 of the Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*

# Conclusion

- LAND TRANSPORT

- Altmark Ruling applies
- No need for public tendering to implement a PSO
- 4 conditions set in Altmark ruling must be respected

- AIR & SEA TRANSPORT

- « Lex specialis »
- Altmark Ruling does not apply
- **Compulsory public tendering if a PSO involves a subsidy to a given operator.**

# The Devil and the Deep Blue Sea

- Tendering procedure is to be welcomed, as it brings an element of competitiveness in the provision of public services. It compels historical operators to « trim up » their act, and provide better value for money.
- On the other hand, tendering procedure is not always a guarantee of effective competition.
- It may bring with itself some of the most undesirable effects of the free-market, and have adverse consequences on the most vulnerable areas of the EU.

## **A political solution ?**

- **A political solution could be to introduce an element of flexibility to the tendering procedure in sea and air transport legislation by adding a new provision.**
- **This provision would allow Member states to ensure that the outcome of a tendering procedure also contributes to the objectives of economic, social and territorial cohesion of the Union as defined in article III-220 of the constitutional treaty.**

# A technical solution?

- A solution used in certain regions (e.g: Corsica) blends the introduction of a real competition between operators, with the protection of local residents, and a freedom of choice for users. It involves the joint use of « light » PSO and social aids.
- « Light » PSOs involves obligations which do not need to carry a public subsidy. Any operator respecting these obligations may work the route.
- Social aids are aids directly applied to certain category of users (including residents), irrespective of the choice of operator.