AUTORITÉ POLYNÉSIENNE DE LA CONCURRENCE

TE MANA TATA'URA'A MĀTETE I PŌRĪNETIA

NOTICE NO. 2022-A-01 OF APRIL 21, 2022 CONCERNING COMPETITION ON THE OIL AND GAS SUPPLY IN FRENCH POLYNESIA

The Polynesian Competition Authority,

In view of decision no. 2021-DAA-01 of June 28, 2021 concerning an ex officio referral for an opinion on the state of competition in the hydrocarbon supply sector in French Polynesia, registered under no. 21/0009 A ;

Having regard to the Polynesian Competition Code, in particular Article LP 620-4;

Having regard to the other documents in the file ;

The rapporteurs, the acting general rapporteur and the Government Commissioner heard at the meeting of the Polynesian Competition Authority on March 29, 2022;

The representatives of the Ministry of Finance and the Economy in charge of energy, generalized social protection, coordination of government action and telecommunications, the energy department, the Directorate General of Economic Affairs, the company Pétropol, the company Pacific Petroleum & services, the company Total Energies heard on the basis of the provisions of article LP 630-5 of the French Competition Code;

Is of the opinion to respond to the request presented in the sense of the following observations:

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INTRODUCTION

1. By decision no. 2021-DAA-01 of June 28, 2021, the French Petroleum and Gas Regulatory Authority (Autorité des Marchés Financiers - AMF) took up the issue of French Polynesia's hydrocarbon supply activities on its own initiative.

2. This referral follows a previous opinion no. 2016-A-02 issued on November 7, 2016 on the state of competition in the hydrocarbons sector. It comes in the context of a project to renew a tripartite agreement between the Pays, companies importing petroleum products and companies transporting these products, with the aim of organizing a mutualization of transport. The initial agreement no. 6.0294 of July 7, 2006 on the transportation of hydrocarbons to French Polynesia (hereinafter "the 2006 Agreement") expired in 2016 and has not been renewed since.

3. In accordance with the referral, five years after the above-mentioned opinion, the Autorité considers it appropriate to take another look at the way the sector operates, to examine whether its recommendations have been followed in whole or in part, and how the competitive conditions for the supply of hydrocarbons have evolved, in order to find out whether it is possible to reduce the price of freight with the aim of "*stimulating business activity, reducing the cost of producing thermal electricity and increasing the purchasing power of Polynesian consumers, particularly motorists*" (Opinion no. 2016-A- 02, § 177).

4. As a preliminary point, and in order to delimit the scope of its intervention, the Autorité wishes to point out that, in the context of an opinion on a referral of its own motion, it can only rule on competition issues of a general nature. It is not its role, in this context, to assess or, a fortiori, to qualify individual behaviors on a market with regard to articles LP 200-1 or LP 200-2 of the French Competition Code, nor to define the relevant markets concerned, beyond recalls of recent decision-making practice and case law. Indeed, only a contentious referral, initiated by the country's institutions, a company, certain authorized third parties, or the Autorité itself[1] accompanied by the adversarial procedure provided for in articles LP 630-2 et seq. of the same code, would enable the legality of a practice to be assessed in the light of the provisions relating to cartels or abuses of a dominant position.

I. BACKGROUND

A. THE 2006 TRANSPORT AGREEMENT AND THE AUTHORITY'S 2016 OPINION

1. THE REASONS FOR POOLING

5. With regard to the supply of hydrocarbons to French Polynesia, a pooling of resources could *a priori* be envisaged for the purchase of petroleum products from refineries located outside French Polynesia, and for the transport of imported petroleum products from these refineries to French Polynesia.[2] and for the transport of imported petroleum products from these refineries to French Polynesia.

6. In its 2016 opinion, the Autorité considered that the *pooling of their petroleum product purchases from Asian refineries* by the three companies importing petroleum products in

[1] Article LP. 620-5 of the French Competition Code.

[2] There are no refineries in French Polynesia. At the hearings, players mentioned the existence of a long-standing refinery project, which never saw the light of day.

French Polynesia[3] did not appear to be economically justified. Such a mutualization (or *horizontal purchasing agreement*), which in this case would concern all Polynesian importers, is a departure from the principle of price competition (purchase prices in this case) and is likely to have anti-competitive effects.[4]. These effects must therefore be more than compensated for by pro-competitive effects. For example, such an agreement could be justified if the total quantities negotiated made it possible to systematically obtain the best price on the markets (efficiency gains), which the investigation has failed to demonstrate, so it is possible to take up this position in the context of this opinion.

7. On the other hand, the configuration of the supply of petroleum products to French Polynesia justifies, in several respects, the *mutualization of the transport of imported products* by these same three companies. In its 2016 opinion, the Autorité identified several characteristics of French Polynesia's hydrocarbon supply that justified its mutualization. They can be repeated here.

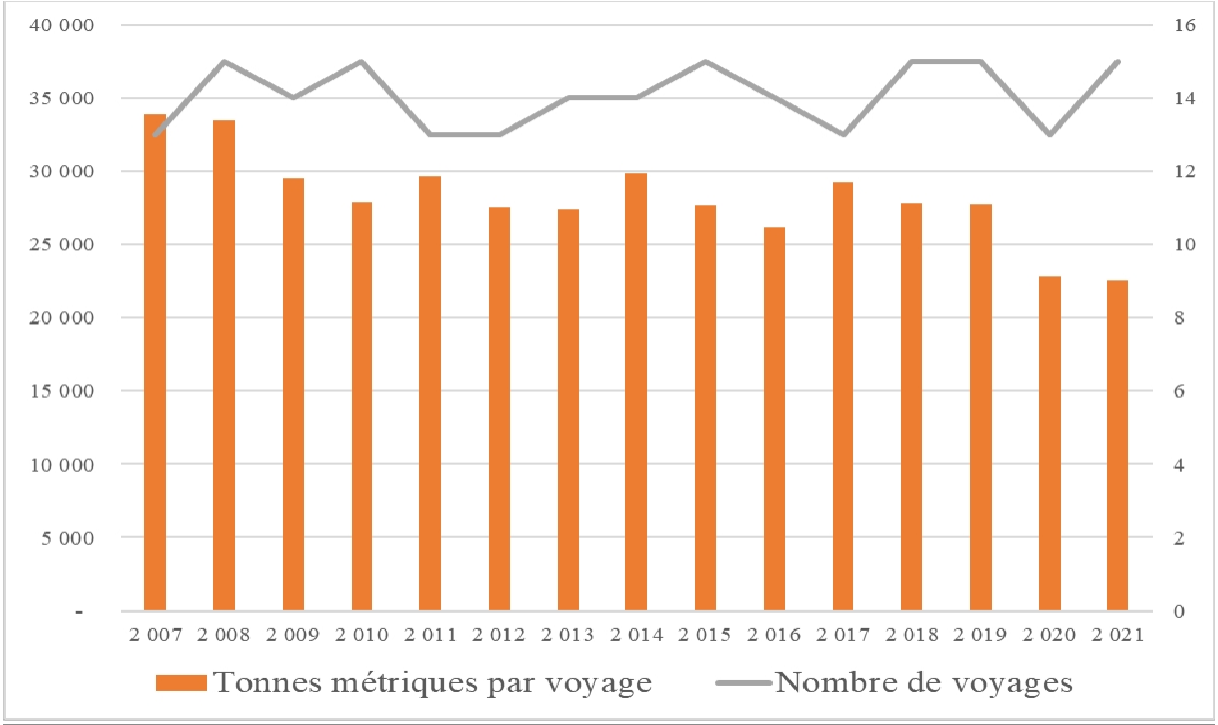
8. Firstly, French Polynesia is far from both the main oil production zones and the major internationally recognized shipping routes.

9. Secondly, the narrowness of downstream markets and their distribution among the three oil companies means that the annual requirements per oil company are low by international standards.

[3] Until 2004, there was a cooperation agreement between the three importing companies (at that time Shell - sold to PPS, Total Polynésie and Mobil - sold to Petropol), set up by the public authorities, which enabled petroleum products to be imported from Shell's refinery in Australia. When Australia ceased to be an exporter of petroleum products, the oil companies turned to Singapore's refineries, ending this cooperation agreement.

[4] See, for example, the Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal cooperation agreements (2011/C 11/01), *"§ 200: Joint purchasing agreements may have restrictive effects on competition in the downstream purchasing and/or sales market(s), such as higher prices, reduced output, product quality or diversity, or innovation, market sharing or anticompetitive foreclosure of other potential buyers. / 201. When downstream competitors purchase a substantial part of their products together, their incentive to compete on price in the sales market(s) may be considerably reduced. Where the parties have considerable market power (though not necessarily a dominant position) on the sales market(s), it is likely that the lower purchase prices obtained through the joint purchasing agreement will not be passed on to consumers"*.

Average quantities imported per trip



Source: APC, DGAE data

10. Thirdly, the characteristics of the port of Papeete, the only port in the country able to accommodate medium-sized oil tankers (MRTs), are such that it is inconceivable to import products other than in limited quantities. Indeed, while the width of the channel (110 meters) and the port's berthing facilities allow such vessels to enter and dock, the channel's depth of 11 meters restricts their draught. As a result, even if the total loading capacity of the MRTs is close to 50,000 tonnes, they can only enter with a maximum tonnage of 36,000 to 38,000[5] metric tons.

11. Fourthly, storage capacities for petroleum products are limited in French Polynesia, even if they appear to be sufficient for pooled supply. However, there are a number of barriers to the expansion of the storage capacity available to receive oil tankers, which would prevent the three operators or new players, even public ones, from considering developing new storage capacity to individualize the transport of petroleum products. These barriers would be of a land, environmental, administrative and economic nature. In addition, there are safety constraints, which have been taken into account in the current project to replace the main storage facilities in the heart of Papeete, which would make it impossible to envisage new storage facilities outside the Papeete urban area.

12. The combination of all these constraints and specificities means that, as things stand, it is not economically viable for an operator to source its own supplies, given the volumes imported for French Polynesia.

13. Indeed, transporting small volumes and regular frequencies on small tankers would multiply distance-related costs, which cannot be diluted on the narrow downstream markets. Conversely, it is not possible for an operator to limit the number of supplies by chartering larger tankers, due to both the specific characteristics of the port of Papeete and the constraints of storing products ashore.

14. Furthermore, if oil companies were to manage their supplies individually, only those with interests in the Pacific zone and outside French Polynesia would be able to charter an oil tanker of their own on a regular basis, pooling the costs associated with the transport of oil within their group.

[5] Answers differ from one oil company to another.

An independent operator or a new entrant would not, *a priori, be* able to benefit from such pooling, given the distances and low volumes involved, which limit or even destroy the supply of petroleum product transport in this part of the Pacific.

15. It can be concluded from all the above that the transport of petroleum products to French Polynesia meets the criteria of a natural monopoly. In other words, given the specific features and constraints outlined above, it is more economical and therefore more efficient to pool this service than to envisage its duplication by each of the importing companies, in order to reduce the unit cost of transport per tonne as much as possible.

16. To this end, an agreement was signed in 2006 between the country and the oil companies (carriers and importers). The prospect of its expiry at the end of 2016 has given rise to an initial opinion from the Authority, the content of which is examined below.

2. THE CONTENTS OF THE 2016 NOTICE

17. ***With regard to the scope of the agreement***, the Authority first looked at the choice of loading zones located in Asia. Since Australia stopped exporting refined petroleum products, importing companies present in French Polynesia have turned to refineries located in Singapore, then in Onsan, South Korea (closer to French Polynesia than Singapore). Although the industry's players certified that there was no better choice, the investigation of the notice did not make it possible to verify whether this was the case.

18. In view of the number and duration of rotations (an average of 14 rotations per year, each lasting just over fifty days), the size of the tankers compatible with the constraints imposed by the specific characteristics of the port of Papeete, the expected quantities of petroleum products and onshore storage capacity, the agreement stipulated that two tankers should be dedicated to supplying French Polynesia. However, it was not possible to verify whether this was the optimum number.

19. Consequently, as part of the renegotiation of the Convention, the Authority considers that its scope needs to be assessed, to ensure that it enables the supply of hydrocarbons to be optimized in the light of the country's constraints and needs. This evaluation must be carried out by an institution independent of the three importing companies and the two carriers, taking into account the constraints linked to the size of the ships and their capacities, the quantities of each of the petroleum products imported by each of the importing companies, their onshore storage capacities, but also a binding rule on the respect of strategic stocks, the respective average quantities (by product and by importing company) required, the distribution of their imports over the year and the number of voyages to be deduced from them.

20. Investigation of the 2016 notice revealed that the routes followed by oil tankers and the quantities delivered have changed significantly since the Convention was set up in 2006, which provided for a direct route between Singapore and Papeete. Rider no. 2, which introduces supply to South Korea for one of the two vessels, also provides for a direct route between Onsan and Papeete. In reality, however, voyages to French Polynesia are no longer made in a straight line, as each ship makes a "milk run" to other Pacific islands, making four to five stops, without Papeete systematically being the last port served.

21. There is no reason to call into question the decision by carriers to pool the transport of petroleum products to several islands on the same tanker, as this allows them to rationalize their costs and is therefore economically efficient.[6]. Given the capacity constraints linked to the specific features of the port of Papeete, imposing a direct route to Papeete would be tantamount to forcing an oil tanker to make a voyage with a load lower than its total transport capacity; this would be inefficient overall, particularly in terms of the freight price per tonne that importing companies would have to pay in such a case. On the other hand, the transport of

[6] "TOAP adjusts transport volumes to ensure that freight is profitable on the route taken.

oil tankers to destinations other than French Polynesia must not be to the detriment of quantities expected or ordered in Papeete.

22. In this respect, the 2016 opinion highlighted the specific situation of Petropol. While two of the three oil companies operating in French Polynesia are linked to the carriers and are part of groups with interests in the other Pacific islands (and are therefore responsible for the choice of shipping routes), this is not the case for the third importing company, Petropol. In the course of the investigation, the latter indicated that it had stopped using Petrocean's transport services due to constant changes in the routes followed and the partial loading of its products leaving refineries in favor of products to be delivered to other ports. As a result, since 2008, Petropol has been supplied exclusively by the vessel operated by TEMAPME (formerly TOAP), although the uncertainties surrounding the loading of its petroleum products have not completely disappeared.

23. Lastly, since the Agreement in force at the time gave carriers significant market power, the Authority felt that it should also include provisions encouraging carriers to maximize the quantities unloaded at Papeete, or even requiring delivery, *at a minimum*, of orders placed by each of the three players. Over the last few years of the agreement, the investigation had highlighted a drop in the quantities delivered for each voyage under the agreement, as well as a recourse to occasional chartering of vessels outside the scope of the agreement - particularly in 2015 and 2016.

24. The 2016 opinion dwelt at length on the question of ***how freight rates should be calculated***, and in particular on the various components provided for in the Convention: i) taking into account the flat rate and the worldscale index, ii) applying a correction coefficient linked to distance, iii) introducing a ratio of "deadweight of the oil tanker to the number of tons unloaded in Papeete", iv) defining a price range with a minimum and a maximum price.

25. In the Authority's view, the flat rate and the worldscale index should be used as a basis for determining freight rates, since "*the combination of these two indices reflects the state of the freight market for a given oil tanker, on a given route, depending on the ports served*". Consequently, it recommended the use of indices representative of the routes actually followed, i.e. taking into account the actual ports of departure and arrival. In addition, for the worldscale index, the Authority recommended using a period corresponding to that of the purchase of petroleum products (e.g. average of values for the month of loading).

26. With regard to the application of a distance-related weighting, the 2016 notice considered that obtaining the flat rate and worldscale index corresponding to the routes actually taken by carriers rendered the use of such a weighting unjustified.

27. The introduction of a ratio of "deadweight of the oil tanker to the number of tons unloaded in Papeete" meant introducing a multiplier of 1.17 (41,000/35,000) into the freight cost calculation formula. The Authority considered that maintaining a multiplier coefficient was not justified, since the hypothesis justifying it was not verified, as carriers optimized their voyages by also delivering to other Pacific islands.

28. With regard to the definition of a price range with a minimum and a maximum price, the Authority first noted that it only partially controlled the cost of freight to French Polynesia, insofar as it is supplemented by an adjustment clause, which is not itself controlled. Constant furthermore that the choice of the value of the bounds of the range is not explained, the Authority recommended the suppression of this tariff range.

29. A final price-related issue concerned the application by carriers of an adjustment clause linked to variations in the price of hydrocarbons used for propulsion and ship operation ("*bunker surcharges*"). In the Authority's view, such a clause should be abolished, since the flat rate and the worldscale index making up the freight rate calculation formula already incorporate fluctuations in bunker prices.

30. ***In terms of data collection and control***, the DGAE is involved in the final pricing of hydrocarbons subject to price control, as part of its economic missions.

Its departments are responsible for calculating the CIF[7] scale and, more generally, for calculating and evaluating each of the variables in the hydrocarbons price structure. They prepare the draft resolutions and decrees adopted by the Council of Ministers[8] presented by the Minister for the Economy to the Council of Ministers.

31. To carry out this mission, and in particular the regular determination of the CIF scale value, the DGAE must have access to a certain amount of information, most of which is held by the parties to the Agreement, carriers and oil companies. However, the investigation into the 2016 notice revealed a very high level of information asymmetry to the DGAE's disadvantage, contributing to the opaqueness of the conditions for importing petroleum products. It revealed that the only data available to the DGAE was provided exclusively by the parties to the Agreement, and was not backed up by any supporting documentation.[9].

32. However, article 6 of Order no. 898 CM of August 27, 1990, as amended, stipulates that *"oil companies shall forward to the departments in charge of price and energy regulation, for each shipment, copies of the invoices and bills of lading relating to the oil products imported by them, within 10 days of the vessel's departure from the loading port"*. However, the Authority considered that article 8 of the same order was likely to explain the lack of incentive for operators to provide these documents: *"If the copy of the invoices referred to in article 6 cannot be provided in good time, a CIF value is set for the period in question".*

33. Consequently, the 2016 opinion stressed that the introduction of market mechanism principles to set the regulated freight price, and hence the CIF scale value, implies not only revising the provisions of the Agreement in this direction, but also creating a regulatory environment conducive to greater transparency, designed to limit information asymmetries. With this in mind, the regulations and the Mutualized Transport Agreement should oblige the players involved, if necessary by providing for financial penalties, to transmit to the relevant departments the documents underlying and related to the transport service, at the very least the contracts and corresponding invoices.

34. In addition, the Authority indicated that the relevant departments should also have the means to access information other than via the players. In the case in point, the relevant departments should ideally have direct access to the data published by the Worldscale and S&P Global Platts associations, or at the very least to that relating to petroleum product freight on the routes concerned.

35. ***With regard to the duration of the agreement and any future rendez-vous clauses,*** the Autorité recalled that establishing a long-term contract between oil companies, transporters and Pays would help to secure the supply of petroleum products to French Polynesia, guarantee the regularity of this supply and establish visibility for the players in a sector where markets are reputed to be volatile. It therefore recommended maintaining the five-year duration of the agreement, and providing for a mid-term review clause in which all parties to the agreement would participate, with the possible assistance of the Polynesian Competition Authority as part of its advisory role, with the possibility of revising at that time any provisions that proved unsuitable. In addition, for the Authority in 2016, the Convention should provide for the possibility of a third party taking part in the Convention while it is in force.

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[7] The CIF "Cost, Insurance, Freight" price is the price of a good at the border of the importing country, or the price of a service provided to a resident, before payment of all import taxes and duties, and all commercial and transport margins in the country.

[8] The technical aspects of petroleum product supply, such as the quality of imported petroleum products and the safety of storage facilities, are the responsibility of other administrative departments.

[9] For example, quotations for petroleum products on the Singapore market (by day and by product for the month concerned by a supply) are sent by the oil companies in the form of free Excel documents, based on data obtained *a priori* from their own suppliers. Similarly, the flat rate and monthly average worldscale indices for the Singapore-Sydney route are sent by one of the two carriers, by e-mail, and are considered valid for both carriers. Information on fuel surcharges is sent by the carriers in the form of Excel tables containing information on the ship's route and the quantities unloaded at each port, but these documents "*are not always consistent or detailed*".

B. NEW DEVELOPMENTS IN THE HYDROCARBON SECTOR SINCE 2016

1. THE END OF FUEL OIL IMPORTS AND THE BATCH COMPETITION ORGANIZED BY EDT

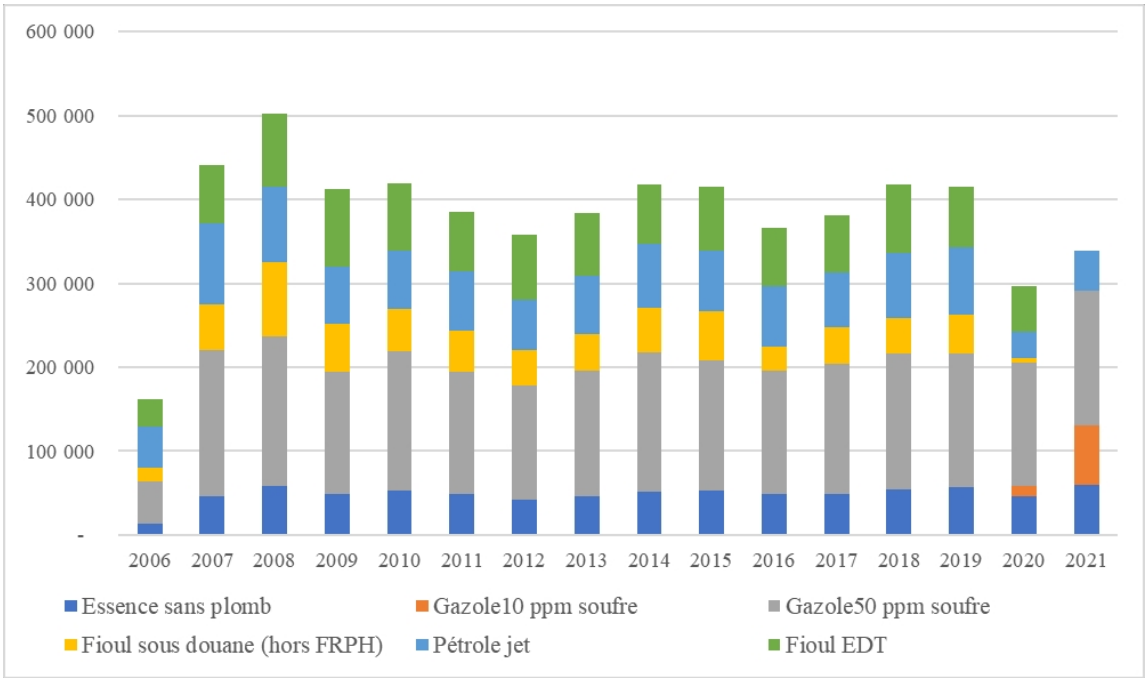
36. The country's hydrocarbon supply underwent a very significant change in 2021, with direct effects on the competitive situation. EDT's Punaruu power plant, which provides over 60% of Tahiti's electricity production, is now fuelled by diesel rather than heavy fuel oil. This change can be explained by variations in the relative prices of fuel oil and diesel: the fall in diesel prices during the Covid-19 crisis has made this energy as affordable as fuel oil, particularly in view of the new regulations requiring ships to use *low-sulphur* fuel oil (1% sulphur instead of 3%). This choice is reversible, at least in the medium term, depending on future trends in the relative prices of fuel oil and diesel, but has been maintained for 2022.

37. Diesel has several advantages for the country. Firstly, it is less polluting than fuel oil. Secondly, it enables the power plant's engines to run at lower revs, thus allowing more renewable energies to be included in the energy mix.

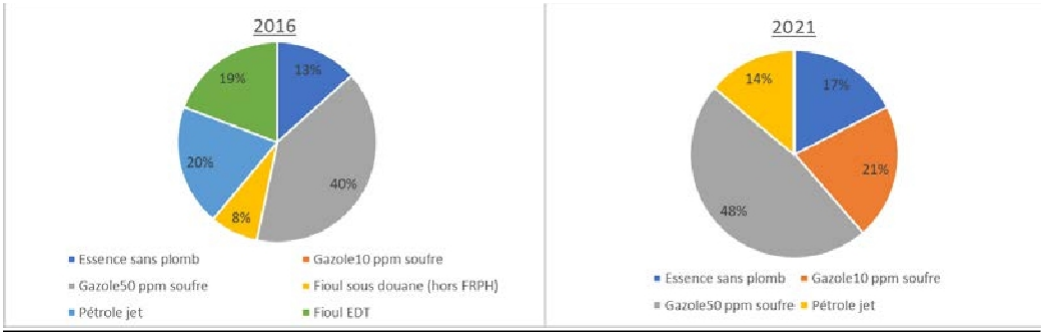
38. But this change also had a pro-competitive effect. Previously, EDT was supplied by PPS, which was the only company with *ad hoc* fuel oil storage capacity for the Punaruu power station. With the switch to diesel fuel, the competitive game is more open, as all three players can store this fuel, which is the same as the diesel used in service stations, reducing risk-taking by transporters and importers and broadening the offer.

39. To accompany this evolution, EDT - in consultation with the Pays - modified its fuel purchasing procedures two years ago, to limit this dependence. It now issues annual invitations to tender, with distinct lots and several response options depending on the logistical capabilities of the players (on just one lot or the whole). For 2021, a competitor of PPS, Total Polynésie, has won a major lot.

Annual import quantities by product (in metric tons)



Breakdown of annual imports by product (%)



Source: APC, DGAE data

40. The thermal power generation sector could also see further significant developments in the years to come.

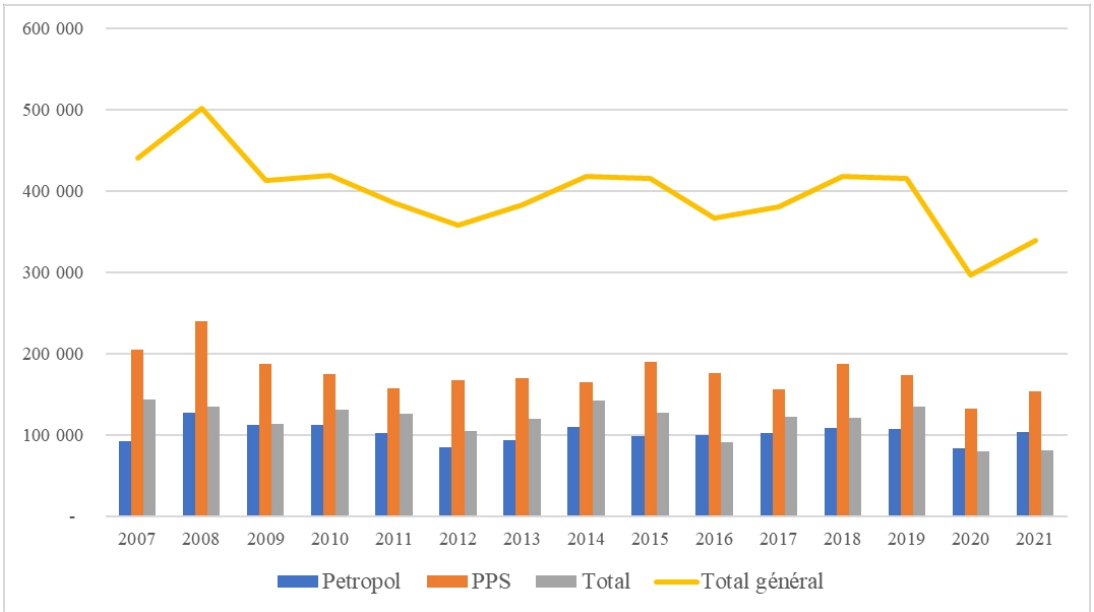
41. On the one hand, plans to switch Tahiti's thermal generation to gas or flexfioul are regularly mentioned, although the investigation did not provide any more precise information on this point. On the other hand, we could see an overall reduction in the weight of hydrocarbons as a result of the development of renewable energies and electric vehicles, as well as the possible use of alternative fuels such as biofuels.

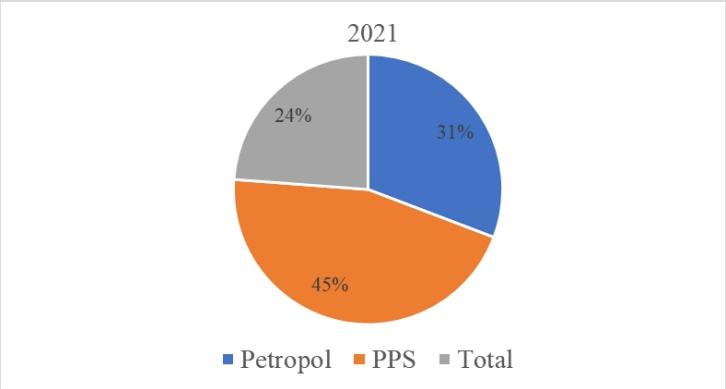
2. A NEW PLAYER IN HYDROCARBON TRANSPORT, REINFORCING THE VERTICAL INTEGRATION OF THE INDUSTRY

42. In terms of importers, the three companies - PPS, Petropol and Total Polynésie - are the same as in 2016, despite a change in the name of Total Polynésie (now Total Energies Marketing Polynésie) and in the governance of Petropol (with a change in shareholders within the family holding company). These three companies are also still active in the storage, distribution and marketing of finished petroleum products for the service station network, air and sea activities and general commercial activities.

43. Quantities imported have changed relatively little, despite a reduction in volumes in 2020, linked to Covid-19 and the slowdown in global activity, which will continue, albeit to a lesser extent, in 2021.

Annual import quantities (total and by company - in metric tonnes)





Source: APC, DGAE data

44. As far as carriers are concerned, on the other hand, the configuration has changed.

45. Total Polynesia and Petropol's carrier is still a subsidiary of the Total Group, TOAP, which has also changed its name to Total Energies Marketing Asia Pacific Middle East Pte Ltd (hereinafter "TEMAPME").

46. By contrast, the third importer, PPS (Pacific Petroleum & Services), has internalized its transport. Previously, PPS oil was delivered by Petrocean, a company whose capital was shared between Albert Moux and Bill Ravel. Petrocean is no longer active in French Polynesia, and Mr. Moux is no longer a shareholder. The Pacific Islands Energy Pte Ltd group (PIE, a 49% shareholder in PPS, with the balance held by Mr. Albert Moux, who is also PIE's main shareholder) has internalized transport through the development of a subsidiary, Orient Oil Express (hereinafter OOE), registered in Singapore and historically present in Tonga and Cook Islands, but which now handles freight to French Polynesia with *medium-range* tankers with a capacity of around 50,000 tons.

47. Even more so than in 2016, two of the three players are vertically integrated, with subsidiaries of the same group handling import, transport and distribution.

48. These companies use different vessels and routes:

- TEMAPME (formerly TOAP) loads its products in South Korea, for Total Polynesia and Petropol.

- OOE mainly loads its products in Singapore, for PPS.

49. The two companies optimize their cargoes by delivering to certain Pacific islands on the route, so as to leave at full capacity and not suffer the consequences of the shallowness of the port of Papeete, which does not allow even medium-sized tankers to access the port with a full load.

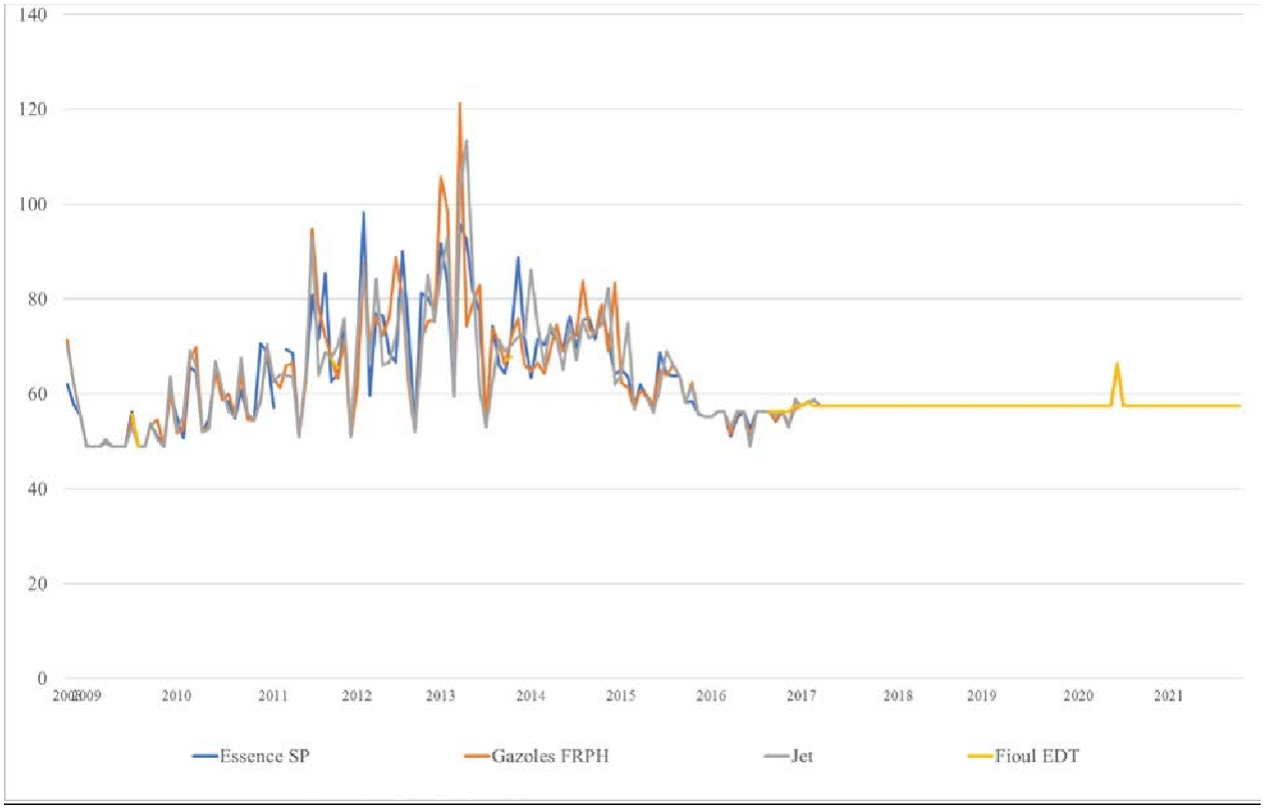
3. FREIGHT RATES TO REMAIN AT THE CONVENTION FLOOR BETWEEN 2017 AND 2021

50. The initial agreement expired at the end of 2016. On January 20, 2017, a decree stipulated that the freight rate would now be determined "*on presentation of an invoice*", in order to fill the legal void and enable the freight component to be taken into account in the regulated hydrocarbon sales tariff, at least until a new agreement is concluded.

51. Logically, therefore, fares - now free - should have varied, over time and between carriers, to keep pace with changes in freight market prices. The three carriers (TEMAPME, Petrocean until 2020 and then OOE from 2020 onwards) have all been charging strictly identical and unchanged rates since 2017, with the exception of one trip in May 2020.

52. This price, USD 57.37 per metric ton, is precisely equivalent to the value for 2017 of the floor in the old agreement (set at USD 48 per metric ton in 2008, with a revaluation of 2% per year).

Freight rates per trip since 2006 (in USD per metric ton)



Source: APC based on DGAE data

53. In fact, world freight prices, represented in particular by the *worldscale* index and the *flat rate*, are largely linked to the price of hydrocarbons, as the main expense for carriers is oil tanker fuel. However, fuel prices are subject to considerable variations, even within a year, as shown by the amplitude of rates observed between 2006 and 2016, when the price was determined on the basis of the

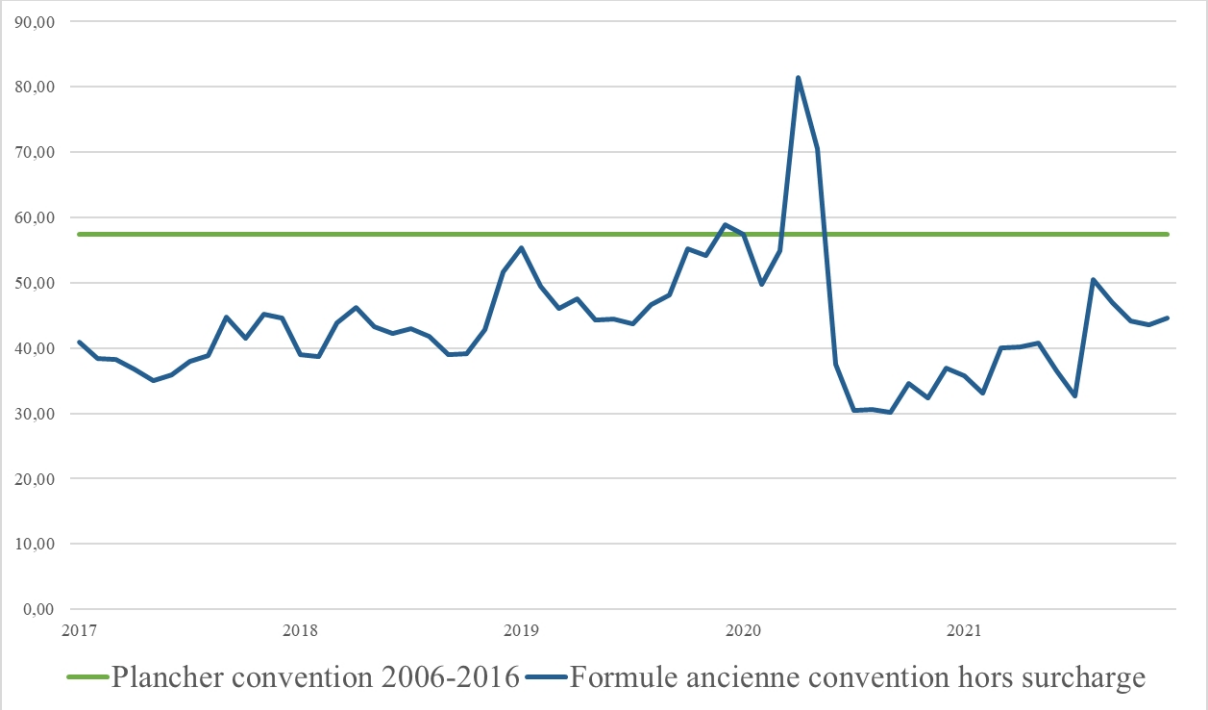
based on these indices (supplemented by fuel surcharges). Market rates should therefore follow these variations.

54. In addition, the carriers use different routes, since TEMAPME loads from South Korea, while Petrocean and OOE operate from Singapore.

55. The application of a uniform tariff for 5 years, corresponding to the application of the previous agreement.

56. *A priori*, this practice is likely to have had an impact on prices, and in particular to have led to their overvaluation, since with the exception of a short period in 2020, the price charged appeared higher than that resulting from the application of the formula in the former agreement (at least excluding the application of the fuel surcharge), even though this fare was itself already well above market prices (see 2016 notice for details).

Comparison between the tariff from 2017 to 2021 (floor) and the tariff resulting from the old formula



Source: APC based on SDE and DGAE data

57. Between 2017 and 2021, therefore, the three carriers jointly applied a minimum fare without any legal basis. According to the information gathered during the investigation, the application of this fare was never validated by the Pays.

58. Such a situation is not economically neutral.

59. When the floor is higher than the market cost, which has been the case most of the time :

- it has increased carriers' revenues above cost;

- it was neutral overall for importers, who passed on the invoiced prices in their sales prices;

- it raised the price of hydrocarbons billed to Polynesian consumers.

60. Conversely, in periods when the floor was below market cost, this practice :

- has reduced hauliers' revenues beyond their cost price, but only to a limited extent, since, with the exception of haulage for Petropol, these are integrated hauliers (even if the rules for calculating selling prices prevented importers from taking advantage of this to make additional profits);

- penalized the least integrated carriers, notably Petropol, because in reality the carriers compensated for the application of floor prices by invoicing fuel surcharges, which, not appearing on the invoices, could not be integrated by this player into its selling price;

- reduced the price of hydrocarbons billed to Polynesian consumers.

61. However, it should be noted that this second, more consumer-friendly scenario is much rarer. It may well have occurred in 2020, but it is worth noting that one of the journeys made in mid-2020 precisely took account of this increase in price, and a higher fare of 66 euros was applied, which had never been the case in the opposite direction when the market price was below the floor.

62. The calculation of the CAF scale (the basis for the authorized selling price) includes freight on invoice not at the level of each company, but on the basis of an average. A company invoicing freight at a price higher than this average would therefore be penalized, as it would be unable to pass on the extra cost in its selling price. Conversely, if an individual player had an interest in being invoiced a price below the calculated average, there would be a risk of driving down cost prices, to the detriment of importers as a whole.

C. NEW CONVENTION PROJECTS CURRENTLY UNDER DISCUSSION

63. The wholesale and retail prices of a number of finished petroleum products imported into French Polynesia are governed by a "price structure", which is based in particular on the setting of a "CIF value scale" for each of the petroleum products concerned. The CIF value is made up of the purchase price, or FOB (free on board), calculated on the basis of market prices for hydrocarbons[10]the cost of insurance (at the rate actually charged) and the cost of freight.

64. As a result, the freight rate has a direct impact on the regulatory rate for hydrocarbons, and therefore on Polynesian economic players and households. The present notice, like that of 2016, concerns the determination of this freight component. Indeed, since 2017 and the end of the 2006 agreement, this tariff has been integrated into the CAF barème formula on the basis of paid invoices, but discussions have taken place between the Country and the oil companies to draw up a new agreement.

65. Discussions between the government and the oil companies on drawing up a new agreement began rapidly following the Autorité's opinion in 2016. Several ways of calculating the formula were discussed, and were the subject of exchanges between the parties between 2017 and 2019. These discussions were interrupted at the time of the health crisis, but resumed in January 2021.

66. The last two draft agreements were sent to the Authority as part of its investigation. One dates back to July 2020, and was sent by Pays to the oil companies (importers and transporters) for comment. The other dates from May 2021 and corresponds to a version amended by the latter.

67. The principles and architecture of these projects are largely based on those of the agreement in force between 2006 and 2016, notably in that they provide for the mutualization of liquid hydrocarbon transport and determine the methods for calculating freight. On the other hand, they depart from them in detail, notably with regard to the formulas adopted and the cost base. It was on the basis of these two drafts, the most complete to date, that the appraisal was carried out.

[10] In accordance with the formula set out in article 3 of Order no. 898 CM of August 27, 1990, as amended, establishing the general framework for the sale prices of certain hydrocarbons imported into the territory of French Polynesia: FABi = (MOPSi + Premium) / 158.98729.

II. COMPETITIVE ANALYSIS

A. POOLING IS ALWAYS DESIRABLE BUT CAN TAKE DIFFERENT FORMS

68. Given its dependence on imported hydrocarbons[11]and the weight they represent in the economy (notably for electricity production, 70% of which is thermal)[12] and road transport[13]), the country has a clear interest in reducing the cost of imported petroleum products as much as possible. This is all the more necessary as the price of hydrocarbons also has an impact on the country's budget, through the hydrocarbon price regulation fund and subsidies granted to numerous sectors, such as fishing, pearl farming, shipping and the bakery industry. The effects are therefore considerable, either on the economy and consumers (if regulated prices follow variations, which is always the case at least in the medium term), or on the budget (if the compensation fund or other capping mechanisms absorb them, which can be the case particularly in the event of a rapid, cyclical rise).

69. However, transport is a component of the price of hydrocarbons. The administered fuel price structure includes: i) the price of petroleum products "ex-refinery". This price is based on the MOPS[14]index, published by Platts; ii) the cost of freight (as applied under the old convention until 2016; on invoices presented by importers since January 1er 2017)[15] iii) "local services", which set the cost of fuel passing through storage tanks owned by oil companies; iv) the margins of importer-distributors and service station managers, set by the Council of Ministers.

70. Admittedly, transport accounts for only part of this (around 4 to 5 F CFP per liter at the current rate, according to the Authority's estimates).[16]. However, as world prices for petroleum products (MOPS indices) and the exchange rate with the dollar are totally exogenous, this component can be reduced, in particular by limiting the number of annual trips to Papeete as much as possible through mutualization.

71. However, reducing the number of annual journeys comes up against a triple constraint:

- port capacity (depth of the Papeete channel, which limits draught and therefore ship loading),
- storage capacity[17]which are also the responsibility of private players,

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[11] According to *the Bilan énergétique de la Polynésie française* (2020), French Polynesia's energy dependency rate, measured by the ratio of imported primary resources to total primary energy available on the territory, is 93.4%. It was particularly stable over the 2010 decade (between 93.3% and 94.6%, for an average rate of 93.8%).

[12] *Bilan énergétique de la Polynésie française*, 2020 edition, p. 29.

[13] Transport (road, sea and air) alone accounted for 50% of total primary energy consumption in 2020 (Bilan énergétique de la Polynésie française, 2020 edition). What's more, "*as in other non-interconnected zones, the main sector of final energy consumption is transport. It accounts for more than two-thirds of final energy consumption (66%). Road transport is the main consumer, accounting for 52% of final energy consumption, and 79% of consumption in the transport sector*" (*Ibid*, p. 48).

[14] The MOPS (Mean Of Singapore Platts) index is the average of a set of Singapore-based petroleum product price assessments published by Platts.

[15] These first two elements give the "CAF barême" value.

[16] Given a current tariff of 57 dollars per metric ton (1000 kg), an average gasoline density of 750 kg / m3 (knowing that one m3 = 1000 liters, we obtain 1000 / 750 = 1,330 liters per TM) and the dollar exchange rate on January 14, 2022 of 1 USD = 104.84 F CFP. Price per liter of transport = 57 x 104.84 / 1330 = 4.48 F CFP. The same calculation for diesel or jet fuel, whose density is slightly different, results in similar orders of magnitude, always between 4 and 5 F CFP per liter.

[17] For information, French Polynesia's hydrocarbon storage capacity will amount to just over 124,000 m^3 in 2020 (Bilan énergétique de la Polynésie française, édiction 2020, p. 15).

- the need to build up and maintain strategic stocks.

72. Another challenge is to maintain a sufficient level of competition, both among importers (to obtain the best purchase rates) and among distributors (even if, in reality, the application of retail tariff regulations by distributors somewhat limits the effects of this competition on prices, since even if only price ceilings are set by these regulations, they are often considered as the prevailing prices by the players). In any case, for this competition to be fully effective, the players must not be in a different situation with regard to transport, depending on whether they are vertically integrated players (PPS and Total) or not (Petropol, which is dependent on the other two groups for transport).

73. While it is theoretically possible to act on these various constraints, in reality the levers are limited. Firstly, the level of strategic stocks is determined by the High Commission, and therefore cannot be an available adjustment variable for the country. Secondly, the question of the capacity of the port of Papeete has been regularly raised by the Authority, and is an issue for the country to consider. Further details will be provided at the end of this opinion. However, while the country's initiatives in this area seem to be heading in the right direction in terms of access to French Polynesia by sea, their effects will only be felt in the medium term. Finally, with regard to the issue of hydrocarbon storage, while it is possible to envisage the country taking action in favor of the construction of public storage infrastructures (as part of essential facilities) to enable greater competition between private importers, this will only be possible in the medium term. Moreover, this is not a course of action that appears to be currently envisaged, especially as it would come up against major land, environmental, economic and safety constraints (cf. *supra*, § 11).

74. *Ultimately*, the easiest lever to activate, and the one likely to have the greatest short-term impact, is to ensure that there is no discrimination between operators (hydrocarbon importers). This means ensuring that transport is effectively pooled between operators, so that the non-integrated operator (Petropol, which is not linked to any hydrocarbon transport company) is not reduced to making spot trips to obtain supplies - theoretically more costly trips.

75. Under these conditions, any mechanism that can ensure the achievement of this priority objective is relevant. While the signing of a new mutualization agreement is a possible way forward, it is not *a priori* the only possible solution for achieving the mutualization objective, insofar as the current situation is not so unfavorable to the Pays and, furthermore, other avenues are conceivable - at least theoretically (regulations, calls for tender...).

1. POOLING, A CHALLENGE SHARED WITH OTHER OVERSEAS DEPARTMENTS AND TERRITORIES OR ISLAND TERRITORIES

a) NEW CALEDONIA

76. In 2018, the New Caledonian Competition Authority (hereafter "ACNC") issued an opinion[18] on a proposed reform of hydrocarbon pricing initiated by the Pays.

77. We can see that the problems are the same, those of a small island territory. The market structure is also relatively similar, with three importers, two of whom are also present in French Polynesia, all linked to transporters (which is the case for only two of the three Polynesian importers).

78. The price of hydrocarbons is also regulated. In particular, the project submitted consisted in determining the FOB price of hydrocarbons on the basis of an international index based on market prices (MOPS), rather than on the price actually invoiced to players. This choice provides an incentive for players to optimize their purchase price, since they have the difference at their disposal if they

[18] Opinion no. 2018-A-06 of August 29, 2018 on the draft deliberation to amend deliberation no. 173 of March 29, 2006 on the structure of gasoline and diesel prices.

under the previous system, they had no incentive to buy at the best price, since their regulated selling price passed on the full cost of purchase, leading New Caledonian consumers to pay any additional costs compared with market prices. This virtuous system has already been adopted in French Polynesia in April 2016.

79. Freight, on the other hand, is not specifically regulated, even though, as in French Polynesia, its cost is included in the price structure of hydrocarbons:

- there is no agreement with the Pays providing for the pooling of transport, even though this is in fact done spontaneously between two of the three players;

- freight costs are determined on the basis of invoices submitted by importers.

80. On this last point, the ACNC mentions a fear that can be heard in French Polynesia, that given the vertical integration of the players, which enables them to play with margins, the prices invoiced are not really market prices. It therefore proposed that only market references be used to define the CAF, including its freight component, independently of the invoices presented.[19]. In practical terms, this would no doubt mean introducing a calculation formula based on internationally recognized indices, like the one in force in French Polynesia between 2006 and 2016, which is recommended in the remainder of this opinion.

b) OVERSEAS DEPARTMENTS AND TERRITORIES

81. In the French overseas departments, hydrocarbon prices are also regulated by the French Competition Authority (Autorité de la concurrence métropolitaine) on the basis of paragraph 2 of article L. 410-2 of the French Commercial Code, which stipulates that: *"in sectors or areas where price competition is limited either by monopoly situations or lasting supply difficulties, or by legislative or regulatory provisions, a decree of the Conseil d'Etat may regulate prices after consultation with the Competition Authority".*

82. French Competition Authority opinion no. 09-A-21[20] raised the question of pooling logistics, which was seen as a preferred option, but only on condition that tariffs were cost-oriented and that no importer was excluded from transport. On the other hand, it did not consider the pooling of purchases to be relevant. In the case of La Réunion, for example, the opinion stated that: *"In all cases, even in the case of La Réunion which, with 800,000 inhabitants, is the largest market in the French overseas departments, fuel freight is an activity that has the characteristics of a natural monopoly. Indeed, in view of demographic trends and national energy-saving policies, fuel consumption, which is currently stagnating, can be expected to remain at around one million tonnes for the West Indies and French Guiana, and 600,000 tonnes for La Réunion, in the medium term. Such supplies cannot be made profitably with vessels that are too small, for example tankers of less than 40,000 tonnes (...) If all distributors, of which there are currently between 4 and 6 depending on the DOM, were to manage their supplies separately, only the largest would be able to charter vessels of this size on a regular basis, but the majority would only be able to charter two or three per year. An independent operator or a new entrant would find it difficult to fill even one in a year. Once delivered by the boat it would have chartered alone, a distributor of insufficient size would have to bear very high costs to store its half-yearly fuel reserve ashore. In addition, it would be exposed to a risk on the value of this stock in the event of a drop in prices. In a market as volatile as the oil market, regular purchases give us greater flexibility to follow market prices. (...) It is therefore reasonable to assume that pooling logistics for the supply of refined fuels to the French overseas departments is the least costly system, which means taking this service out of the competitive arena by ensuring that common freight rates are cost-oriented. (...) On the other hand, it has not been demonstrated that the mutualization of*

[19] His proposal is as follows: *"To stipulate in the decree implementing this draft resolution that the indices or reference values used to determine each sub-item of the "CIF" price are based on objective data, external to the oil companies and representative of the reality of the markets concerned.*

[20] Autorité de la concurrence (metropolitan France), notice no. 09-A-21 of June 24, 2009 on the state of competition on the fuel markets in the French overseas departments.

The same is true for Reunion Island and the West Indies. (....) Given the lack of information available on the conditions of purchase of refined products, it is not possible to conclude on this point. However, the Authority notes that on the jet fuel market, where prices are free, the various distributors buy their products separately, limiting pooling to freight and joint storage. (...) The Authority proposes to maintain and strengthen control over the current regulatory system, which is based on the pooling of transport costs by chartering vessels common to all importers and, where appropriate, by chartering a dedicated vessel, as is the case on Reunion Island or for coastal shipping in the West Indies and French Guiana. This appears to be the best system in terms of freight costs, security and regularity of supply, and price control by the authorities. (...) As this is a monopoly activity, freight rates must, as is the case today, be cost-oriented, incorporating actual insurance and sea-casting rates in line with industry averages. The administration will nevertheless have to ensure that independent importers or airlines can load the quantities they buy directly onto the joint vessel, without barriers to entry and at non-discriminatory prices."

83. For its part, a joint report by the Inspectorate General of Finance, the General Council for Industry, Energy and Technology and the Inspectorate General of Administration[21] made the following observation in 2009: *"On Reunion Island, fuel transport costs are based on market prices and, from this point of view, appear to be justified. Refined fuels are supplied by a dedicated vessel (the Tamarin, which took over from the Cilaos). It is chartered from Socatra by the four importers/distributors, under a long-term contract. In the specific case of Réunion, this formula has proved more advantageous than chartering.*
"This system enables importers to hedge against sudden price rises. This system enables them to hedge against sudden upward trends. Conversely, if world freight rates fall, as is currently the case, supply cannot benefit. (...) In the West Indies (...) / - the cost of transporting fuel between Martinique and Guadeloupe is mutualized between the two departments; this mutualization must be maintained."

84. So we're back to the concern, on the one hand, to pool transport and, on the other, to set its cost on the basis of objective references that are external to the players involved.

85. An examination of current legislation suggests that the methods used to calculate freight rates vary from one local authority to another, particularly as the French West Indies and French Guiana obtain their supplies from the Martinique refinery (SARA), while Réunion and French Polynesia purchase products that have already been refined.

86. For Guadeloupe, French Guiana and Martinique, an order dated February 5, 2014[22] does not mention fuel freight, but a specific method is used to set the so-called "refinery exit" rates, so that they are the same in the different departments. The freight component is defined as follows: *"The representative quotation for freight on these finished or semi-finished products is the World Scale rate appearing in Platt's Assessment - CARIBBEAN to GULF COAST (25KT) - CLEAN N° 2. / Only cost elements subject to a market quotation are taken into account at this stage, to the exclusion of any other unquoted additional charge."*

87. For La Réunion, an order dated February 5, 2014[23] provides for the following provisions: *"Determination of the import price of petroleum products. (...) / 2° Other costs related to supplies, in particular fees, unlisted premiums, trading costs, are taken into account by the prefect upon presentation of supporting documents. / 3° With regard to freight costs, the price used is the average value, expressed in euros, of costs recorded during the third month preceding the month concerned (M - 3). / 4° Insurance costs are set at 0.25% of the cost of "Free on board" (FOB) plus freight. 5° The cost of insurance is set at 0.25% of the cost of "Free on board" (FOB) plus freight.*

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[21] Report on fuel pricing in French overseas departments, March 2009.

[22] Relating to the implementation of Decree no. 2013-1314 of December 27, 2013 regulating the prices of petroleum products and the operation of wholesale markets for the distribution of these products in the departments of Guadeloupe, Guyana and Martinique.

[23] Relating to the implementation of decree no. 2013-1315 of December 27, 2013 regulating the prices of petroleum products and the operation of wholesale markets for the distribution of these products in the department of La Réunion.

The cost of casting, duly recorded by the competent authority, is added. It is calculated on the basis of the ratio of actual losses in the previous calendar year.

88. We therefore have both "invoice" and index (market) prices.

c) OTHER PACIFIC ISLAND TERRITORIES

89. It follows from this instruction that each Pacific territory determines its own rules for setting hydrocarbon tariffs and, within them, the freight component.

90. In its 2015 Fuel Pricing Manual, the SPC (Secretariat of the Pacific Community) had distinguished three cases:

- The case of deregulated markets, such as Australia, Vanuatu or Palau, which can ensure competitive prices, but only if they have the means to penalize anti-competitive behavior, a multiplicity of importers and no barriers to entry (as is the case in Australia). On the *other hand,* in the smallest markets (Vanuatu or Palau), the absence of new potential suppliers led to higher fuel prices in the absence of regulation.
- The case of tendering regimes, such as Samoa or American Samoa, likely to offer the most competitive tariffs in the zone, but with public control of storage as a prerequisite. This case will be discussed further *below*.
- Price regulation in Fiji, Tonga and the Cook Islands (but also in French Polynesia), where the challenge is to set a calculation formula that is both favorable to consumers and attractive to oil companies.

2. THERE ARE A NUMBER OF WAYS TO ENCOURAGE THE POOLING OF TRANSPORT SERVICES

a) INTERNAL POOLING OR POOLING BETWEEN IMPORTERS

91. The players present in French Polynesia are in different situations when it comes to the need for mutualization. While, objectively speaking, they all report a need to mutualize transport (or, *at the very least*, to optimize it), this mutualization does not necessarily have the same meaning depending on the operator. It may be a question of internal "mutualization" within an oil group, in the form of optimized routes, journeys and unloadings, or of genuine mutualization of transport between importers, with the latter using the services of a single carrier, in order to limit the constraints linked to the low volumes to be delivered by each operator and bring economies of scale into full play.

92. At the hearing held by the investigating department, PPS did not seem to believe in the possibility of real pooling between importers, which would be more of a theoretical option than a practical possibility, particularly as importers do not load their hydrocarbons in the same ports, even when loading takes place in the same city - which is rare (see *below* and *above*, Total and Petropol load mainly in South Korea, PPS mainly in Singapore). In practice, PPS used to use Petrocean vessels to transport its hydrocarbons. It now uses the services of Orient Oil Express, with which it has capital ties. Since 2008, neither of these two transport companies has transported hydrocarbons to French Polynesia on behalf of Petropol, and Petrocean has only done so very occasionally on behalf of Total Polynesia. On the *other hand,* PPS defends the idea of a kind of internal mutualization within the PIE group, of which it is a subsidiary and which has capital interests throughout the Pacific Ocean. In this way, by optimizing the routes followed, unloading volumes of hydrocarbons in certain Pacific islands (Fiji, Samoa...) before arriving in Papeete, PPS is able to make vessels depart at full capacity and thus limit the effects on its costs of the low volumes delivered to French Polynesia, due in particular to the shallow depth of the channel. This strategy

optimization of the routes followed is presented as the condition for the sustainability of the link to French Polynesia, at a reasonable fare.

93. On the other hand, Petropol, which is not linked to any transport company, needs mutualization between importers. In the absence of such pooling, and in the absence of a carrier, the company would have to resort to spot transport, which is more costly. In fact, after being loaded onto Petrocean vessels on an ad hoc basis prior to 2008, the hydrocarbons imported by Petropol into French Polynesia are now transported by Total. Pooling between importers therefore concerns only two of the three operators based in French Polynesia.

94. Lastly, the Total group is in a mixed situation: it transports Petropol's fuels and thus participates in the mutualization between importers. However, as this mutualization is insufficient to minimize its costs, Total also optimizes the routes taken by its ships, making stops and therefore unloading in certain Pacific ports before arriving in Papeete. According to documents provided by Total during the investigation of this notice, the ports concerned are mainly Fiji, but also more occasionally New Caledonia.

b) DIFFERENT WAYS OF ENCOURAGING POOLING BETWEEN PLAYERS

i. Laissez-faire would be a risky path for the country

95. Alternatively, we could opt for a laissez-faire approach, betting on the private interest of the players involved in some form of mutualization. The advantage of this approach is that it is extremely simple to implement, and does not entail any collective costs associated with its development or monitoring.

96. However, the different positions in which the players are placed with regard to the imperative of mutualization make achieving this objective highly uncertain by opting for a laissez-faire approach. What's more, even in the optimistic hypothesis of a convergence of players' private interests in favor of pooling the transport of hydrocarbons to French Polynesia, the absence of regulation could prove problematic. Indeed, as the cost of freight is always included in the CAF scale calculation formula, any uncertainty as to the actual cost of freight borne by players left outside the scope of any regulation could result in unjustified costs being borne by the country. What's more, in such a case, the absence of any incentive for private players to work towards greater efficiency (the cost of freight being included in the CAF scale anyway) would run the risk of perpetuating this sub-optimal configuration. What's more, opting for a laissez-faire approach would offer no guarantee that any gains would be passed on to consumers.

97. The benefits of pooling are clear for both the country and the Polynesian consumer (fewer trips per year, lower freight costs), as well as for private operators (cost minimization).

98. In practice, pooling transport means creating a monopoly, and thus ruling out any competitive logic. The main risks associated with a monopoly are well known. Firstly, a higher price is set than would result from competitive emulation, and secondly, there is no incentive to seek greater productivity (and hence lower costs).

99. In this particular case, the market power of the monopoly is also reinforced by the specific context of French Polynesia's petroleum product supply, which implies the country's strong dependence on these imports and the need for regular and secure supplies, in order to reduce the risks of disruption. The very low price elasticity of French Polynesia's demand for petroleum products makes it a captive market. As imported petroleum products account for more than 90% of the primary energy consumed in French Polynesia, the country's intervention to regulate their pooled transport is justified.

100. This intervention could take the form of a call for tenders, the contours of which remain to be determined, or more traditional regulation by regulation or agreement.

ii. ***The hypothesis of a call for tenders for the transport of hydrocarbons organized by the Country***

101. As the Authority already mentioned in its 2016 opinion, organizing a **tender** involving the mutualized transport of petroleum product purchases by the three oil companies has the advantage for the country of introducing an additional degree of competition. By enabling a third-party carrier to bid and position itself for the transport of petroleum products to French Polynesia, and thus exert competitive pressure on the two established carriers, leading them to optimize their costs and freight rates, the invitation to tender would thus be designed to select the most efficient service provider to meet the transport requirement.

102. The success of an invitation to tender is measured by the number of companies bidding, the quality of the bids submitted, the length of the negotiation period, the similarity of the conditions and prices set out in the final contract and the specifications contained in the invitation to tender. All these factors mean that French Polynesia must have full control over the services it wishes to see implemented.

103. In the case in point, in addition to the two current carriers, it appears from the investigation of the present notice, and in particular from the hearings of the various players, that the number of companies potentially bidding seems to be small, and therefore competition for the market difficult to establish and stimulate. In fact, it would appear that the service of transporting hydrocarbons to French Polynesia, on a straight line, is of limited interest to transport companies. *At the very least*, to make the call for tenders more attractive, it should be possible to combine this service with the transport of hydrocarbons to other Pacific ports. However, such an approach is difficult to implement in practice through an invitation to tender.

104. In addition, the organization of hydrocarbon transport to French Polynesia is characterized by a high level of information asymmetry between the country and its departments, on the one hand, and the players, carriers and oil companies, on the other. This asymmetry has recently been partially reduced, *with* SDE subscribing to the indices published by Worldscale and Platts at the end of 2019. It applies to all petroleum product transport parameters, as the Authority was already able to observe in 2016. This strong asymmetry makes it difficult for Pays to organize a tendering process, especially as there are no *a priori* examples of tenders launched solely on the basis of petroleum product transport services.

105. Indeed, the most common examples in similar contexts (narrow downstream markets and very high transport costs due to distance from production zones and limited, sub-optimal tanker loads) more generally concern the competitive tendering of the entire supply chain, i.e. the purchase of petroleum products from refineries and their transport, and therefore of CAF services.

106. The Samoan government, for example, has been using a tendering system since the mid-1980s. Before the introduction of this model, the situation in Samoa was similar to the current situation in French Polynesia, in that three local operators (Shell, Mobil and BP) imported and distributed petroleum products in the territory. Each had its own storage and distribution infrastructures, which they operated independently of each other. Mobil was the dominant operator, owning the main storage infrastructures.

107. The government of Samoa justified its choice of a new model by the fact that, by reducing the number of suppliers and the number of local operators, the unit costs of imports and operations upstream of distribution (storage and transport) would fall, due in particular to the mutualization of the high fixed costs of these activities. The format of the Samoan government's tenders has evolved over the years, and now covers the entire supply chain, with contracts for five years covering the total supply of petroleum products to Samoa, plus monthly unloading by MRT at the port of Apia.

108. As the Authority already pointed out in 2016, the application of the Samoan model, and therefore the implementation of a tender covering the entire supply of hydrocarbons to the territory, would only be conceivable in French Polynesia if a certain number of prerequisites were met.

109. First of all, we need to assess the optimum configuration of the expected service in terms of French Polynesia's needs, its distance from the supply zone, the specific features of the port of Papeete and the possibilities for onshore storage. In particular, this estimate would enable us to establish whether a call for tenders is appropriate for the supply context in French Polynesia. In fact, it should be noted that the three oil companies already have access to competitive prices on the petroleum product purchasing markets *via* their parent companies, without a call for tenders. What's more, it's not certain that a call for tenders would enable French Polynesia to pool its supplies with other Pacific islands, whereas the two existing carriers could benefit from such pooling.

110. Secondly, the situation regarding onshore storage and pipeline transport of imported products would also have to be modified. Indeed, the successful bidder would need to have full access to the storage and transport infrastructures present in the territory, which presupposes that local operators, although excluded from the import business, make all their infrastructures available to the successful bidder (at rates that would need to be regulated).[24].

111. This was initially the case in Samoa, which led to a strong disincentive for players to invest in and maintain their storage and transport infrastructures. The Samoan government was therefore forced to invest in these infrastructures (pipelines, terminals, depots).

112. In French Polynesia, the country *has* not opted to invest in infrastructure for the storage and transport of petroleum products in the territory, on the occasion of the project to build new storage facilities on the Fare Ute dike. Consequently, although it could be envisaged, the organization of a call for tenders by the Pays, which would require a rethink of the entire hydrocarbon supply value chain, would appear to be a far more substantial undertaking than the revision of the current Transport Agreement.

iii. The regulatory path

113. **The regulatory** option could be to set a freight tariff by regulation. In such a configuration, once the tariff is known, players would be free to organize themselves to transport hydrocarbons at the best cost. A regulated tariff is in fact a solution often used to regulate a natural monopoly, as is the case here.

114. Administrative pricing, which is necessarily imperfect from an economic point of view, must be as close as possible to market mechanisms, so that the regulated price is as close as possible to a market price. At the very least, the administrative setting of a price must prevent it from leading to situations that would not be observed in a normally functioning market, such as a price level below costs, or a price level allowing an excessive margin.

115. The most common approach to tariff regulation is to set the tariff for the regulated good or service with reference to its production costs, since "cost orientation" of tariffs is traditionally justified as promoting allocative efficiency (i.e., obtaining a price level as close as possible to the competitive price level). The disadvantage of this approach, however, is that it does not guarantee productive efficiency, as it does not provide an incentive for productivity, since the company does not benefit from any cost savings it may achieve. An alternative approach to gearing regulated tariffs to the costs that promote productive efficiency is that of the
The "price ceiling" approach, which consists in setting a price that allows the company to benefit from a rent if it succeeds in reducing its costs; however, this approach has the disadvantage of pushing allocative efficiency into the background.

[24] It should be noted, however, that in certain cases, the ownership and management of such infrastructures may constitute a dominant position, or even fall under the regime of essential infrastructures, which may lead to sanctions for refusal of access or access under discriminatory conditions to these infrastructures to third parties. See in particular Conseil de la concurrence, Decision no. 93-D-42 of October 19, 1993 relating to practices implemented by Elf Antar France and Total Réunion Comores on the jet fuel distribution market in the Réunion department.

116. However, while the system is simple on *the face of it*, the issue of setting the level of this regulated tariff is far more complex. Indeed, given the degree of information asymmetry between the Pays and private operators, the question of setting the tariff arises. For the country, the risk is of setting the tariff too high, which would lead to unjustified overprofits on the part of the carriers, and would weigh on the country's budget as well as on the end consumer. Symmetrically, in the absence of sufficiently precise data, the Pays could also be led to set a freight rate that is too low, which could discourage private operators from supplying French Polynesia with hydrocarbons.

117. Given these conditions, and in particular the asymmetry of information between private operators and public authorities, the implementation of a shared transport agreement seems to be the most appropriate way of achieving the desired result, i.e. minimizing hydrocarbon transport costs while guaranteeing security of supply.

118. Such an agreement, as applied until 2016, provides a framework for the economic behavior of the private operators who sign it, in order to avoid setting excessively high freight prices on the one hand, and to encourage them to minimize the costs underlying the freight service on the other. It also contains clauses providing legal certainty for the mutualization of transport, so as not to introduce unjustified distortions of competition between integrated and non-integrated players - and thus to guarantee the supply of hydrocarbons to the territory, more than any other system.[25].

119. Determining the cost of freight remains the central issue. In the light of the principles outlined *above*, it is necessary, when setting up a mutual agreement for the transport of petroleum products, to provide for the regulation of the freight prices that carriers will be required to charge.

120. The Convention in place in French Polynesia provided for a method of calculating freight rates, which was analyzed by the Authority in its 2016 opinion. Insofar as the various draft conventions of which the Authority has been made aware also provide for a (new) method of calculating freight rates, a substantial part of the developments that follow will be devoted to assessing the proposed methods, with a view to guaranteeing or restoring economic efficiency in the market for transporting petroleum products to French Polynesia.

B. A NEW CONVENTION WITH ROOM FOR IMPROVEMENT

121. The choice of the convention seems a wise one, insofar as it represents a good balance between freedom and constraint, and between protecting the interests of Polynesian professionals and consumers.

122. The shipping convention has several objectives:

- fix the cost of freight used in the price structure for hydrocarbons, to guard against excessive rates, which could be encouraged by the vertical integration of certain players and the CAF scale calculation methods (full inclusion of freight costs in the authorized selling price);

- promote pooling between carriers, to reduce as far as possible the number of annual tanker rotations to French Polynesia, and thus cut the fixed costs associated with transport.

123. Such a system provides a certain degree of visibility, and also ensures that non-integrated importing companies (which do not benefit from transport by one of their subsidiaries or a company belonging to the same group) have their products transported without discrimination.

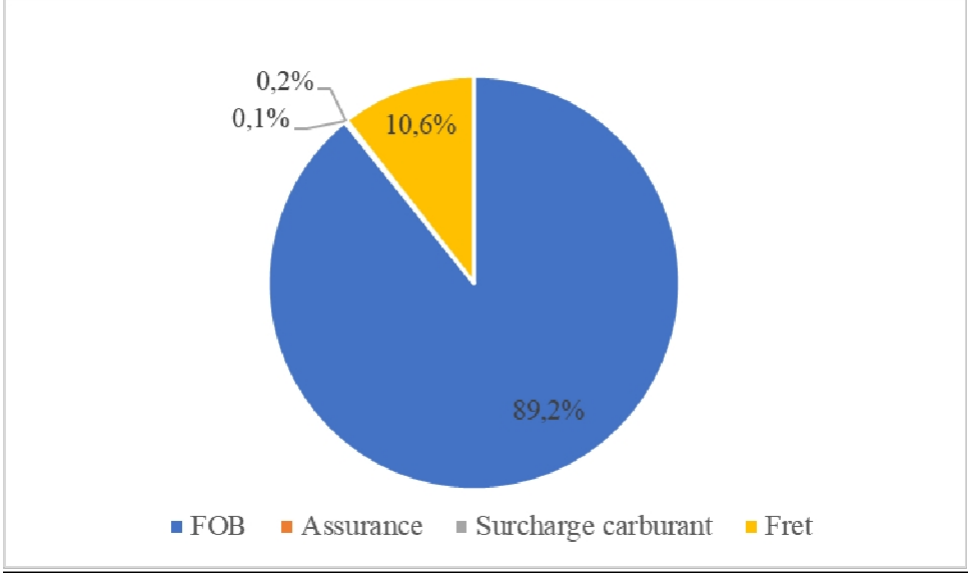
124. Should the country decide to sign a new agreement, it would be useful to critically analyze the drafts submitted during the appraisal process and make proposals to the government to improve the texts.

[25] In any case, with less uncertainty and without requiring a major reorganization of the value chain.

1. DETERMINING THE COST OF FREIGHT UNDER THE AGREEMENT

125. One of the aims of the agreement is to set the rules for determining the freight rate integrated into the hydrocarbon price structure (the "CAF barème"). The level at which this freight rate is set has a far-reaching impact on the Polynesian economy. Indeed, the "CAF barème" value is the basis for determining wholesale fuel prices, and impacts a number of economic activities (fishing, pearl farming, etc.). It is also the basis for determining retail fuel prices, and impacts the pump price paid by consumers, as well as electricity prices. As an indication, the CIF scale value represents between 30% and 100% of the regulated wholesale and retail prices of imported hydrocarbons.

Structure of CAF scale (average 2015-2021)



Source: APC, based on DGAE data

126. Freight costs represent 11% of the CAF scale, i.e. around 4 to 5 F CFP per liter of fuel, but the volumes involved are very significant, since the total annual cost of freight averaged 21 M USD over the period, i.e. around 2 Bn F CFP. Reducing its cost by 20%, for example (which is feasible), would represent an **annual saving of 400 M F CFP for Polynesian consumers** (individuals and professionals) **and/or the country's budget** (when price variations are absorbed by the hydrocarbon price regulation fund or FRPH).

Composition of CAF scale (in USD)

In	FOB	Insurance	Overload fuel	Fre t	Total
2 015	195 655 331	125 860	2 495 715	23 854 877	222 131 783
2 016	136 636 179	90 172	-286 896	20 520 432	156 959 887
2 017	165 075 369	113 320	12 801	21 794 689	186 996 179
2 018	237 914 741	154 743	-	23 959 967	262 029 451
2 019	213 512 494	145 837	-	23 859 440	237 517 770
2 020	124 264 766	90 827	-	17 101 114	141 456 706
2 021	195 940 426	130 413	-	19 431 586	215 502 426
Average	**181 285 615**	**121 596**	**317 374**	**21 503 158**	**203 227 743**

Source: APC based on DGAE data

127. So, in principle, the setting of tariff benchmarks by an agreement seems virtuous, provided that the benchmarks selected result in a realistic and appropriate tariff.

a) THE FORMULA FOR CALCULATING FREIGHT COSTS

128. Setting the pricing methodology in the agreement should help overcome the risks associated with the vertical integration of players (importers and carriers). The aim is to prevent the possible manipulation of tariffs through interplay between subsidiaries, while preserving incentives for companies to reduce their supply costs, by basing prices essentially on external references that are independent of the players involved. It is also important to ensure that the tariff level resulting from the agreement is not excessively high for French Polynesia, in relation to the costs actually incurred by the carriers.

129. In the initial agreement, these principles were only partially respected. As the Authority explained in its 2016 opinion, the basic freight rate formula was indeed based on indices representative of market values (the *flat rate* and the *worldscale* index for the route used), but the formula was supplemented by a number of elements likely to alter its use, and not always objectively justified (surcharges, application of a price floor and ceiling, billing of additional elements such as fuel surcharges, etc.).

130. A new formula has been adopted in the latest versions of the draft agreement, common to the July 2020 and May 2021 versions, to determine the cost of freight.

131. It is as follows:

Freight rates in USD per metric ton

=

Flat rate x (Worldscale index + 15) x (vessel deadweight / average number of tons unloaded in Papeete)

132. In this formula :

- The *"Flat rate" is* a flat rate published by the Worldscale Association (London) Limited and the Worldscale Association (NYC) Inc for the year of delivery. The July 2020 version uses the rate for the route actually used. The May 2021 version uses the rate for the direct Singapore - Papeete route.
- The "*wordscale* index" is the monthly average, calculated over the last full calendar month prior to the vessel's loading date, of the *worldscale* index for the Singapore-Sydney route (TC7) as published by S&P Global Platts for 30 KT medium range (MR) vessels.
- The "Deadweight" of the vessel is its capacity, weighted by neutralizing the external part of the service corresponding to products unloaded before arrival in French Polynesia and the utilitarian part (crew, food, fuel for the vessel, etc.). It is fixed at 37,500 tons.
- The "Average number of tons unloaded in Papeete" is the average tonnage of all types of hydrocarbons unloaded in Papeete over the calendar year preceding the ship's arrival date. It is equal to the total tonnage unloaded in the year in question divided by the number of voyages made during that year. The conventional maximum for this number of voyages is 15.

133. The various elements of this formula, as well as the other pricing elements provided for in the agreement, are discussed in the following sections.

b) THE CHOICE OF BENCHMARKS

i. Indisputable clues...

134. The calculation formula of the draft agreements under discussion, like that of the 2006 agreement, is based on the combination of two indices relating to the routes followed (or to nearby routes when

the road index is not available). These are the *flat rate* and the *worldscale* index. These two indices are internationally recognized in the maritime oil and gas transport sector.

135. The *flat rate* refers to the grid of nominal annual freight rates (in dollars per tonne) published by the *Worldscale* organization under the name "*Worldscale* scale". It is a theoretical estimate of the cost of freight on a given route, calculated on the basis of company feedback and standardized data.

136. The *worldscale* index refers to a percentage of this nominal rate, published daily by S&P Global Platts.[26]. Defined on the basis of a few typical routes, it takes into account the charter contracts concluded, and varies daily, for example according to changes in fuel costs or vessel availability.

137. The combination of these two indices reflects the state of the freight market for a given oil tanker, on a given route, depending on the ports served. Thus, for a given route, the real freight cost in USD per metric ton is the result of multiplying the annual nominal *worldscale* rate (*flat rate*) by the *worldscale* "point" of the day (divided by 100).

138. There's no reason to question the use of these two variables. On the contrary, it is essential. The Secretariat General of the Pacific Community, which in 2015 published a guide to fuel pricing in the Pacific Islands ("*Pacific Islands Fioul Pricing Manual*"[27]) for the public authorities of the Pacific countries and territories that control and regulate fuel prices, recommended the use of these same indices.

ii. ...but roads that don't necessarily correspond to the routes followed

139. In addition to the choice of indices used, their amount is highly dependent on the routes selected. The routes actually used by oil tankers bound for French Polynesia (currently Onsan - Papeete and Singapore - Papeete) are not commonly used, and the indices for these particular routes do not necessarily exist.

140. As far as the *flat rate* is concerned, the route chosen in the draft agreements currently being negotiated is that from Singapore to Papeete, whereas in the previous agreement the shorter Singapore-Australia route (8,946 km rather than 13,294 km) was chosen. This represents progress, since it brings us closer to the costs actually borne by the carriers. In fact, this was one of the recommendations of the Authority's 2016 opinion, provided that such an index existed (which has only recently been the case).

141. Based on the indices for the last ten years, the freight rate for the route to Papeete has been on average 30% higher than for the route to Australia (between +23% and +34% depending on the year). As a result, the 25% surcharge applied under the previous agreement (2006-2016) on the grounds that the formula route was shorter is no longer justified and should be abolished.

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[26] Unlike the flat rate, and despite its name, the *worldscale* index (without capital letters in this notice) is not published by the Worldscale organization (with capital letters).

[27] http://www.spc.int/edd/en/document-download/finish/11-reports/1993-pacific-islands-fioul-pricing-manual-english-copy

Cost differential between the Sydney route (old agreement) and the Papeete route (new agreement)

Year	Flat rate Singapore-Sydney	Flat rate Singapore-Papeete	*difference*
2010	13,51	18,04	*33,5%*
2011	16,50	21,94	*33,0%*
2012	19,67	26,18	*33,1%*
2013	21,48	28,68	*33,5%*
2014	20,74	27,14	*30,9%*
2015	20,30	26,60	*31,0%*
2016	14,85	19,03	*28,1%*
2017	11,77	14,53	*23,4%*
2018	13,81	17,41	*26,1%*
2019	15,94	20,55	*28,9%*
2020	18,43	24,48	*32,8%*
2021	15,53	20,30	*30,7%*
Average			***30,4%***

Source: APC, SDE data

142. The *worldscale* index is based on the Singapore-Australia route (TC 7). No index exists for the routes actually taken to reach Papeete. It should be noted, however, that this second index is not strictly speaking a price, expressed in dollars per tonne, unlike the *flat rate*, but a mark-up coefficient updated daily to take account of intra-annual cost trends (linked in particular to changes in production costs, such as fuel prices or vessel availability). In arithmetical terms, this increases the dollar base of the *flat rate,* which takes into account the route to Papeete. Assuming, as is likely, that infra-annual variations, notably those in fuel prices, are common to the various destinations in the South Pacific (Australia and French Polynesia in this case), the fact that the route used for this second index is shorter has no impact on the amount derived from the formula. No specific increase in this index - which already applies to a higher base - can therefore result from the fact that the route chosen is that of Sydney and not Papeete, unless it can be demonstrated that sub-annual circumstances have specifically increased the Papeete route and not that of Sydney.

143. With regard to the multiplicity of routes followed: while the *flat rate* now takes into account the actual point of arrival of oil tankers, i.e. Papeete, we note that both indices use Singapore as the point of departure in the May 2021 version proposed by the tankers, whereas in the July 2020 version, the *flat rate* is defined as that of the route actually used.

144. This choice is not without consequences. Of course, choosing only one route has the advantage of obtaining a uniform price for both carriers. However, two of the three Polynesian importers actually load their hydrocarbons in South Korea, at Onsan, and the carriers opt massively for this route. For example, in the case of TEMAPME (formerly TOAP), 40 of the 46 trips made between 2015 and 2021 were from Onsan, i.e. 87% of the total. If we include the few voyages (3) made from other South Korean ports (Yosu or Daesan), we obtain a figure of 93.5% of TEMAPME voyages to Papeete that were loaded at a Korean port. Conversely, TEMAPME's voyages from Singapore accounted for only 6.5% of the total.

145. However, it appears that South Korea is closer to French Polynesia (11,263 km instead of 13,294 km), and that this route is less expensive. In fact, the *flat rate* for the Onsan-Papeete route exists.

and is indeed lower than that of the Singapore-Papeete route, averaging 13% for the years 2010 to 2021.

Cost differential between the route from Onsan and the route from Singapore (the *flat rate*)

Year	Flat rate Singapore-Papeete	Flat rate Onsan-Papeete	*difference*
2010	18,04	15,61	*-13,5%*
2011	21,94	18,96	*-13,6%*
2012	26,18	22,59	*-13,7%*
2013	28,68	24,61	*-14,2%*
2014	27,14	23,35	*-14,0%*
2015	26,60	22,90	*-13,9%*
2016	19,03	16,43	*-13,7%*
2017	14,53	12,65	*-12,9%*
2018	17,41	15,12	*-13,2%*
2019	20,55	17,83	*-13,2%*
2020	24,48	21,20	*-13,4%*
2021	20,30	17,68	*-12,9%*
Average			***-13,5%***

Source: APC, SDE data

146. In response to the comments made in the 2016 notice on the asymmetry of information between the country and the oil companies, it is also important to note that since that date, the country has taken out a subscription to the services of Platt's, the company responsible for compiling the indices used in the formula. The country is therefore no longer dependent on the information provided by the companies. Although asymmetry remains for other strategic information, in particular that relating to the routes taken by ships and the unloading carried out before and after the Polynesian stage, this is a step forward which means that, on the one hand, it is not dependent on the companies to obtain *a posteriori* the indices used and, on the other, with more complete information it can draw up simulations and comparisons, in particular between the different routes, which enables it to determine and, if necessary, modify the clauses of the agreement.

PROPOSALS

On the choice of routes for the *flat rate*

- For the point of departure: opt for the route actually taken by the carriers.

- For the point of arrival: we welcome the fact that the new agreement takes into account the more realistic *flat rate for* journeys to Papeete.

On the choice of routes for the *worldscale* point

- Remember that since this index is in fact a mark-up coefficient on the *flat rate*, which applies to the route to Papeete, no mark-up due to the irrelevance of the route followed by this second index (Singapore-Sydney) can be accepted.

c) THE WORLDSCALE INDEX INCREASE COEFFICIENT

147. The 2006 agreement included a 50% increase in the product of a rate and an index (*flat rate* x *worldscale*). This was reduced to 25% by an amendment in 2008. While the parties to the agreement never provided any objective justification in support of the choice of a 25% rate, neither during the

At the time the 2016 notice was issued, and not during the present investigation, the principle of such an increase was, in their view, justified on two counts:

- Take into account the longer, and therefore more expensive, distance of the route to Papeete, since the *flat rate* used was that of the route between Singapore and Australia, rather than Papeete, as the index for this second route did not exist at the time.

- Take into account the fact that the tankers used had to transport both "white" products (such as gasoline or diesel) and "black" products (fuel oil), which must necessarily be transported in separate tanks and therefore involve specific logistics that are more complex than "single-product" transport (lack of economies of scale).

148. These two justifications have now disappeared:

- the route chosen for the *flat rate* now runs as far as Papeete, not just Sydney;

- The Punaruu power plant is now fuelled by diesel, and fuel oil imports will be zero in 2021.

149. However, in the new projects obtained by the Authority, a premium of 15 points remains on the *worldscale* index. This premium applies to an index whose values have ranged between 110 and 300 points over the years 2010 to 2021, with an average of 190 points, which *ultimately* amounts to a premium of between 5% and 13% of the freight rate, with an average of 8%. The fact that this mark-up is lower than in the previous agreement must be qualified by the fact that it is no longer expressed as a percentage but as an absolute value, increasing an index which does not add to the *flat rate* but multiplies it, thus increasing the mark-up on the total cost of freight.

150. The justification for this mark-up, which can no longer be attributed to the route taken (since the mark-up coefficient is applied to an index that takes account of the Singapore-Papeete route), undoubtedly lies in the fact that when these projects were drawn up, fuel oil still played an important role in imports, especially of PPS. In fact, this is one of the arguments put forward by carriers in support of this increase: they explain that the construction of standardized international indices is based on the so-called single-product transport of white products, and that they therefore wanted a corrective factor to be applied to take account of the transport of fuel oil, since the transport of black products requires special treatment (double segregation during transport and unloading, reheating throughout the journey, tank washing and treatment of washing water, etc.). In one of the documents communicated during the investigation, a premium coefficient of 50 points was proposed by the transporters for fuel oil. In relation to the share of fuel oil in total imports at the time (around one-third), this resulted in an overall *worldscale* index premium of 17 points, very close to the 15 points finally retained.

151. Tankers for French Polynesia no longer carry fuel oil, since the country has decided to switch to diesel for power generation, in response to rising fuel oil prices. This makes it simpler to transport only white goods. This surcharge is therefore no longer justified.

PROPOSALS

On index increases:

- Eliminate the 15-point increase in the *worldscale* index.

d) THE COEFFICIENT OF INCREASE LINKED TO VESSEL CAPACITY

152. One of the main challenges of mutualization is to take into account the reduced depth of the Papeete pass (11 meters). In fact, only *medium-range* vessels can access it, and even then with a reduced load compared to their total loading capacity (around 36,000 to 38,000 deliverable tonnes for vessels with a capacity of around 50,000 tonnes). Vessels therefore arrive in the port of Papeete partly empty (with so-called *dead freight*).

153. This constraint has repercussions on the design of the freight rate calculation formula (in the old agreement, as in current projects), which takes it into account through a coefficient of

surcharge. The numerator takes into account the ship's capacity (the "deadweight", expressed in tons, which designates the loading capacity of a ship, i.e. the maximum weight it can carry) and the denominator the volumes actually unloaded in Papeete. The greater the difference between these values, the higher the freight rate. Their definition is therefore essential, and must take into account the reality of trade. However, it would appear that the definitions set out in the draft agreements currently being drawn up are more unfavorable to Papeete than those in the previous agreement in force from 2006 to 2016.

i. A decrease in the numerator more than offset by a decrease in the denominator in current convention projects

154. The calculation methods for these variables have been set differently between the different versions of the agreement, which has a significant impact on freight rates.

155. In concrete terms :

- The numerator is the vessel's deadweight. The higher it is, the higher the mark-up. It must take into account the vessel's total capacity (around 50,00 tons for *medium range* vessels), but exclude everything that is not likely to be delivered: crew, bunker fuel, foodstuffs, but also hydrocarbons delivered outside Papeete.

- Quantities unloaded in Papeete are the denominator. The higher they are, the lower the freight cost. The debate essentially concerns whether to take into account the quantities actually unloaded, or the quantities potentially "unloadable".

156. In the last version of the 2006-2016 agreement, after the 2008 amendment, the deadweight (numerator) was set at 41,000 tonnes, and the tonnes unloaded in Papeete (denominator) were in theory the tonnes actually unloaded, but with a conventional minimum of 35,000 tonnes (after deepening of the Papeete pass). There was therefore a minimum value for the denominator, and therefore a maximum value for the coefficient of increase of + 17.14% (41,000 / 35,000). In reality, this ceiling was systematically applied, as it was always higher than the tonnage actually unloaded.

157. In the July 2020 and May 2021 versions, the coefficients have been modified.

- In the numerator, the "deadweight" has been reduced from 41,000 to 37,500 tonnes. The idea was to take better account of the quantities of fuel oil needed to propel and consume the ship on the planned route, and also of the fact that ships are not empty for the entire journey, but only for a section of it, as they optimize their itinerary to make intermediate deliveries, before or after Papeete. In theory, this should have led to a reduction in the surcharge.

- On the other hand, the denominator, while still equal to the volumes actually unloaded (based on the average observed during year N - 1), no longer includes a flat-rate minimum. As already mentioned, the volumes actually unloaded are in reality always much lower than the minimum stipulated in the previous agreement.

158. Both coefficients have therefore been reduced. Since the numerator is not variable but fixed, it is easy to determine the direction of the variation as a function of the denominator. As a result, the reduction in the denominator more than offsets the reduction in the numerator as soon as actual unloadings fall below 32,000 tonnes (37.5 / (1 + 17.14%)). Since 2009, actual unloadings have always been below this level.

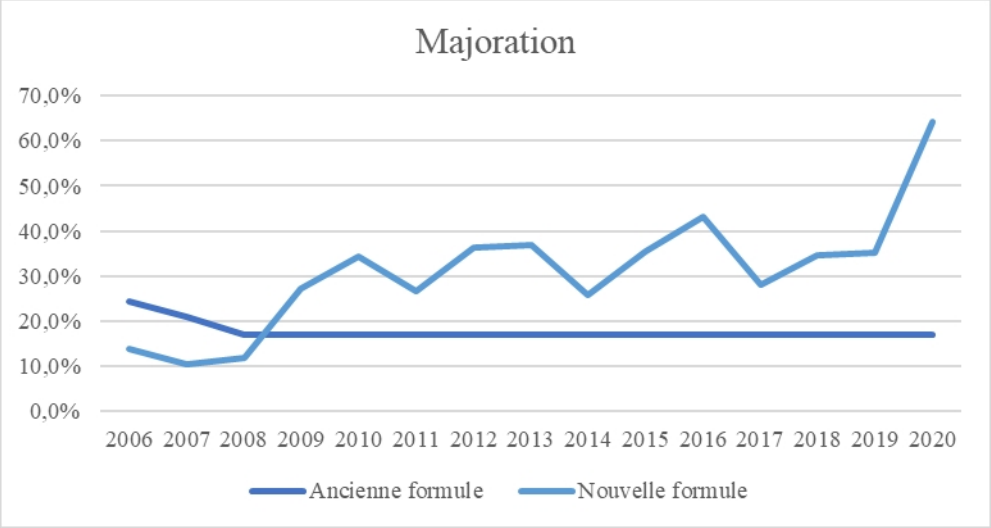
159. Thus, if we fictitiously make the calculations for past years on the basis of the data communicated by the DGAE, we see that with the application of the new formula, the increase under this coefficient would have been between 28% and 64% over the years 2016 to 2021, i.e. a much higher amount than the 17% of the old agreement.

Rate of mark-up linked to vessel capacity under the old convention (2006-2016) and current draft conventions

Year	No. of trips	Tons per trip	Old formula			New formula		
			Numerator	Denominator	**Surcharge**	Numerator	Denominator	**Surcharge**
2006		32 948						
2007	13	33 918	41 000	32 948	**24,4%**	37 500	32 948	**13,8%**
2008	15	33 484	41 000	33 918	**20,9%**	37 500	33 918	**10,6%**
2009	14	29 474	41 000	35 000	**17,1%**	37 500	33 484	**12,0%**
2010	15	27 931	41 000	35 000	**17,1%**	37 500	29 474	**27,2%**
2011	13	29 624	41 000	35 000	**17,1%**	37 500	27 931	**34,3%**
2012	13	27 522	41 000	35 000	**17,1%**	37 500	29 624	**26,6%**
2013	14	27 405	41 000	35 000	**17,1%**	37 500	27 522	**36,3%**
2014	14	29 822	41 000	35 000	**17,1%**	37 500	27 405	**36,8%**
2015	15	27 688	41 000	35 000	**17,1%**	37 500	29 822	**25,7%**
2016	14	26 199	41 000	35 000	**17,1%**	37 500	27 688	**35,4%**
2017	13	29 307	41 000	35 000	**17,1%**	37 500	26 199	**43,1%**
2018	15	27 843	41 000	35 000	**17,1%**	37 500	29 307	**28,0%**
2019	15	27 726	41 000	35 000	**17,1%**	37 500	27 843	**34,7%**
2020	13	22 827	41 000	35 000	**17,1%**	37 500	27 726	**35,3%**
2021	15	22 580	41 000	35 000	**17,1%**	37 500	22 827	**64,3%**

Source: APC, DGAE data

Rate of mark-up linked to vessel capacity under the old convention (2006-2016) and current draft conventions



Source: APC, DGAE data

160. Since there is no indication that volumes delivered per voyage are likely to increase significantly in the coming years (they have been falling since 2020), the mark-up coefficient provided for in the draft agreements, if unchanged, would undoubtedly be systematically higher than that provided for in the old agreement, and therefore unfavorable to Polynesian consumers.

ii. Disagreement over the number of trips to be included on the plate

161. Another element in the formula is likely to modify the freight rate: the number of voyages used to determine the volume of actual unloadings in the port of Papeete. The higher the number of trips, the lower the average volumes and the higher the freight rate derived from the formula.

162. On this point, a precaution has been included in the draft agreements. The aim of the agreement is to encourage the pooling of transport. The aim is to avoid the temptation for carriers to multiply short trips. To this end, the number of trips used to determine the load

The average effective load per trip has been capped at 15 annual trips. This avoids creating an incentive to reduce the effective load in order to increase freight income. However, this number of trips has never been exceeded over the last fifteen years. This precaution is therefore either theoretical or inappropriate.

163. Another debate concerns the inclusion or exclusion from the total number of trips of "spot" shipments made in the previous year. Spot transports are one-off journeys, as opposed to the regular routes operated by the Kiribora and formerly James Cook and Bougainville ships. They are taken into account separately for each project:

- The July 2020 draft includes volumes delivered during spot shipments in actual unloadings, but excludes them from the number of voyages retained, which increases the average level of volumes unloaded and therefore reduces the mark-up. The justification is that these voyages are organized outside the convention, and are therefore optional, since the convention must be sufficient to deliver sufficient quantities of hydrocarbons to the country. Consequently, while these voyages cannot be prohibited, and sometimes meet a need, they should not be encouraged by the architecture of the formula determining the freight rate.

- On the other hand, the May 2021 version, revised by the oil companies, reintroduces spot hauls into the number of trips. This leads to an increase in the overall mark-up (in all cases compared with the July 2020 version; in absolute terms if the volumes transported by spot trips are lower than the volumes usually transported, which is likely).

iii. A surcharge to be abolished, or at least capped, in order to strengthen incentives for pooling

164. In principle, it would be understandable to apply a capacity-related surcharge if the ships actually made the entire trip undercapacity (light) and left their loading port (Onsan or Singapore) at the maximum discharge capacity in Papeete, i.e. with a useful load of between 36,000 and 38,000 tonnes. This would be the case if, for example, the Convention required the carrier to make a straight voyage to Papeete. In this case, compensating for the carrier's loss of earnings could mean maintaining the ratio of deadweight to unloaded quantities. But this is not the case. According to the hearings conducted by the Authority, all vessels depart with full or almost full loads and make deliveries on the road, or even after Papeete (to Fiji, Vanuatu, Samoa or New Caledonia, for example). The additional costs incurred by the shallow depth of the Papeete pass are therefore largely offset by optimized tanker routes, which are only constrained for a small part of the journey - the last leg to Papeete - by a load compatible with the capacity of the autonomous port. Based on a partial sample of data collected by the Authority, it appears that while average unloadings in Papeete are around 27,000 tonnes, initial ship loads average 37,000 tonnes, i.e. 10,000 tonnes more. The cost of these first sections cannot be borne by French Polynesia.

165. The very principle of such a coefficient may therefore be called into question. For this reason, the Authority considers that there is no reason to retain this multiplier in the formula for calculating the unit price of freight, as the hypothesis justifying its retention - i.e. the need to compensate for the loss of earnings of a carrier forced to follow a straight route - has not been verified. Carriers share freight with other Pacific islands.

166. In the alternative, even if a coefficient were to be retained, it should be determined in such a way as to encourage the pooling and optimization of trips to Papeete. Indeed, as it has been designed, with the quantities actually unloaded in Papeete as the denominator, it creates an incentive to multiply the number of short trips (even if it means maximizing intermediate deliveries in other territories), instead of encouraging the transport of substantial quantities on each trip (in order to limit the number of trips).

167. A relatively easy solution would be to reintroduce a conventional minimum for quantities actually unloaded, as was the case in the 2006-2016 agreement (after the 2008 rider). This could be equivalent to the unloading capacity in the port of Papeete. Indeed, to encourage greater pooling, the denominator should not take into account the quantities actually unloaded, but the optimal quantities that can be unloaded in Papeete. This is the

In fact, this was the rationale behind setting a floor of 35,000 tonnes in 2008, close to what could be delivered to Papeete on each voyage if no unloading took place on the road. In fact, several voyages have unloaded at this level, or even higher (around 36,000 tonnes), indicating that the constraint linked to the size of the pass is in fact only relative.

168. This would be a balanced solution, striking a balance between the freedom of organization of private players and encouraging pooling among Polynesian importers. Of course, there is no reason to call into question the choice of carriers to pool the transport of petroleum products to destinations other than French Polynesia on the same tanker. This enables them to rationalize costs and is both economically efficient and ecologically rational.

169. On the other hand, these internal logistical choices must not be made to the detriment of the quantities expected or ordered in Papeete, and there is no reason why Polynesian consumers should have to pay a surcharge for the fact that oil transporters only unload smaller quantities in Papeete than the capacities allowed by the pass, on the grounds that they unload large quantities of hydrocarbons in other Pacific ports.

170. However, this choice requires us to ensure that onshore storage facilities can accommodate these quantities. Assuming a floor volume of 35,000 tonnes, as in the previous agreement, which is slightly lower than the capacity offered by the depth of the pass and even certain actual routes, the increase coefficient would be reduced to a maximum of 7% (37,500 / 35,000 -1).

PROPOSALS

On the surcharge coefficient linked to vessel capacity (deadweight/unloaded quantities):

- *Primarily,* remove the mark-up coefficient to take account of importers' and carriers' ability to optimize their routes.

- *Alternatively,* modify the denominator to take account not of actual unloadings, but of a maximum "unloadable" (e.g. set at 35,000 T), to encourage importers and carriers to limit the number of trips to French Polynesia.

e) THE RANGE FOR FREIGHT RATES

171. The 2006 agreement included a range for the application of the freight rate formula, with a floor and a ceiling. Initially set at [USD 41 per metric ton; USD 48.5 per MT], this was increased by an amendment in 2008 to [USD 48; USD 55.5], with an annual 2% revaluation. Had the agreement not expired at the end of 2016, these amounts would have resulted in a range of [57.364 USD; 66.328 USD] at January 31, 2017.

172. The draft new agreement, proposed in July 2020, had eliminated the use of such a range. By contrast, the May 2021 draft, reviewed by the carriers in particular, proposes its reintroduction on the basis of the latest values to date - without annual revision - i.e. the following range: [USD 57.37; USD 66.33].

i. *A range that only benefited carriers in the 2006-2016 period, and continued to apply after 2017.*

173. In theory, limiting the unit price of freight per tonne should limit the opportunities for carriers to make their journeys profitable in the event of a rise in world freight prices, but to benefit from an additional margin in the event of a fall in prices. The two balance out over time, smoothing out variations in freight rates.

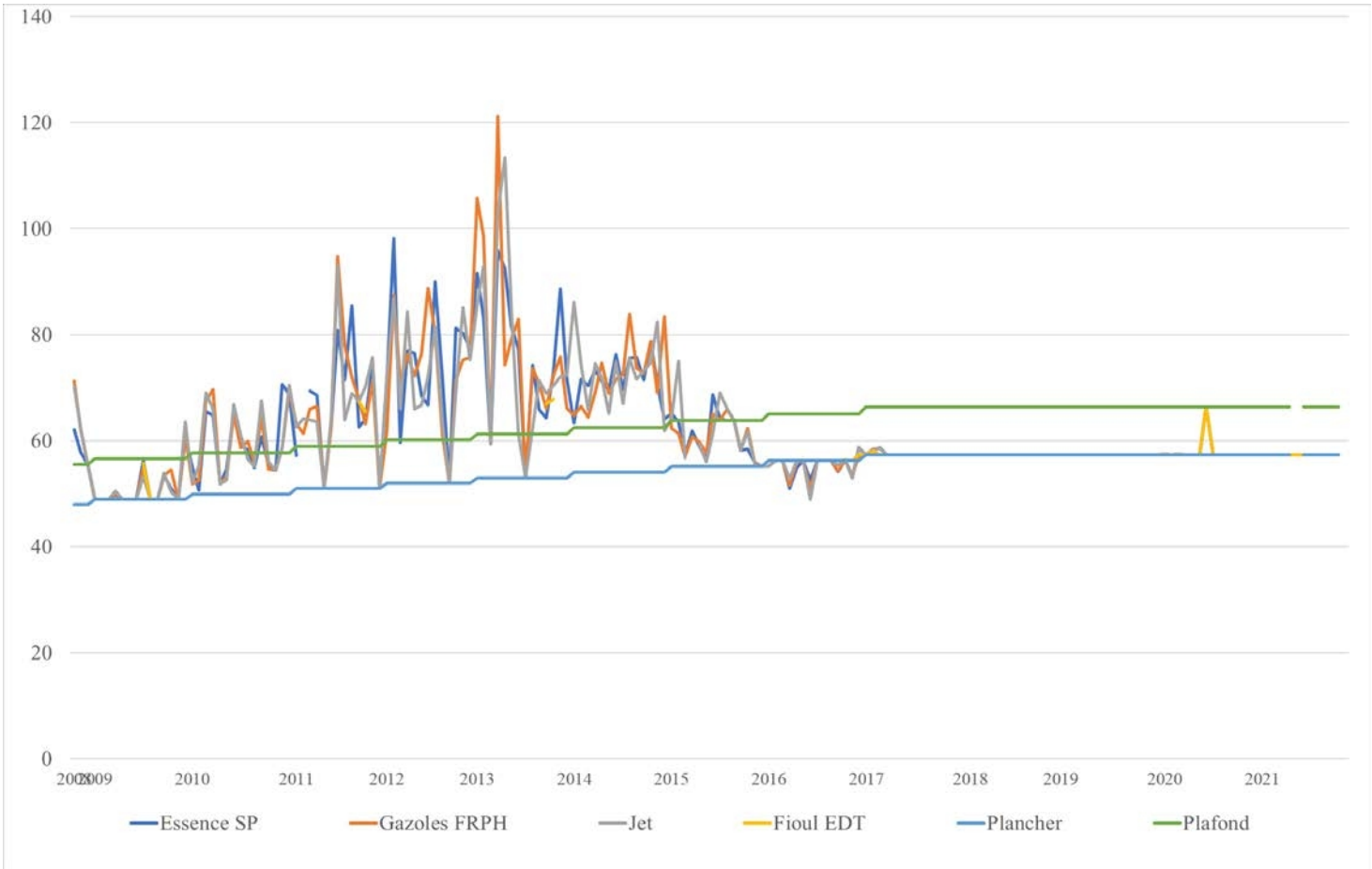
174. In fact, a historical examination of freight costs shows that the fork was a bidding factor when costs were low, but did not protect the country when costs rose. It has therefore only worked to the carriers' advantage.

175. Thus, at various times, the result of the formula should have led to the Polynesian consumer being billed a lower cost than the floor (for example, around 2008-2010 and 2015-2016, and undoubtedly

since). However, even though pricing is based on invoices, we have remained at the floor rate for 5 years. The Polynesian consumer has therefore been penalized by the floor each time it has been applied. What's more, while Polynesian consumers should have been protected by the ceiling during periods of rising prices, particularly during the global economic recovery (around 2011-2014), the ceiling did not play its role. In fact, changes in freight indices and costs are essentially linked to the price of fuels used to propel ships. Under the old agreement, the range covered only part of the total cost of freight, i.e. the unit price, but not the total cost, since the CIF scale value also included a fuel surcharge, which was not covered. As a result, the application of this surcharge enabled carriers to invoice under this heading all the additional costs linked to changes in the price of the hydrocarbons used for their propulsion, rendering the ceiling of the range useless. What's more, although fuel surcharges can theoretically be negative, this is only very rarely the case, and the actual freight price has only exceptionally been lower than the floor.

176. This explains why rates per metric ton were often higher than the conventional ceiling, but almost never lower than its floor between 2006 and 2016.

Actual freight cost per product (with surcharge) and rate range for the 2006-2016 agreement



Source: APC based on DGAE data

177. This asymmetry in the real usefulness of the range penalized the Polynesian consumer, who saw a *de facto* price floor applied, but without a ceiling, to the sole benefit of the carriers, who were able to make overprofits in periods of low prices, while being protected from price rises.

178. In our 2016 opinion, we therefore proposed that this range be eliminated. In fact, over the period 2006-2016, it did not play its role and led to the neutralization of the formula derived from market data, whereas the initial objective of such a formula was precisely to abstract from endogenous data in favor of exogenous market values.

179. However, in practice and without any legal basis, it is the floor of this range that has been applied since the end of the previous agreement at the beginning of 2017, leading to the application of a higher tariff for French Polynesia than that which would have resulted from the application of the formula alone.

ii. Different effects for different players

180. In addition to being unfavorable to the Polynesian consumer, the effects of the fork are distinct depending on the players involved.

181. In theory, changes in freight rates are neutral for importers, who are merely "price passers", since their regulatory sales price includes the cost of freight. However, the actual effects may differ from one player to another, depending on whether or not they are vertically integrated.

182. Firstly, over the period 2006-2016, the excess profits made by transporters may have benefited importers belonging to the same group, either through the application of effective tariffs lower than regulated tariffs, or through transfers between subsidiaries (cross-subsidies, under-invoicing of other services, etc.). The latter have consequently been able to compete more effectively domestically, for example by charging pump prices below the regulatory ceiling (as is effectively the case for three service stations). While such price competition is legitimate and even desirable, it must not be the result of undue advantage, made possible by misapplication of the regulations to certain players.

183. Then, since 2016, the floor still applies *de facto*, but any fuel surcharges are no longer included by the Country in the CAF scale formula. TEMAPME continues to invoice its two customers, Petropol and Total, for fuel surcharges, unlike PIE (PPS and OOE). What is neutral for the Total group or the PIE group as a whole (for Total, losses on imports are strictly offset by gains on transport; for PIE, losses on transport are strictly offset by gains on imports), is not so for Petropol, which incurs a cost that it is unable to pass on in its selling price.

184. The de facto perpetuation of the floor therefore creates an asymmetry between importers, to the detriment of one of them.

iii. A range that remains problematic, even in the absence of fuel surcharges.

185. The two draft agreements submitted to the Authority abolish the right to charge a fuel surcharge. This should make it possible to reinforce the usefulness of the ceiling, which was not playing its role because of the fuel surcharge.

186. However, the value of re-establishing a range in the Convention needs to be put into perspective. Its sole advantage is to provide both importing companies and the country with some visibility on the cost of transporting petroleum products, and to limit the effect of fluctuations in wholesale and retail prices on downstream markets. However, it remains fraught with uncertainty, and while the floor will certainly play its part when hydrocarbon prices and other transport costs are low, as has been the case since 2016, it is highly unlikely that, in the event of a sudden rise in these costs, carriers will continue to apply an unchallenged clause that would lead them to transport at a loss (even if these extra costs should only be temporary, and are covered in an inter-temporal perspective by extra profits when the floor is applied). This issue is particularly acute in the current context of international tensions over the price of shipping and raw materials, particularly hydrocarbons.

187. What's more, the choice of the upper and lower limits of the range was not specifically justified during the investigation, since it simply perpetuates the range from the previous agreement (with inflation frozen over the period), which is itself unexplained. This range thus appears to be totally disconnected from market trends.

188. The bottom line:

- As far as the floor is concerned, it seems to have no basis in reality. Application of the formula based on the *Worldscale* and *Platts* indices, which correspond to route-specific values,

is sufficient to ensure carrier profitability. *A priori,* therefore, carriers have no objective reason - in the event of a drop in world prices - to benefit from an additional margin on this destination alone. The argument that carriers could stop serving this route without such protection is therefore irrelevant. Furthermore, with regard to the possible inter-temporal justification that these extra profits should compensate for losses linked to the application of the ceiling to other periods, we have sufficient hindsight to note that, in practice, this ceiling has never been applied. The floor therefore directly penalizes consumers (and/or the budget) in French Polynesia, without any compensation.

- As far as the ceiling is concerned, the elimination of the fuel surcharge appears to be a prerequisite for the effective existence of a ceiling, failing which it renders it ineffective. This specific point will be developed below.

189. The Authority therefore recommends - as it did in 2016 - that the result of the freight calculation formula should no longer be limited to a range. This recommendation is consistent with the one to limit the freight unit price calculation formula to the combination of *flat rate* and *worldscale* indices, appropriate to the situation of petroleum product freight to French Polynesia and more generally to the South Pacific islands. These indices make it possible to set a freight price as close as possible to world prices, while already taking into account general price trends (and therefore inflation) and ensuring the profitability of carriers.

190. Eliminating the fork - or not reintroducing it at all - will also limit the distorting effects between players, which are currently to the advantage of vertically integrated players.

PROPOSALS

On the range of freight rates :

- Do not reintroduce a range for the calculation formula, or maintain only a ceiling.

f) FUEL SURCHARGE

191. The fuel surcharge clause enables carriers to claim compensation from importers if the price of bunkers (fuel for propelling the ship) exceeds an agreed amount. It acts as an adjustment variable, plus or minus, once the actual consumption of a completed voyage is known.

192. Its definition is conventional (before 2016) or contractual (since 2017). Thus, the 2006 agreement set average prices for heavy fuel oil (IFO 380 CST used for propulsion) and light fuel oil (MDO used at berth), with reference to the average prices of these products over the four months preceding its entry into force, i.e. 310 USD/tonne for heavy fuel oil and 491 USD/tonne for light fuel oil. These unit prices have since been slightly revalued, but the method of calculation remains the same. The surcharge is calculated as the difference between the actual fuel prices and these base values, multiplied by the fuel consumption for the trip to Papeete. The surcharge can be negative if the fuel price is lower than these values.

193. The reference to these calculation methods is surprising, given that the rate and index used (*worldscale* and *flat rate*) already take discounted fuel costs into account. This is all the more true given that, over the period 2006-2016, this item accounted for a high proportion of total freight costs (everything in the graph above is above the ceiling of the range). In 2013, for example, it may have doubled the formula fare.

194. On the other hand, periods of negative overcharging (leading to a price below the floor) were much rarer.

195. Despite the expiry of the agreement at the end of 2016, it emerged from the hearings that two of the three importers have continued to receive fuel surcharges since that date, some of them significant. This surcharge has not been negative since 2016, and in the examples provided represents an increase of between 7% and 20% of the freight cost for the trips concerned (13% on average).

196. What's more, the importers concerned are no longer in a position to pass on the surcharge in their selling prices. In fact, this surcharge is calculated by the carriers themselves on the basis of the actual costs incurred at the end of the tanker's turnaround. There is therefore a time lag in obtaining and transmitting this information to the administration compared with other data relating to a particular voyage, and in particular compared with the communication of the paid freight invoice. However, since 2017 and the end of the agreement, freight has been included in the calculation of the CAF scale "on presentation of invoice". Since the surcharge is not determined until after the journey, it is no longer *strictly speaking* part of the invoiced freight cost included in the formula for calculating the selling price of hydrocarbons. It is therefore a net cost for the importers concerned, since they pay it but are no longer able to pass it on in their selling price.

197. From a competitive point of view, this lack of repercussion is to the disadvantage of the importer who is not linked to a carrier (Petropol), since the latter, unlike the two other competing importers, does not have the possibility of making intra-group compensations between the sums collected and paid.

198. However, to limit this distortion, rather than reintroducing a fuel surcharge into the price structure, it would seem more appropriate to simply abolish the possibility of charging it. In fact, the combination of the *flat rate* and the *worldscale* index makes it possible to assess the real freight rate almost instantaneously. The *worldscale* is published daily, and the formula takes into account the latest available monthly average. These indices are constructed by taking into account voyage times, unloading times, port charges and taxes, bunkering costs, world tanker traffic and daily variations in the price of hydrocarbons used as fuel for ships. As stated in the 2016 notice: *"Gibson Shipbrockers' August 2016 Weekly Tanker Report[28] states: "Worldscale flat rates are recalculated at the beginning of each year due to fluctuations in bunker prices, exchange rates and port fees and taxes." (...) Several industry players interviewed as part of the investigation also raised the redundant aspect of taking into account an adjustment clause, whereas the Worldscale index, published daily, precisely reflects daily variations in hydrocarbon prices."*

199. According to one of the companies interviewed, fuel surcharges play a triple role:

- update the *flat rate*, which is based on fuel prices ("bunker prices") for years N - 1 and N - 2 ;

- compensate for the fact that ships for French Polynesia do not travel with a full cargo;

- compensate for the fact that the route chosen for the clues stops in Australia.

200. However, it is clear from the above that other elements of the formula or of the draft agreements already make it possible to take these elements into account:

- the *flat rate is* supplemented by monthly variations in a daily index (*worldscale)* that takes into account infra-annual variations in fuel costs;

- *dead freight* is already taken into account, on the one hand through a mark-up coefficient (ratio of deadweight to actual unloading), and on the other through optimization by carriers on the road;

- finally, in the old formula, the fact that the route stopped in Australia was compensated by a 25% surcharge, whereas the new formula retained the full route to Papeete.

201. The Authority therefore considers that the adjustment clause for the price of fuel consumed by oil tankers should be removed, as the *flat rate* and *worldscale* index making up the freight rate calculation formula already incorporate fluctuations in bunker prices. It is important to point out that to achieve this, it is necessary to explicitly remove the possibility for the carriers of the

[28] Marine brokerage experts worldwide: http://www.gibsons.co.uk/

charge, and not just exclude, any surcharge from the CAF scale base, in order to avoid distortions between importers, depending on whether or not they are vertically integrated (as is the case in the current situation, where one player suffers more than the others from the application of this surcharge).

202. This is also the case in the two drafts submitted for its examination, which explicitly state that *"The price resulting from the calculation in article 7 covers all transport costs, including bunker surcharges. No expense incurred by the Carriers, in particular bunker surcharges, may be the subject of additional invoicing"*.

PROPOSALS

On fuel surcharges

- Make provision for the explicit exclusion of any invoicing in this respect in current draft agreements, and ensure that it is not reinstated whatever system is finally adopted in the future.

g) *DEMURRAGE*

203. Demurrage is a contractual charge invoiced to the importer by the carrier in the event of a delay in loading or unloading. They correspond to the cost of waiting in a port when this time exceeds that stipulated in the contract (for example, 54 hours in Papeete for one of the local players). Their amount is also fixed by the contract, and can be very high, e.g. [$15,000 - $20,000] per 24 hours of delay in Papeete.

204. While the draft agreements currently being drawn up do away with *bunker surcharges*, they introduce another element into the cost of freight: *demurrage*.

205. The wording thus stipulates that "*The price resulting from the calculation in article 7 covers all transport costs. No expense incurred by the carriers may be the subject of additional compensation, with the exception of demurrage"*.

206. However, their treatment differs between the two versions:

- The July 2020 version excludes them from the CAF scale base, which means that importers, even if they are invoiced for them, cannot pass them on in their sales prices :
  "In continuity of existing tacit agreements between importers, carriers and hydrocarbon suppliers, the subject of demurrage will continue to be dealt with between them and will be invoiced separately, but in no case will demurrage be reflected in the freight rate as defined in article 7.

- On the other hand, the May 2021 version, amended by the oil companies, includes them in the freight cost base: "*Demurrage charged to Importers on loading and unloading will be included in the calculation of the CAF scale used for hydrocarbon price structures"*.

207. The following examples of demurrages were provided during the appraisal:

- loading, congestion of refineries or loading ports ;

- unloading, swell in Papeete harbor.

208. While these charges form part of the importer/shipper's cost price, their causes and responsibilities vary. In some cases, they may result from delays attributable to the port of Papeete, for example, but also from other transport incidents, independent of the Country (for example, when they occur in the port of departure or another port on the route, or if they result from the responsibility of the shipper or carrier). In addition, according to one carrier interviewed, demurrage is relatively rare in Papeete, as the time allowed for unloading is long. This is 54 hours, compared with the usual 36 hours for this type of vessel. Only two occurrences have been recorded in the recent past.

209. Moreover, some demurrages may be covered by insurance, and in other cases, the importer must be able to seek the liability of a third party within this timeframe and be reimbursed.

(while having probably already sold its products in French Polynesia at a rate increased by these fees).

210. It would therefore seem that only cases linked to unforeseeable events, not covered by insurance, not involving the responsibility of a third party, and occurring in French Polynesia, should be included in the cost of freight.

PROPOSALS

Demurrage (*demurrage* charges)

Distinguish between cases to avoid undue invoicing, and in any case only retain delays linked to unforeseeable events, not covered by insurance, not involving the responsibility of a third party, and occurring in French Polynesia.

2. ON INCENTIVES FOR POOLING

211. In addition to setting freight rates, the agreement aims to promote the pooling of transport between importers. To this end, in addition to declarations of principle, it includes various provisions designed to encourage players to play the mutualization game. However, between the two versions of the agreement examined, the one initially proposed in July 2020 and the one validated by the oil companies in May 2021, there have been significant changes that remove or render meaningless some of the most restrictive provisions, in particular the financial penalties.

a) LIMITING THE NUMBER OF POTENTIAL IMPORTERS

212. The two draft agreements sent to the Authority include a clause in article 2 that did not appear in the 2006 agreement: *"Only importing companies that are signatories to this agreement are authorized to regularly import petroleum products into French Polynesia on these vessels"*.

213. Such a restriction appears excessive and detrimental to the freedom of trade and industry.

214. Although it is unlikely that a new entrant would use the vessels of TEMAPME and OOE (who would also be its competitors for imports, *via* PPS and Total Polynesia), the agreement is not intended to close the hydrocarbon market to potentially cheaper new entrants, and to freeze the market for the long term. What's more, while pooling transport appears to be a laudable and rational objective, closing the Polynesian market to new importers does not appear to be an essential condition for this pooling; on the contrary, it creates a lock-in in favor of existing players.

215. We therefore recommend deleting this clause.

PROPOSAL

Limiting the number of potential importers:

- No clause limiting imports to signatory companies.

b) MODIFICATION OF THE ROUTES TAKEN

216. The 2006 agreement initially stipulated that ships carrying hydrocarbons and covered by the pooling scheme would load their cargoes in Singapore, which replaced Australia as the supplier to the Polynesian market. An amendment in 2008 subsequently extended the supply possibilities to Onsan in South Korea.

217. The draft new agreement mentions these two routes, but also allows other routes to be included in the scheme, albeit under different conditions between the two versions of the agreement:

- after validation by all the signatory parties in the July 2020 version (article 6);

- following a proposal from one of the signatories, and on condition that the planned delivery dates are met in the May 2021 version (article 6).

218. The draft new agreement also provides for carriers to make the capacity available on their vessels available to all importers, subject to the supply of petroleum products to the same port of loading.

219. These combined provisions are likely to have several implications. In this respect, the agreement must pursue two objectives at the same time:

i. give importers the flexibility to source their supplies at the best possible cost, even if this means changing the source and place of supply (for example, some have mentioned the possibility of sourcing from Japan);

ii. ensure that any change of route by one of the players is not detrimental to another, particularly if the initiator of the change is linked to a carrier and therefore benefits from greater facilities to modify the route followed, *de facto* depriving another importer of access to its vessels.

220. To ensure greater flexibility for the oil companies - the first objective (i) - it would seem preferable to modify the routes at the sole initiative of the players concerned, without going through the cumbersome endorsement procedure. Indeed, as long as the country's supply conditions (rates, number of rotations, etc.) are respected, it does not seem necessary to systematically resort to the country's signature to modify these routes.

221. However, such a unilateral modification of routes would be likely to pose difficulties for the non-vertically integrated player, Petropol, to the detriment of the second objective (ii). If, for example, a hydrocarbon-importing company belonging to an integrated group unilaterally decided to source its supplies from another port, for example in Japan, it would probably still benefit from the services of the same group's transport subsidiary under similar conditions. On the other hand, it would not necessarily be in a position to continue providing pooled transport for other importing companies in Polynesia, if the latter were unable to source from Japan, or if such sourcing were more complex or costly. Moreover, the above-mentioned transport subsidiary would probably be able to use this route to serve other territories on its itinerary, and the loss of volumes from other hydrocarbon importing companies in Polynesia would not necessarily represent a significant cost for it.

222. Consequently, it would be preferable to authorize a change of route only on condition that it is accepted by all importers, and that compliance with delivery deadlines is guaranteed. On the other hand, the agreement of the country or other carrier does not seem necessary. This is therefore an intermediate proposal between the two versions.

PROPOSAL

On route changes:

- Make route changes conditional on maintaining delivery times and the agreement of signatory importers only

c) OBLIGATION TO TRANSPORT

223. Article 12 of the communicated draft agreements stipulates that a carrier may not refuse to accept an importer's order within the limits of its transport capacity (set at 37,500 T).

224. However, the two versions then differ on two points:

- The July 2020 version does not stipulate any condition for refusal other than the carrier's transport capacity and, in the event of refusal of transport and excluding cases of force majeure, sets the carrier's penalty at

the origin of the refusal (equal - for the rotation concerned - to the difference between the freight price determined by the indices and the conventional price, which is subject to surcharges[29]).

- The May 2021 version, amended by the industry and especially carriers, removes the penalty and, above all, specifies that acceptance of a load from a signatory importer is only "subject to the *vessel having available capacity and the order being compatible with the Carrier's delivery schedule".*

225. In other words, with regard to refusal of carriage, whereas the first version implies a form of priority for deliveries to French Polynesia, which may be sufficient to fill the vessel, including with the quantities carried for a third-party importer, the amended version leaves carriers free to give priority, if they so wish, to deliveries to third-party territories on the route planned for their vessel.

226. It is certainly legitimate to give carriers some leeway to organize their routes and make intermediate deliveries. In fact, this is what enables them to depart fully from their port of origin, and should prevent the constraints imposed by the depth of the Papeete pass, which limits vessel capacity, from being passed on to their fixed costs and therefore freight rates. However, this flexibility must not be detrimental to pooling, and in particular to the possibilities for Polynesian importers who do not have their own carrier capacity to benefit from it.

227. This is not the case with the second version, as it leaves carriers free to refuse a load, thus depriving the clause of any useful effect.

228. As far as the penalty is concerned, it is justified in principle, since the clauses of the agreement would be largely deprived of practical effect if the Country deprived itself of the means to enforce them.

229. However, a penalty must be based on obligations that are realistic and achievable by the parties. During the investigation, one of the oil companies pointed out that it was not challenging the principle of penalties as such, but the fact that they related to clauses that were operationally impossible to meet. For example, it was pointed out that simply changing quay in the port of Singapore, to take on another importer's cargo, is extremely complicated and takes around five days, since a place in the tanker queue has to be found again. In this way, the obligation to transport can have an impact on the security or cost of supplies, making the penalties far removed from any logistical logic and a source of disputes. Another company pointed out that penalties could be contrary to international rules governing the activities of shipowners, and could be the subject of disputes or even litigation.

230. For these reasons, an intermediate version could be envisaged as follows:

- Establish a limitative list of cases authorizing refusal of transport (cases of force majeure, which need to be more precisely defined; proven impossibility of loading an importer's volumes within the turnaround time stipulated in the text; breach or non-compliance by the shipper of the contractual relationship; reaching "unloadable" transport capacity in Tahiti, i.e. 37,500 tonnes).

- Transform the penalty into a modification of the conventional freight tariff for the planned rotation (which would correspond to remuneration based solely on the *worldscale* road indexes, but excluding any mark-up), in order to remove any risk of litigation concerning the application of this penalty.

PROPOSALS

On the obligation to carry and the associated penalty:

- Draw up a restrictive list of cases in which transport may be refused (cases of force majeure, which must be precisely defined; duly established impossibility of loading an importer's volumes within a given timeframe, etc.).

[29] Article 12: *"The carrier concerned shall therefore pay the Country a penalty (...) equal to the number of tonnes carried by that vessel, multiplied by the difference between the price calculated in accordance with article 7 and a price of Flat rate * Worldscale index USD/tonne".*

of rotation provided for in the text; breach or non-compliance by the shipper of the contractual relationship; reaching the "unloadable" transport capacity in Tahiti, i.e. 37,500 tonnes).

- Rather than a penalty, for the rotation in question, the conventional freight rate taken into account in the CAF scale should be limited to the strict application of the Worldscale and Platts road indexes, with no surcharges.

d) LIMITING SPOT TRANSPORT

231. The agreement sets out a schedule of annual rotations, carried out on behalf of importers by scheduled carriers who are also signatories to the agreement. However, it is also possible for an importer to use the services of another carrier or vessel on an ad hoc basis, for example to meet exceptional requirements not covered by the scheduled rotations. This is known as *"spot"* transport.

232. The new draft convention - at least in its first version of July 2020 - aims to discourage the use of such shipments, except in the exceptional case of an importer's refusal to load, leading it to resort to them under duress.

233. To this end, two schemes are provided for in the July 2020 version of the agreement:

- The application to the company using spot transport of a penalty equal to *"*the *number of tonnes transported by this vessel, multiplied by the difference between the price calculated in accordance with article 7 and a Flat rate * Worldscale index price"*, in other words, equal to the increases provided for in the text in relation to the application of reference indices alone. Despite its title, the penalty is not really a penalty at all. Its purpose is simply to consider that the remuneration calculated is lower for spot transport, and that the importers concerned will receive compensation for freight below the usual level, and potentially lower than the cost incurred.

- A reduction in the following year's freight surcharge for all companies. Article 15 provides for *"quantities delivered by Spot vessels (...) to be taken into account in calculating the term 'average number of tons unloaded in Papeete'",* but specifies that *"the transport carried out by the Spot vessel shall not, however, be included in the number of voyages for the following year"*. In so doing, the formula mechanically increases the denominator of the mark-up (which is equal to: quantity unloaded / nb voyages) and therefore reduces its level.

234. However, the version of the agreement amended by the carriers in May 2021 renders all these provisions ineffective or even abolishes them:

- Firstly, it broadens the list of cases in which spot transport can be used, which is no longer limited to refusal to load, but includes the following: *"cases of force majeure / Insufficient vessel spacing / Product quality problem / Variation/peak in average volumes consumed over a given period / Any other reasons that could jeopardize continuity of supply"*.

- Secondly, it removes the penalty.

- Lastly, it cancels out the effects on the rate for year N+1, since "*the transport carried out by the non-scheduled vessel in year n-1 is counted in the number of voyages for year n*". This change leads to an increase in the freight rate for the following year if the average quantities delivered during spot shipments are lower than those delivered by regular shipments pooled between several importers. This has been the case most often in recent years, with spot shipments of around 18,000 tonnes (for an annual average of around 26,000 tonnes).

235. Although at first sight drafted in relatively similar terms, the 2020 version prohibits and penalizes *spot* transport, while the 2021 version, on the contrary, trivializes it.

236. The use of *spot* transport should not be totally ruled out. Firstly, certain one-off needs have to be met quickly (during the hearing, an exceptional delivery in 2021 was mentioned, at the time of a NASA mission to French Polynesia). Secondly, it is

It's important to leave some latitude to professionals, as optimizing transport can *ultimately* benefit the Polynesian consumer, and some spot transport may correspond to a one-off opportunity (supply or transport at a lower rate than usual).

237. However, under no circumstances can such transport replace regular deliveries, as this would ultimately undermine security of supply, weaken incentives for pooling, and have a negative impact on the following year's tariffs and the environment. However, the version proposed by the oil companies distorts the objectives of mutualization.

238. It is recommended to :

- retain the principle of lower remuneration for *spot* transport (which is not a penalty, since there is no financial flow from the company to the country, but a reduction in the inclusion of freight in the CAF scale determining the authorized selling price);
- maintain the exclusion of these journeys from the number of journeys used to calculate volumes actually unloaded (provided that this mark-up coefficient is maintained), while broadening the cases in which this type of transport is used to take account of the operational constraints of the players involved.

PROPOSALS

On *spot* transport

- Extend the use of spot trips to take account of operational constraints, but exclude spot trips from the calculation of unloaded volumes (if this variable is retained in the formula).

- Rather than a penalty, the conventional freight rate for the route in question should be limited in the CAF scale to the strict application of the Worldscale and Platts road indexes, with no surcharges.

C. SUMMARY OF PROPOSALS

1. ON THE CONTENT OF THE AGREEMENT AND THE POOLING REQUIREMENT: ENSURING A BALANCE BETWEEN FLEXIBILITY FOR PLAYERS AND SECURITY OF SUPPLY AT A REASONABLE PRICE

239. The tariff method proposed by the agreement in its May 2021 version, and validated by the oil companies, is based on a methodology that is highly protective of carriers' interests. In fact, it takes into account the cost of transport specifically dedicated to French Polynesia, which would leave Asia on a straight line to Papeete with a load limited to the volumes unloaded in Papeete, and takes into account all additional costs (e.g. *demurrage,* even foreign to French Polynesia), as well as a surcharge that no longer seems justified. This cost, once included in the CAF scale, is passed on to Polynesian consumers (individuals and businesses).

240. Conversely, the terms and conditions of transport are much more flexible in this version than in the version proposed by the Pays in July 2020, and therefore do not seem able to guarantee the effectiveness of mutualization (e.g. clauses on spot transport or refusal of transport).

241. It's true that setting a high calculated cost guarantees a comfortable remuneration for carriers and therefore encourages them to make deliveries to French Polynesia, thereby securing the country's hydrocarbon supply. However, this high calculated cost does not correspond to the costs actually incurred by the carriers (notably because they optimize the route and their charges are therefore much lower than those calculated in this way). They therefore receive the full cost of this optimization, with no return for the country.

242. As far as importers are concerned, they are price "passers", since the price is integrated into the CAF scale formula, and therefore into the selling price. They therefore have no particular interest in negotiating rates, and if they do so, it will be to their sole advantage, since it will have no effect on the regulated freight rate (the rate actually paid would in this case be lower than the rate incorporated into the selling price) and no benefit for consumers (as we have seen, although the regulated rate is supposed to be only a ceiling, it actually corresponds to the rate applied). Lastly, this situation potentially penalizes the only importer not belonging to a group that also includes a transporter, as it is unable to derive a competitive advantage on the distribution side from the extra profit on the transport side.

243. On the other hand, the agreement must not be overly restrictive, constraining the operational and logistical margins of the players involved. A tariff that is too tight, for example, corresponding to the price of the route actually taken, without any mark-up linked to reduced port and storage capacity, assuming full vessel loads, setting an imperative number of voyages and penalizing spot transport, risks limiting the efficiency of players who have an interest in optimizing their routes and must have a certain latitude to do so, as long as they meet their main objective (on-time delivery to French Polynesia). In the extreme, although this argument seems highly unlikely at present, it could even dissuade players from using this route, putting supply at risk.

244. In short, the aim is to find a system that favors flexibility for operators (within the limits of secure, regular supply), but allows the country to benefit from the resulting efficiency gains, at least partially (but not totally, in order to maintain the incentive for oil companies to do better).

245. The above proposals are aimed precisely at ensuring such a balance. Based on objective values (the Worldscale and Platts indices), they avoid the risk of tariff manipulation by integrated players, while taking into account the objective additional costs of supplying the Polynesian territory (including the shallow depth of the channel and limited storage capacity).

246. In this respect, the choice of denominator for the mark-up linked to the capacity of the port of Papeete is a particularly important factor. It plays a major role in the cost, and could lead to an increase of over 50%. Rather than setting it on the basis of actual discharges, it should take account of the port's maximum capacity. This would create an incentive for players to pool their transport and maximize their loads to Papeete. And in any case, if carriers prefer to limit loads to serve other destinations by road, there's no reason why these internal financial choices should be borne by Polynesian consumers.

2. ON THE CONSEQUENCES OF SETTING THE FREIGHT RATE: CAREFULLY CALIBRATING A FORMULA THAT COULD PROVE COSTLY FOR THE POLYNESIAN ECONOMY

a) The draft agreements include advances, but also room for improvement

247. The methods of calculating the freight rate in the draft agreements submitted to the Authority include a number of advances over those in the old agreement, but should be further developed, as the freight rate in these texts is potentially higher than in the old text.

248. The main breakthrough concerns the impossibility for carriers to charge a fuel surcharge, which was calculated on obsolete bases dating back to the 2006 agreement and duplicated a component of the formula, the *worldscale* (daily) index, which already takes into account the cost of fuel used for transport.

249. Another advance is the inclusion of the route to Papeete, rather than Sydney, which significantly increases the freight rate (+30% on average), but brings the use of this formula closer to the costs actually incurred. But for this reason, and given that French Polynesia will no longer be importing fuel oil from 2021, the mark-up introduced in the agreement is no longer justified. The simple application of the combination of the *flat rate* and the *worldscale* index is sufficient to render the surcharge unjustifiable.

market costs for the maritime transport of hydrocarbons. The 15-point *premium for the worldscale* index should therefore be abolished.

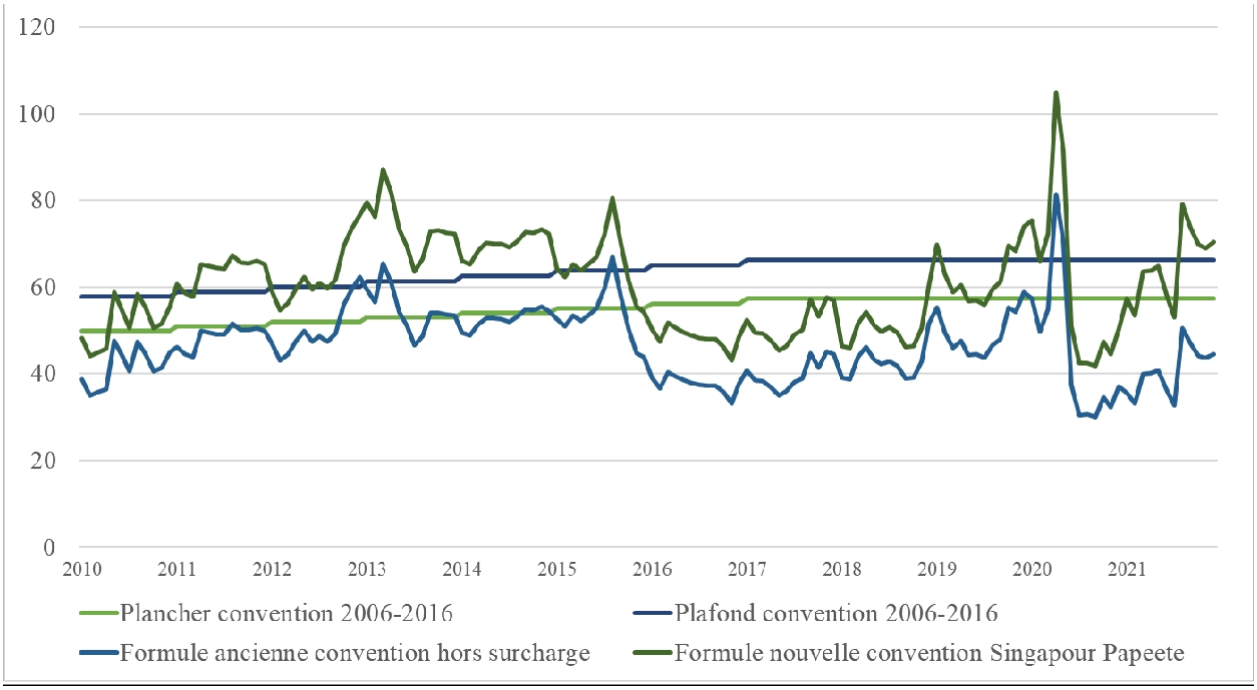
250. In addition, in 2022 as in 2016, oil tankers bound for French Polynesia will make a number of intermediate deliveries on their route, which are justified in principle since they enable carriers to optimize their loading, but which make it unjustified to apply a surcharge based on the volume of actual unloadings made at Papeete, due to the shallowness of its pass. In effect, this amounts to making Polynesian consumers pay for the discrepancy between the port's capacity and the volumes unloaded, even though this discrepancy is primarily the result of internal logistical choices made by transport companies, which, with the calculation method used, are encouraged to limit unloading per voyage. If there is to be a surcharge, it should only be a flat-rate one, corresponding to the difference between the useful capacity of the vessel after intermediate deliveries and the capacity authorized by the depth of the pass, as was the case with the old formula.

b) Implementing the Authority's recommendations could lead to significant savings for the Polynesian economy

251. The cumulative effect of the various changes introduced into the formula by the draft agreements under review means that the formula envisaged is *ultimately* less advantageous for French Polynesia than that of the previous agreement (at least before taking into account fuel surcharges). Above all, the formula envisaged for the new agreement, apart from the fact that it maintains a surcharge with no objective basis, appears particularly penalizing; by taking into account actual unloading in Papeete, rather than a flat-rate value based on unloading possibilities, it removes responsibility from carriers, who are no longer encouraged to optimize unloading or pooling, and are even encouraged to reduce their average supplies (as long as they remain within the 15-trip limit).

252. The effects can be simulated using past data.

Comparison of freight rates in dollars per tonne between the old agreement (excluding fuel surcharges) and the draft new agreement submitted to the Authority.



Source: APC, based on DGAE and SDE data

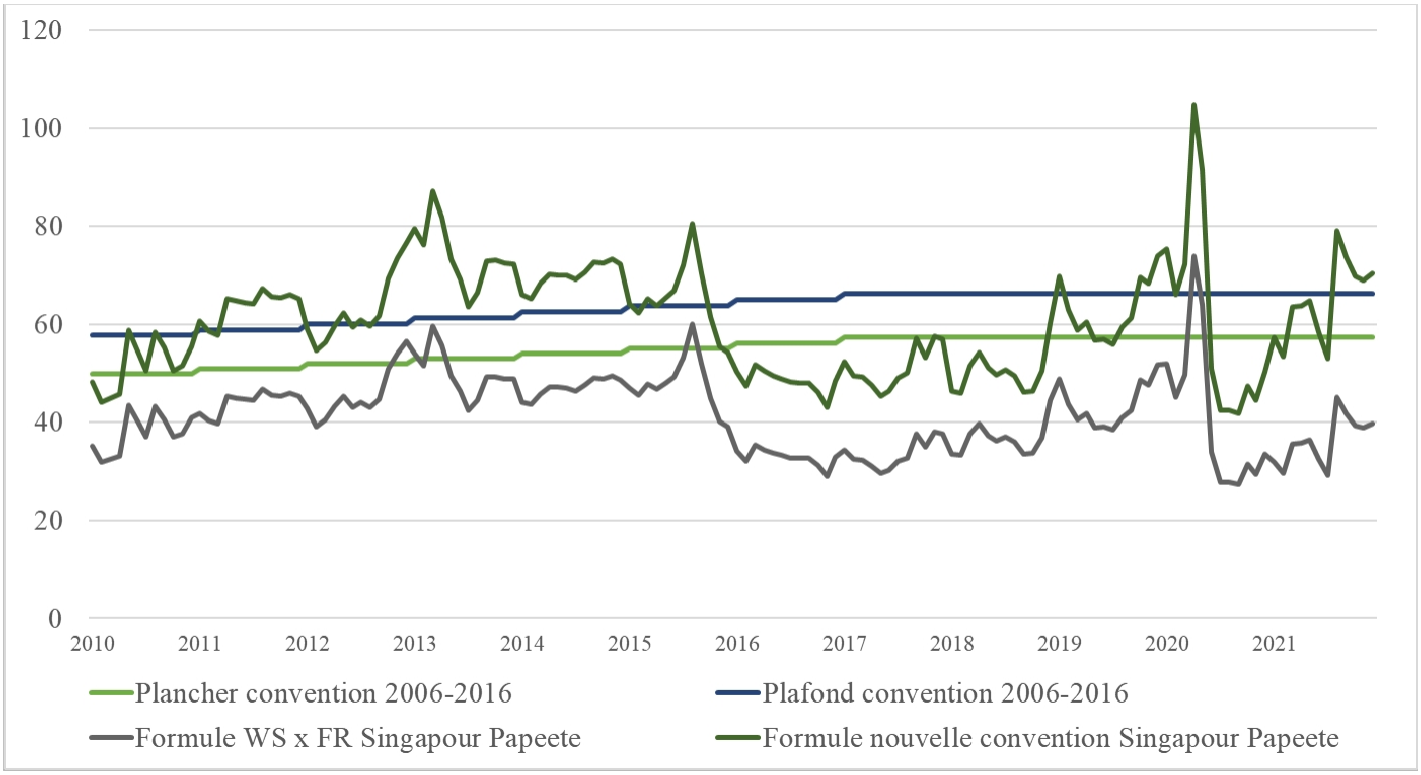
253. A simple combination of a rate and an index (*flatrate* and *worldscale*), with no mark-up, would be more appropriate and realistic.

254. In this case, the formula would be written as follows:

Freight rates in USD per metric ton
=
(Flat rate on Singapore-Papeete route) x (worldscale point on TC7 route)

255. The average freight rate in 2021, for example, would have been USD 36 per tonne under this formula, compared with USD 65 under the formula proposed in the draft agreements (+80%).

Comparison of freight rates in $ per tonne between the application of indices without mark-up and the draft new agreement submitted to the Authority



Source: APC, based on DGAE and SDE data

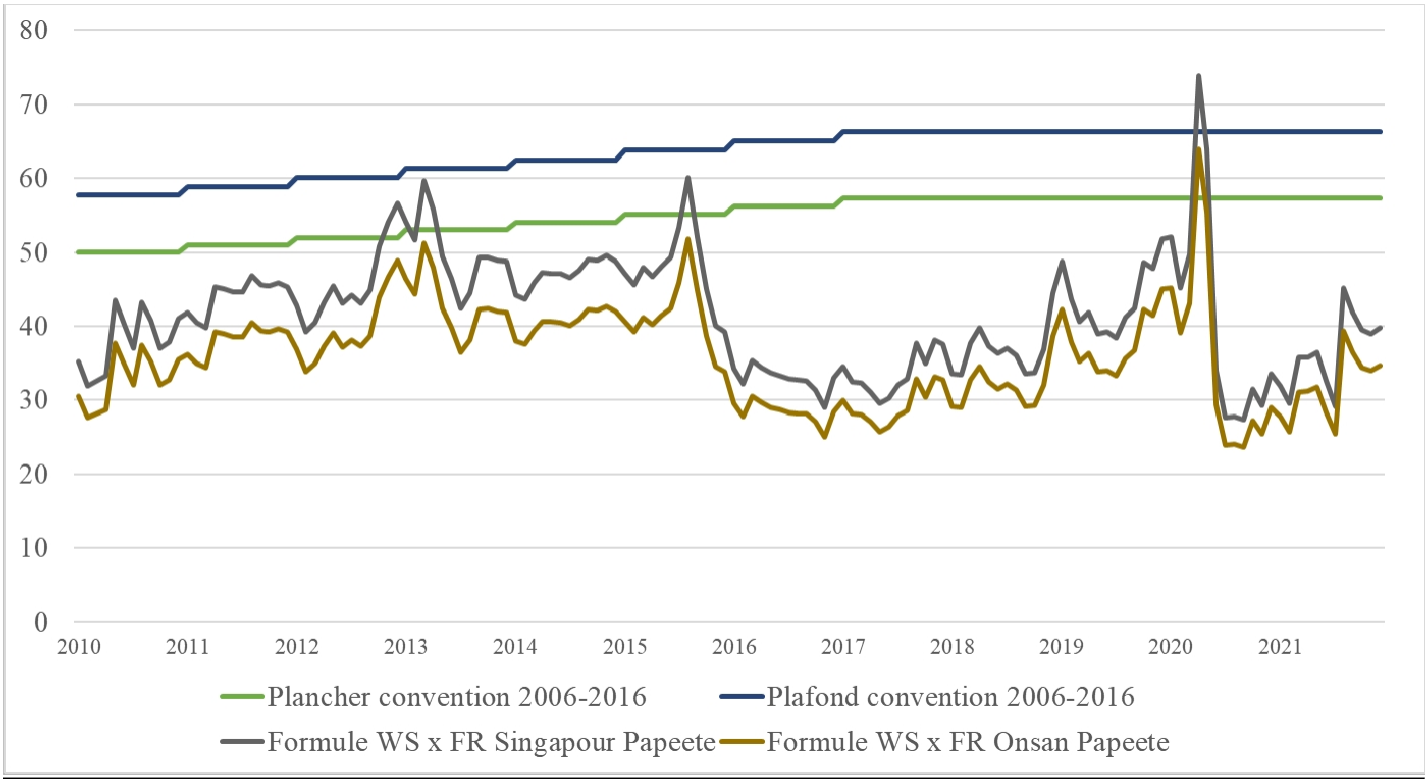
256. The gain would be even greater if, at least for the trips concerned, the indices corresponding to the route from South Korea were used.

257. In this case, the formula would be written as follows:

Freight rates in USD per metric ton
=
(Flat rate of the route actually used) x (TC7 route worldscale point)

258. The average cost of this route in 2021 was USD 32 per tonne, compared with USD 36 for the route from Singapore.

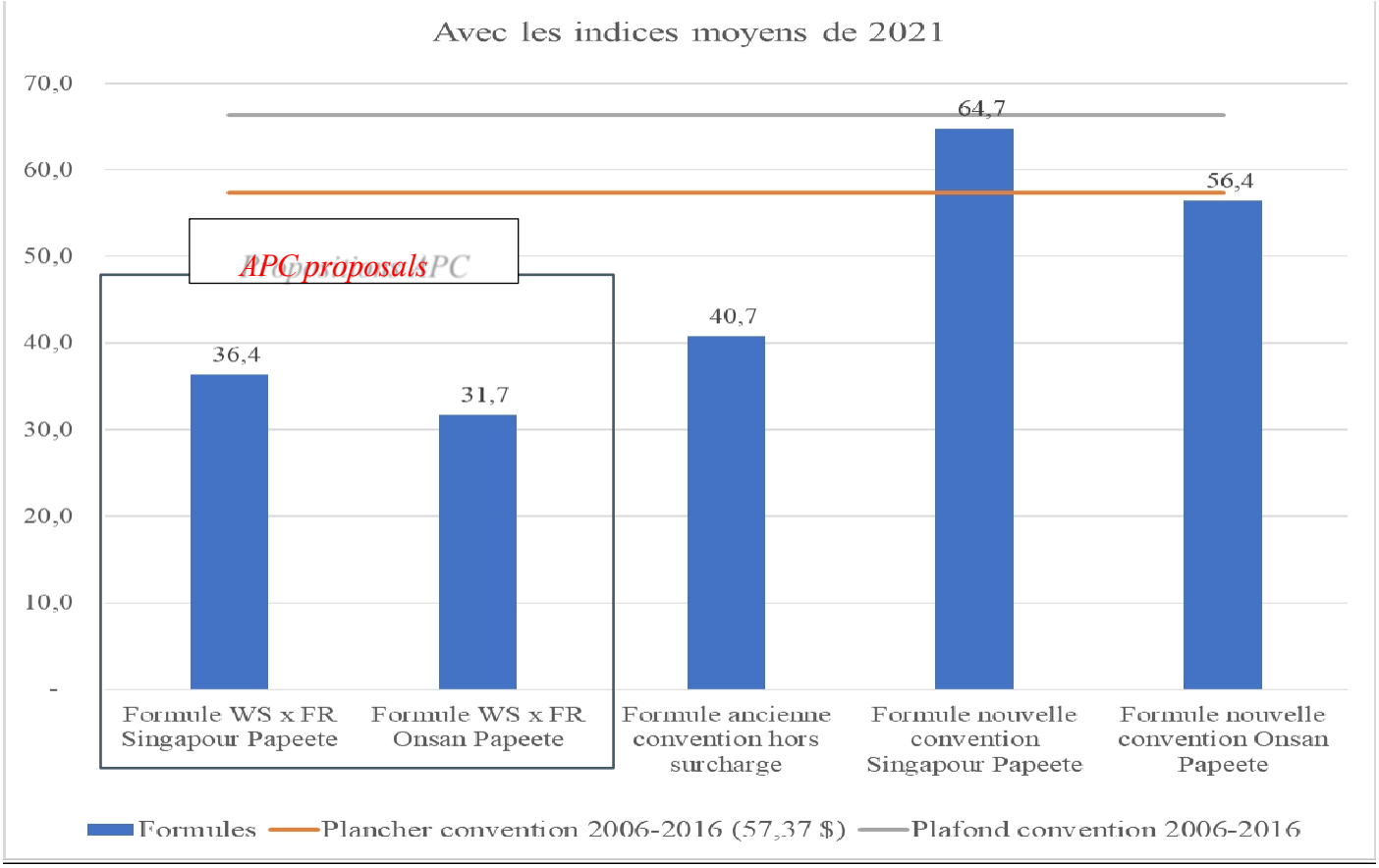
Comparison of freight rates in USD per ton between the application of indices without mark-up from Singapore and from Onsan (South Korea).



Source: APC, based on DGAE and SDE data

259. These simulations show that the differences between the different formulas, with or without surcharges, are far from negligible, since they range from simple to double. The surcharges no longer appear justified, given that the basis of this new formula, the *flat rate*, is now based on the route to Papeete (rather than Sydney), that fuel transport is no longer significant, and that it is undisputed that oil companies optimize their routes and deliveries, and therefore do not suffer from the reduced size of the Papeete pass.

Comparison of freight rates in $ per tonne according to different formulas



Source: APC, based on DGAE and SDE data

260. In addition, the cumulative effects of the choice of formula are significant for Polynesian consumers.

261. If we take 2021 as our reference year :

- application of the formula proposed in the new draft agreements would have represented an increase of 250 M F CFP over the price actually charged in 2021 ($57.37);

- the application of the *flat rate* and *worldscale* index alone, without surcharges, for the route from Singapore to Papeete would have represented a gain of 711 M F CFP compared with the price actually charged in 2021 (and 870 M F CFP for the route from Onsan);

- the difference in freight costs would therefore have been close to one billion francs between a formula based on the application of indices alone, with no mark-up, and the application of the formula set out in the draft agreements with the oil companies.

262. However, the cost of freight is fully reflected in the authorized selling price (or in the country's budget in the case of compensation by the FRPH). These differences therefore represent an equivalent loss of earnings for the Polynesian economy.

Differences in total annual freight costs according to formulas (based on 2021 data)

		Billed price (2006-2016 agreement floor)	Formula WS x FR Singapore Papeete (without surcharge)	Formula WS x FR Onsan Papeete (without surcharge)	Former convention formula (excluding surcharge)	Formule nouvelle convention Singapour Papeete	New Onsan Papeete convention formula
Total freight costs 2021 in billions of F CFP		1,9	1,2	1,1	1,4	2,2	1,9
Deviation from current cost	in	0%	-37%	-45%	-29%	13%	-2%
	in millions of F CFP	-	- 711	- 870	- 563	250	- 33

Freight in tonnes: 338
706Exchange rate: $1 = 100 F
CFP

Source: APC, based on DGAE and SDE data

3. A PERSISTENT, CROSS-CUTTING CHALLENGE: IMPROVING ACCESS TO POLYNESIA BY SEA

263. At present, maritime hydrocarbon services on Polynesian territory are hampered by the shallowness of the Papeete channel and limited storage capacity. While the latter are the responsibility of private players, who have set up storage companies in which they are joint shareholders, the management of port works is the responsibility of the country. However, deepening the pass would increase the volume transported per voyage, thereby reducing unit costs and facilitating pooling between players.

264. It would also enhance competition by making the port accessible to larger vessels.

265. The issue of port capacity has already been examined in an opinion issued by the Authority on import and distribution mechanisms in French Polynesia[54] , where a number of avenues were considered:

- Deepen the Papeete pass and long-distance quay to 14.50 m, widen the pass and quay and, if necessary, extend the existing trading terminal into the warehouse area and relocate the storage sheds.

- Move the port to the eastern zone, with access via the deeper Taunoa pass, to create a 25-hectare commercial terminal.

266. The government has since taken up the issue. For example, the Council of Ministers meeting of July 8, 2021 stated that*: "In view of the disruption to maritime transport to French Polynesia and its consequences for the country's supplies, the Government is considering building a new port in a naturally more suitable area, which would accommodate a landing platform and a development zone for companies (agro-processing, logistics, etc.). / This is in response to the demand from shipping companies for a redevelopment of the Port of Papeete and access with a deeper channel to allow the passage of larger container ships, which would enable economies of scale to be achieved, with a direct impact on the cost of international freight.* The Authority can only welcome this step forward.

Deliberated on the oral report by Antoine Callot, rapporteur, and Matthieu Pujuguet, acting general rapporteur, by Johanne Peyre, chairwoman, Aline Baldassari, Youssef Guenzoui, Marie-Christine Lubrano and Christian Montet, members.

The President

Johanne Peyre