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II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Non-opposition to a notified concentration

(Case COMP/M.5231 — Bain Capital/D&M)

(Text with EEA relevance)

(2008/C 219/01)

On 13 August 2008, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32008M5231. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

Non-opposition to a notified concentration

(Case COMP/M.5210 — Siemens/Ortner/JV)

(Text with EEA relevance)

(2008/C 219/02)

On 31 July 2008, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in German and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32008M5210. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

Non-opposition to a notified concentration

(Case COMP/M.5010 — Berkshire Hathaway/Munich Re/GAUM)

(Text with EEA relevance)

(2008/C 219/03)

On 14 July 2008, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32008M5010. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

Non-opposition to a notified concentration

(Case COMP/M.5121 — News Corp/Premiere)

(Text with EEA relevance)

(2008/C 219/04)

On 25 June 2008, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32008M5121. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

Non-opposition to a notified concentration

(Case COMP/M.5114 — Pernod Ricard/V&S)

(Text with EEA relevance)

(2008/C 219/05)

On 17 July 2008, the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004. The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— from the Europa competition website (http://ec.europa.eu/comm/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,

— in electronic form on the EUR-Lex website under document number 32008M5114. EUR-Lex is the on-line access to European law (http://eur-lex.europa.eu).

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COMMISSION

Euro exchange rates ([1])

27 August 2008

(2008/C 219/06)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,4767	TRY	Turkish lira	1,7595
JPY	Japanese yen	160,98	AUD	Australian dollar	1,7114
DKK	Danish krone	7,4589	CAD	Canadian dollar	1,5417
GBP	Pound sterling	0,7997	HKD	Hong Kong dollar	11,53
SEK	Swedish krona	9,3877	NZD	New Zealand dollar	2,103
CHF	Swiss franc	1,6132	SGD	Singapore dollar	2,0914
ISK	Iceland króna	121,69	KRW	South Korean won	1 597,42
NOK	Norwegian krone	7,926	ZAR	South African rand	11,4775
BGN	Bulgarian lev	1,9558	CNY	Chinese yuan renminbi	10,0977
CZK	Czech koruna	24,533	HRK	Croatian kuna	7,1644
EEK	Estonian kroon	15,6466	IDR	Indonesian rupiah	13 526,57
HUF	Hungarian forint	235,71	MYR	Malaysian ringgit	4,9898
LTL	Lithuanian litas	3,4528	PHP	Philippine peso	67,34
LVL	Latvian lats	0,7035	RUB	Russian rouble	36,295
PLN	Polish zloty	3,327	THB	Thai baht	50,274
RON	Romanian leu	3,5475	BRL	Brazilian real	2,3959
SKK	Slovak koruna	30,315	MXN	Mexican peso	14,9634

([1]) *Source:* reference exchange rate published by the ECB.

Opinion of the Advisory Committee on restrictive practices and dominant positions given at its 405th meeting on 20 March 2006 concerning a draft decision relating to Case COMP/E-1/38.113 — Prokent/Tomra

(2008/C 219/07)

1. The Advisory Committee agrees with the Commission's conclusion on the relevant market:
   (a) the product market;
   (b) the geographical market.
2. The majority of the Advisory Committee agrees with the Commission's conclusion that Tomra enjoyed a dominant position on the reverse vending machine market in the five countries concerned. A minority abstains.
3. The majority of the Advisory Committee agrees with the Commission on the conclusion that Tomra's practices had an object and effect to restrict competition within the meaning of Article 82 of the EC Treaty and Article 54 of the EEA Agreement. A minority disagrees.
4. The majority of the Advisory Committee agrees with the Commission's conclusion that Tomra's practices have been capable of appreciably affecting trade between Member States of the EU and Contracting parties of the EEA Agreement. A minority disagrees.
5. The majority of the Advisory Committee agrees with the Commission's conclusion on the gravity of the infringement. A minority disagrees.
6. The majority of the Advisory Committee agrees with the Commission's conclusion on the duration of the infringement. A minority disagrees.
7. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
8. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

View of the representative of the EFTA States concerning a preliminary draft decision relating to Case COMP/E-1/38.113 — Prokent/Tomra

Meeting on 20 March 2006 of the EC Advisory Committee on restrictive practices and dominant positions

(2008/C 219/08)

1. The representative of the EFTA States agrees with the Commission's conclusion on the relevant market:
   (a) the product market;
   (b) the geographical market.
2. The representative of the EFTA States agrees with the Commission's conclusion that Tomra enjoyed a dominant position on the reverse vending machine market in the five countries concerned.
3. The representative of the EFTA States agrees with the Commission on the conclusion that Tomra's practices had an object and effect to restrict competition within the meaning of Article 82 of the EC Treaty and Article 54 of the EEA Agreement.
4. The representative of the EFTA States agrees with the Commission's conclusion that Tomra's practices have been capable of appreciably affecting trade between Member States of the EU and Contracting parties of the EEA Agreement.
5. The representative of the EFTA States agrees with the Commission's conclusion on the gravity of the infringement.
6. The representative of the EFTA States agrees with the Commission's conclusion on the duration of the infringement.
7. The representative of the EFTA States recommends the publication of its opinion in the *Official Journal of the European Union*.
8. The representative of the EFTA States asks the Commission to take into account all the other points raised during the discussion.

Final report of the Hearing Officer in Case COMP/E-1/38.113 — Prokent/Tomra

(Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2008/C 219/09)

The present proceedings resulted from a complaint submitted by Prokent AG against the Tomra Group on 26 March 2001 ([1]). The complaint originally concerned an abuse of Tomra's dominant position in the market for the supply of so-called reverse vending machines and related products, in particular backroom equipment, to prevent market access by competitors.

The Commission took the view that, according to Article 56 of the EEA Agreement, it had jurisdiction over this case ([2]) and initiated an investigation. Subsequent to that the Commission concluded that Tomra was a dominant undertaking both within the EU and within the territory of the EFTA States and had engaged in exclusionary conduct contrary to Article 82 of the EC Treaty and Article 54 of the EEA Agreement in several EU Member States. The Commission considered that Tomra had implemented this strategy, in particular, through exclusivity agreements, quantity commitments and rebate schemes.

Accordingly, the Commission issued a Statement of Objections (SO) on 1 September 2004 which covered mainly Tomra's policy and practices until the beginning of 2003 ([3]). The SO was addressed to: (i) Tomra Systems ASA; (ii) Tomra Europe AS; (iii) Tomra Systems BV; (iv) Tomra Systems GmbH; (v) Tomra Buttikksystemer AS; (vi) Tomra System AS (DK); (vii) Tomra Systems AB and (viii) Tomra Leergutsysteme GmbH.

Access to file

By 13 September 2004, all addressees had been granted complete access to the file.

Deadline to reply

Upon reception of the SO, Tomra applied for an extension of the deadline to reply of two months without giving, in my view, sufficient grounds to grant its request. However, I exceptionally decided to extend the deadline until 14 November 2004.

Upon a second request by Tomra, I agreed to a further extension until 22 November 2004. Tomra had submitted that the information necessary to answer in detail to the SO *'had to be obtained by interviews with employees who have not had to keep records […] and [that it should] consult former employees'*. I considered that the need to conduct interviews can allow for an extension of the deadline to reply to an SO only in exceptional cases. I accepted that this could be the case for Tomra, given its relatively lean management structure, but only to a limited extent.

Oral Hearing

Tomra formally requested an oral hearing pursuant to Article 12 of Commission Regulation (EC) No 773/2004, which took place on 7 December 2004.

The specific situation of the complainant in this case

As has been pointed out above, this procedure was initiated on the basis of the complaint by Prokent AG, a German competitor of Tomra. In September 2003, Prokent AG went bankrupt and was acquired by the German company Wincor Nixdorf International GmbH by way of an asset deal. On 26 September 2003, the Commission was informed that Prokent AG had initiated its liquidation procedure.

In application of Article 6 of Regulation (EC) No 773/2004, a non-confidential version of the SO was sent to Wincor Nixdorf International GmbH on 26 October 2004 on the assumption that it was the legal successor of the complainant. The Commission did not receive any comments from them, and they did not express a wish to participate in the oral hearing.

([1]) Hereinafter 'Tomra'.

([2]) Tomra's turnover in the territory of the EFTA States did not equal 33 per cent or more of its turnover in the EEA. Several of Tomra's competitors were based in EC Member States, while Tomra also had a production subsidiary in an EC Member State.

([3]) In April 2002, Tomra approached the Commission with a view to settling the case. The Commission did not consider this appropriate at the time and therefore proceeded to issue a SO.

On 6 May 2005, i.e. five months after the oral hearing, a lawyer informed the Commission services that he had received a power of attorney from Prokent AG, which had not yet lost its legal personality, to carry out its representations in this antitrust procedure. In addition, he requested copies of any decisions the Commission had adopted so far. A non-confidential version of the SO was therefore sent to him on 27 May 2005, offering Prokent AG an opportunity to submit comments by 24 June 2005. On 15 June 2005 this deadline was extended upon request until 5 August 2005. The Commission services also offered Prokent AG an opportunity to make oral observations on the case at a meeting that would have been held at the Commission premises and in my presence.

Prokent AG informed the Commission by fax of 16 August 2005 that it would not make any written comments to the SO. By e-mail of 18 November 2005, Prokent also declined the Commission's offer to make oral observations.

Since the Commission has expeditiously adopted corrective measures taking into account the fact that the complainant had not ceased to exist as a legal person after its bankruptcy, I consider that the complainant's procedural rights have been fully respected in this procedure.

The Commission's final orientation

DG Competition has addressed the reasoning and factual elements submitted by Tomra in its written reply and at the oral hearing. As a consequence, Denmark was removed from the list of the countries where the abuse was established and Tomra's Danish subsidiary Tomra System AS is no longer an addressee of the final decision.

In the light of the above, I conclude that the draft decision only contains objections in respect of which the parties have been afforded the opportunity of making known their views.

I consider that the rights to be heard of the participants to this proceeding have been respected.

Brussels, 22 March 2006.

Serge DURANDE

Opinion of the Advisory Committee on restrictive practices and dominant positions given at its 406th meeting on 27 March 2006 concerning a draft decision relating to Case COMP/E-1/38.113 — Prokent/Tomra

(2008/C 219/10)

1. The majority of the Advisory Committee agrees with Commission's conclusion as regards the gravity of the infringement. A minority disagrees, a minority abstains for procedural reasons.
2. The majority of the Advisory Committee agrees with the Commission's conclusion as regards the starting amount of the fine. A minority disagrees.
3. The majority of the Advisory Committee agrees with the Commission's conclusion as regards the duration of the infringement. A minority disagrees.
4. (a) The majority of the Advisory Committee agrees with the Commission that there are no aggravating circumstances. A minority abstains.

   (b) The majority of the Advisory Committee agrees with the Commission that there are no attenuating circumstances. A minority abstains.
5. The majority of the Advisory Committee agrees with the Commission on the final amounts of the fines for the infringement of Article 82 of the EC Treaty. A minority disagrees.
6. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.

View of the representative of the EFTA States concerning a preliminary draft decision relating to Case COMP/E-1/38.113 — Prokent/Tomra

Meeting on 27 March 2006 of the EC Advisory Committee on restrictive practices and dominant positions

(2008/C 219/11)

1. The Advisory Committee agrees with Commission's conclusion as regards the gravity of the infringement.
2. The Advisory Committee agrees with the Commission's conclusion as regards the starting amount of the fine.
3. The Advisory Committee agrees with the Commission's conclusion as regards the duration of the infringement.
4. The Advisory Committee agrees with the Commission that there are no:
   1. aggravating circumstances;
   2. attenuating circumstances.
5. The Advisory Committee agrees with the Commission on the final amounts of the fines for the infringement of Article 82 of the EC Treaty.
6. The Advisory Committee recommends the publication of its opinion in the *Official Journal of the European Union*.
7. The Advisory Committee asks the Commission to take into account all the other points raised during the discussion.

Summary of Commission Decision

of 29 March 2006

relating to a proceeding under Article 82 of the Treaty establishing the European Community and Article 54 of the EEA Agreement against Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergutsysteme GmbH

(Case COMP/E-1/38.113 — Prokent/Tomra)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/C 219/12)

1. On 29 March 2006, the Commission adopted a decision relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement. In accordance with the provisions of Article 30 of Regulation (EC) No 1/2003, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP website at:

http://europa.eu.int/comm/competition/index_en.html

1. SUMMARY OF THE INFRINGEMENT

1.1. Introduction

2. The Decision was addressed to Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergusysteme GmbH (hereafter 'Tomra group'). Tomra group is active in the area of collecting used beverage containers. Its main activity within the EEA consists of the supply of so-called reverse vending machines (RVMs) that are used for the collection of empty drink containers. Tomra's worldwide turnover was approximately EUR 273 million in 1999, EUR 342 million in 2000, EUR 368 million in 2001 and EUR 336 million in 2002.

3. Until its bankruptcy, Prokent AG ('Prokent'), the complainant, was based in Ilmenau, Germany. Like Tomra, it was a supplier of reverse vending machines and related products and services. It achieved a turnover of approximately EUR 2,3 million in 2000 and of approximately EUR 4,2 million in 2001. Prokent sold its products predominantly in Germany, but tried to enter other national markets as well. Following the bankruptcy of Prokent and subsequent acquisition of its assets by Wincor Nixdorf Technologies GmbH, based in Paderborn, Germany, in September 2003, the latter has carried on the former business of Prokent.

1.2. The proceedings

4. On 26 March 2001, the Commission received a complaint from Prokent, asking the Commission to investigate whether Tomra had abused its dominant position by preventing Prokent's access to the market. The inspections were carried out by the Commission on 26 and 27 September 2001. Following a number of requests for information, on 1 September 2004, the Commission adopted a Statement of Objections against Tomra Systems ASA, Tomra Europe AS and Tomra group's subsidiaries in six EEA-Contracting Parties. Tomra group responded to the Statement of Objections on 22 November 2004. The Oral Hearing took place on 7 December 2004.

1.3. Article 82 of the Treaty and Article 54 of the EEA Agreement

1.3.1. *Dominance*

5. Tomra and its competitors supply so-called reverse vending machines (RVMs) and related products, in particular backroom equipment ([1]). They also provide services in relation to the products they sell such as maintenance and repair services. RVMs identify the incoming container according to particular parameters such as shape and/or bar code and calculate the deposit that is to be reimbursed to the customer.

6. Tomra began supplying RVMs in 1972 and has remained the market leader ever since. Whereas all other RVM suppliers, at the time when the investigation took place, were very small companies with a small number of employees and were active only in one country or a small number of EEA Contracting Parties. RVMs are usually installed in the retail outlets like supermarkets, therefore the RVM customers are usually retail groups, the number of which has shrunk recently due to the consolidation process on the market.

1.3.1.1. Relevant product market

7. Although automated and manual handling of containers may be functionally substitutable, they are not interchangeable from the perspective of an actual or potential purchaser of Tomra's products, whose needs are not satisfied by manual handling. Customers prefer automated RVM solutions to manual handling for reasons of labour

([1]) A backroom space in which the drink containers are further handled or processed, which may include conveyor systems for crates and individual containers, stacking, sorting, compacting, accumulation units etc.

costs and customer service mainly. Therefore, contrary to what is argued by Tomra, manual handling is not part of the same product market.

8. Considering that the RVMs that are designed for use in canteens or kiosks are distinct from RVMs designed for retail outlets, and since the relevant market players, that is the suppliers and customers of the respective products, are different, RVMs that are designed for use in canteens or kiosks cannot be part of the same product market as RVMs designed for retails outlets.

9. When looking at the product characteristics, the intended use of the machines and their price, it appears to be appropriate not to consider low-end ([1]) stand alone machines as substitutable with other RVMs demanded by food retailers. There are reasons to consider that a separate market for high-end RVMs and systems exists, and the Commission considers that this would be the preferable market definition. However, the question can be left open whether high-end RVMs constitute a separate market or a part of an overall market for RVMs including low-end machines. The competitive assessment is the same whether there is one overall market for RVMs or a separate market for high-end machines.

10. The competitive assessment in the Decision is, therefore, based on the market for high-end reverse vending machines or systems, including, in particular, all RVMs that can be installed through a wall and can be connected to backroom equipment, and also on an overall market including high-end and low-end machines. The wider market definition is taken as a working basis as it yields more favourable figures, to Tomra's advantage.

1.3.1.2. The relevant geographic market

11. The types and the volumes of drink containers on which there is a deposit ([2]) in a given EEA Contracting Party determine the potential for reverse vending solutions and the models of RVMs that are marketed in the country in question. Despite examples of cross border consolidation and cooperation in the food retail sector, customers and their procurement process were predominantly organised at national level. Moreover, between 1997 and 2002 RVM suppliers other than Tomra were active only in one or in a small number of EEA Contracting Parties. All these factors indicate that the conditions of competition were not harmonious across the EEA in the period under consideration and that the relevant geographical markets were national in scope.

([1]) Low-end are the stand-alone machines that accumulate the containers inside, whereas the high-end RVMs are connected to a backroom which storage capacity is much higher compared to that of the low-end machine.

([2]) A deposit system is established by a state legislation under which a mandatory deposit on a drink container is charged for the purchase of drinks. The deposit amount is returned to the buyer when the empty container is brought back to a specific collection point, RVMs amongst others.

1.3.1.3. Dominant position

12. Since it entered the market Tomra has been the market leader enjoying very high market shares. According to its annual reports and internal documents, of which at least the Annual Reports are said to relate to high-end RVMs, Tomra's market shares continuously exceeded 70 % in Europe in the years before 1997. Tomra's market shares have exceeded 95 % in Europe since 1997. In any relevant markets Tomra's market share was a multiple of the market shares of its competitors. Tomra's rivals, including those who had the potential to become strong competitors, were all small or very small companies, with a very low turnover and very few employees. Tomra's ability and determination to acquire its most serious competitors and/or competitors with potential to become such in the future, further reduced the chances for the development of credible competition. Moreover, there was no substantial countervailing buyer power which would have been able to challenge Tomra's dominance in any of the markets concerned. Tomra, therefore, is a dominant undertaking in the common market and in the territory of the EEA as well as in substantial parts of the common market and the territory of the EEA, which means that it is a dominant undertaking in the sense of Article 82 of the Treaty and Article 54 of the EEA Agreement.

1.3.2. *Tomra's practices*

1.3.2.1. Tomra's strategy

13. Tomra's strategy was based on a policy that sought to preserve its dominance and market share through means such as: (i) preventing market entry; (ii) keeping competitors small by limiting their growth possibilities, and (iii) finally weakening and eliminating competitors, by way of acquisition or otherwise, especially those competitors that were deemed to have the potential to become more serious challengers. To achieve this objective Tomra employed various anti-competitive practices, including exclusivity and preferred supplier agreements, as well as agreements containing individualised quantity commitments or individualised retroactive rebate schemes. The latter types of agreements or conditions usually relate to quantities representing the entire requirements of the customer or a large proportion thereof within a given reference period. They are often referred to as 'high-volume block orders'. Tomra resorted to such practices, in particular, in anticipation of expected market entry, whether due to the planned introduction of new legislation introducing a deposit system or otherwise, or as a reaction to the implementation of such legislation, being aware that competitors needed to achieve certain sales volumes in order to become profitable. Tomra's overall strategy is not only confirmed by the different practices employed by the group, but was also discussed extensively within the group on various occasions, be it at meetings and conferences or in correspondence, for instance, e-mail.

14. Tomra was focused on preventing market entry, considering and offering cooperation with much smaller competitors, that often had just entered the market, and/or driving them from the market, and giving priority to long-term preferred supplier agreements and high volume block orders. The latter is not a strategy confined to the normal competitive process and the selection resulting from it. Rather, it is designed to interfere with this process and prevent it from eroding the dominant position of the undertaking.

1.3.2.2. Implementation

15. Tomra's policy of blocking market access for competitors was pursued in particular by:

— concluding exclusivity agreements with a number of its customers for the supply of RVM solutions in five EEA countries (Austria, Germany, the Netherlands, Norway and Sweden) in the period of 1998-2002,

— concluding agreements with its customers in the period of 1998-2002 imposing upon them an individualised quantity target, that corresponded to the customer's total or almost total demand for RVM solutions in a specific period of time. The customers were granted discounts subject to their commitment to purchase the agreed target quantity,

— concluding agreements with the retail companies in the period of 1998-2002 in five EEA countries establishing individualised retroactive rebate schemes, thresholds of which corresponded to customers' total or almost total demand.

16. Tomra through its subsidiaries has implemented the above identified practices in five national markets (Austria, Germany, the Netherlands, Norway and Sweden).

2. ASSESSMENT OF THE PRACTICES UNDER ARTICLE 82 OF THE EC TREATY AND ARTICLE 54 OF THE EEA AGREEMENT

17. Article 82 of the Treaty and Article 54 of the EEA Agreement prohibit abuses of the dominant position that an undertaking holds on a relevant market. The Court of Justice has held that an undertaking that is in a dominant position and ties purchasers, even if it does so at their request, by an obligation or promise on their part to obtain all or most of their requirements exclusively from the said undertaking, abuses its dominant position within the meaning of Article 82 of the Treaty, whether the obligation in question is stipulated without further qualification or is undertaken in consideration of the grant of a rebate. This applies to cases where the dominant company is granted full exclusivity, but also where the customer undertakes to purchase a given percentage of its requirements from the dominant company ([1]). The same is true in cases where purchasing targets for a given period are expressed in absolute figures, where these quantities represent all or a large portion of the customer's requirements or its capacity for absorption in the contract period in question ([2]).

18. According to the case law the same applies if the said undertaking, without tying purchasers by a formal obligation, applies, either under the terms of agreements concluded with these purchasers or unilaterally, a system of fidelity rebates, that is to say discounts or rebates conditional on the customer's obtaining all or most of its requirements — whether the quantity of its purchases be large or small — from the undertaking in a dominant position ([3]).

19. Although the agreements, arrangements and conditions found in this case contain different features such as explicit or *de facto* exclusivity clauses, undertakings or promises to purchase quantities corresponding to a significant proportion of the customers' requirements or retroactive rebate schemes related to the customers' requirements, or a combination of them, they all have to be seen in the context of Tomra's general policy directed at preventing market entry, market access and growth opportunities for existing and potential competitors and eventually driving them out of the market so as to create a situation of virtual monopoly.

20. According to the case law of the Court of Justice, abuse in terms of Article 82 of the Treaty is an 'objective concept', which refers to the conduct of a dominant company which through recourse to methods different from the ones governing normal competition *'has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition'* ([4]). The Court in *Michelin II* established that *'[t]he "effect" referred to in the case-law cited in the preceding paragraph does not necessarily relate to the actual effect of the abusive conduct complained of. For the purposes of establishing an infringement of Article 82 EC, it is sufficient to show that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect'* ([5]). It has abundantly been shown in this decision that Tomra's practices tended to restrict competition, that is to say, were clearly capable of having that effect. In addition, however, the Commission has investigated the likely restrictive effects of the practices.

([1]) Judgement of 13 February 1979 in Case 85/76, *Hoffmann-La Roche v Commission*, [1979] ECR-461.

([2]) See, for instance, judgement of 9 November 1983 in Case 322/81, *NV Nederlandse Banden Industrie Michelin v Commission*, [1983] ECR-3461.

([3]) Judgement of 13 February 1979 in Case 85/76, *Hoffman-La Roche v Commission*, paragraph 89; judgement of 3 July 1991 in Case C-62/86, *AKZO v Commission*, [1991] ECR I-3359, paragraph 149; judgement of 1 April 1993 in Case T-65/89, *BPB Industries plc and British Gypsum LTD v Commission*, [1993] ECR II-389, paragraph 120.

([4]) Judgement of 13 February 1979 in Case 85/76, *Hoffmann-La Roche v Commission*, paragraph 91; judgement of 9 November 1983 in Case 322/81, *NV Nederlandse Banden Industrie Michelin v Commission (Michelin I)*, paragraph 70; judgement of 3 July 1991 in Case C-62/86, *AKZO Chemie BV v Commission*, paragraph 69; judgement of 7 October 1999 in Case T-228/97, *Irish Sugar v Commission*, paragraph 111.

([5]) Judgement of 30 September 2003 in Case T-203/01, *Manufacture française des pneumatiques Michelin v Commission (Michelin II)*, paragraph 239, and judgment of 17 December 2003 in Case T-219/99, *British Airways plc v Commission (British Airways)*, paragraph 250.

21. Exclusivity obligations, because they require the customers to purchase all or significant parts of their demand from a dominant supplier, have by their nature a foreclosing capability. Given Tomra's dominant position on the market and the fact that exclusivity obligations were applied to a not insubstantial part of the total market demand, it was capable of having and in fact had a market distorting foreclosure effect. In this case there are no circumstances that could exceptionally justify exclusivity or similar arrangements. Moreover, Tomra has failed to justify its practices by its cost savings.

22. Discounts granted for individualised quantities that correspond to the entire or almost entire demand, have the same effect as explicit exclusivity clauses, that is to say, they induce the customer to purchase all or almost all its requirements from a dominant supplier. The same applies to fidelity (loyalty) rebates, that is to say, rebates that are conditional on customers purchasing all or most of their requirements from a dominant supplier. It is not decisive for the exclusionary character of agreements or conditions whether the purchase volume commitment is expressed in absolute terms or with reference to a certain percentage thereof. With regard to Tomra's agreements identified in this decision, the stipulated quantity targets constituted individualised commitments that were different for each customer regardless of its size and purchase volume. Furthermore, they corresponded either to the customer's entire requirements or to a large proportion of them, or even exceeded them. Moreover, Tomra's policy to tie customers, in particular key customers, into agreements that aimed at excluding competitors from the market and denying them any chance of growth, is evident from the documents relating to Tomra's strategy, its negotiations and the offers made by it to its clients. Considering the nature of the RVM solutions market and the special characteristics of the product itself, in particular the transparency and rather foreseeable demand of each customer for machines each individual year, Tomra had the necessary market knowledge for a realistic estimate of each individual customer's approximate demand.

23. The rebate schemes were individualised for each customer and the thresholds related to the total requirements of the customer or a large proportion thereof. They were established on the basis of estimated customer requirements and/or purchasing volumes achieved in the past, as is evident from the circumstances. The incentive for buying exclusively or almost exclusively from Tomra is particularly strong where thresholds of the kind described in this section are combined with a system whereby the achievement of the bonus or a more advantageous bonus threshold benefits all purchases made by the customer in the reference period and not exclusively the purchasing volume exceeding the respective threshold. Under a retroactive system, a customer who has started buying from Tomra, which is a very likely scenario given Tomra's strong market position, has a strong incentive to reach the threshold in order to reduce the price of all its purchases from Tomra. This incentive increased the closer the customer came to the threshold in question. The combination of a retroactive rebate system with a threshold or thresholds corresponding to the entire requirements or a large proportion thereof represented a significant incentive for buying all or almost all the equipment needed from Tomra and artificially raised the cost of switching to a different supplier, even for a small number of units. In accordance with the case law of the Court of Justice and the Court of First Instance of the European Communities, the rebate schemes identified have to be qualified as loyalty building and, therefore, as fidelity rebates.

2.1. **Effect on trade**

24. The products supplied by Tomra and its competitors are made and sold in different EEA Contracting Parties. Tomra, as a dominant company, engaged in exclusionary practices in several Member States and in Norway. Furthermore, the abuses aimed at excluding and/or eliminating competitors who were active in different Member States and EFTA States. The practices in question may, therefore, have had an effect on trade between Member States, as required by Article 82 of the Treaty, and within the EEA territory, as required by Article 54 of the EEA Agreement.

2.2. **Repercussions of Tomra practices for competition**

25. Although, as stated by the Court in *Michelin II* and *British Airways*, to establish an abuse under Article 82 it is sufficient to '*show that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect*' [1], the Commission has completed its analysis in this case by considering the likely effects of Tomra's practices on the RVMs market.

26. A dominant supplier may use rebate schemes and quantity discounts for different reasons, and these practices may lead to different — both positive and negative — effects on the market, depending on their characteristics. The main possible negative effect of the rebates applied by the dominant supplier is the foreclosure of the market for the competitors and potential competitors. The same can be applied with regard to the quantity commitments, aimed at meeting the entire or almost entire demand of a customer. Exclusivity has, by its nature, the capability to foreclose, because it requires the customer to purchase all or almost all its requirements from the dominant supplier. With regard to the assessment of the negative effects created by the rebate schemes and the quantity commitments employed by a dominant supplier, it would be necessary to establish whether they have the capability to hinder the degree of competition still existing on the market or the growth of that competition.

[1] *Michelin II*, paragraph 239, *British Airways*, paragraph 250.

27. The main possible positive effect is demand expansion or efficiencies. Given that demand for RVMs is inelastic and that other possible efficiencies do not apply, it is difficult to conceive of any efficiency enhancing arguments that could be advanced in favour of Tomra.

28. Throughout the reference period of the Decision, from 1998 till 2002, Tomra's market share in each of the five national markets considered remained comparatively stable. At the same time, the position of its rivals, remained rather weak and unstable. One successful competitor, the complainant, exited the market in 2003 after managing to acquire an 18 % market share on the German market in 2001. Other rival companies that demonstrated the potential and ability to acquire bigger market shares were eliminated by Tomra by acquisition, such as Halton and Eleiko. In addition to this, Tomra's exclusionary strategy, as it was implemented throughout 1998-2002, had an effect that is demonstrated by the changes in the tied market ([1]) share and the sales of market players. Moreover, some customers started purchasing more of the competing products after the expiry of their exclusionary agreements with Tomra. In addition to the absence of cost efficiencies justifying Tomra's practices, there was no benefit to consumers either. The price of RVMs offered by Tomra did not fall after the sales volume had increased. On the contrary, prices for Tomra's machines stagnated or increased during the period under investigation.

3. FINES

3.1. Gravity

29. Tomra's practices consisted of a system of exclusivity, quantity commitments and loyalty-inducing discounts. This system aimed at eliminating or at the very least preventing the entry and/or the expansion of its competitors. Tomra purposefully employed the practices in question as part of its exclusionary policy. In addition, the assessment of the gravity of Tomra's abuse must take account of its geographic scope, encompassing five EEA Contracting Parties: Austria, Germany, the Netherlands, Norway and Sweden. It is clear that Tomra's practices were in fact implemented and were capable to deter new entry and to prevent expansion of the few, if any, existing competitors.

30. In the overall assessment of gravity of the practices addressed in this decision, account is taken of the fact that the infringement did not always cover the entire period in each of the national markets considered, and that within each national market the intensity of the infringement may have varied over time.

31. With regard to the gravity of the infringement, the Commission comes to the conclusion that it was a serious infringement.

3.2. Duration

32. The Commission bases itself on the five-year period running from 1998 to 2002 for the purposes of establishing the appropriate level of fine. As a result, the starting amount of the fine should be increased by 10 % for each full year of the infringement.

3.3. Aggravating and mitigating factor

33. There are no aggravating or mitigating circumstances.

3.4. Amount of the fine

34. For the above reasons, the amount of the fine to be imposed on Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergutsysteme GmbH, jointly and severally, should be fixed at EUR 24 million.

4. DECISION

35. Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergutsysteme GmbH have infringed Article 82 of the Treaty and Article 54 of the EEA Agreement in the period 1998-2002 by implementing an exclusionary strategy in the national reverse vending machines markets in Austria, Germany, the Netherlands, Norway and Sweden, involving exclusivity agreements, individualised quantity commitments and individualised retroactive rebate schemes, thus foreclosing competition on the markets.

36. For the infringement referred to above, a fine of EUR 24 million is imposed on Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergutsysteme GmbH, jointly and severally.

37. Tomra Systems ASA, Tomra Europe AS, Tomra Systems BV, Tomra Systems GmbH, Tomra Butikksystemer AS, Tomra Systems AB and Tomra Leergutsysteme GmbH shall immediately bring to an end the infringements referred to in Article 1 insofar they have not already done so.

38. They shall refrain from repeating any act or conduct referred to in Article 1 and from any act or conduct having the same or equivalent object or effect.

([1]) In this context, what is meant by the term 'tied market' is the quantity of units purchased by the customers from Tomra under the anticompetitive agreements discussed in the Decision. The contestable part of the volume was not covered by the exclusionary agreements, and therefore was contestable to Tomra's competitors.

Opinion of the Advisory Committee on Mergers given at its meeting of 16 January 2008 regarding a draft decision relating to Case COMP/M.4734 — Ineos/Kerling

Rapporteur: Italy

(2008/C 219/13)

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration with a Community dimension within the meaning of Article 3(1)(b) of the EC Merger Regulation, and that it does constitute a case of cooperation under the EEA Agreement.
2. The Advisory Committee agrees with the Commission's definitions of the relevant product markets as stated in the draft decision.
3. The Advisory Committee agrees with the Commission's definition of the relevant geographic market as stated in the draft decision.
   (a) The Advisory Committee agrees with the Commission's definition that the relevant geographic market for S-PVC is wider than national and does not correspond to UK and the Nordic Region, namely Norway and Sweden.
   (b) The Advisory Committee agrees with the analysis done and the elements considered by the Commission to conclude that the geographic market definition for S-PVC corresponds at least to North-Western Europe.
4. The Advisory Committee agrees with the Commission that the concentration as notified does not raise serious doubts as to its compatibility with the common market.
5. The Advisory Committee agrees with the Commission's analysis that after the merger it is unlikely that the parties would be able to unilaterally exercise market power in the market for S-PVC as above defined.
6. The Advisory Committee agrees with the Commission that the notified merger should be declared compatible with the Common Market and with the functioning of the EEA Agreement in accordance with Article 2(2) and 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

Final report of the Hearing Officer in Case COMP/M.4734 — Ineos/Kerling

(Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2008/C 219/14)

On 19 July 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ('the Merger Regulation') by which the undertaking INEOS Group Limited (United Kingdom, 'UK'), belonging to the INEOS Group (together 'Ineos'), would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Kerling ASA ('Kerling', Norway) belonging to the Norsk Hydro Group by way of purchase of shares.

After examination of the notification, the Commission found that the notified operation fell within the scope of the Merger Regulation and raised serious doubts as to its compatibility with the common market and with the EEA Agreement. Proceedings were initiated pursuant to Article 6(1)(c) of the Merger Regulation on 7 September 2007.

In response to the party's request to access to key documents in the file, the Commission services responded that in their view there were no key documents.

Following an in-depth market investigation, the Commission services concluded that the proposed transaction would not significantly impede effective competition in the common market and was therefore compatible with the common market and the EEA Agreement. Accordingly, no Statement of Objections was sent to the notifying party.

No queries or submissions have been made to me by the parties or any third party. The case does not call for any particular comments as regards the right to be heard.

Brussels, 24 January 2008.

Karen WILLIAMS

Summary of Commission Decision

of 30 January 2008

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M.4734 — Ineos/Kerling)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/C 219/15)

On 30 January 2008, the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ([1]), and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address:

http://europa.eu.int/comm/competition/index_en.html

1. On 19 July 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 by which the undertaking INEOS Group Limited (United Kingdom, 'UK'), belonging to the INEOS Group (together 'Ineos'), acquires within the meaning of Article 3(1)(b) of the Council Regulation the whole of undertaking Kerling ASA ('Kerling', Norway) belonging to the Norsk Hydro Group by way of purchase of shares.

2. Ineos is a leading global manufacturer of petrochemicals, specialty chemicals and oil products. It comprises eighteen businesses and, although it is present in seventeen countries throughout the world, it is mainly active in Europe where it achieves more than two thirds of its turnover.

3. Kerling is a subsidiary of Norsk Hydro ASA and comprises the polymer division of the Norsk Hydro group. It is mainly active in the production, marketing and sale of polyvinyl chloride ('PVC') and caustic soda.

4. The Advisory Committee on Concentrations on 16 January 2008 delivered a favourable opinion on a draft Decision granting clearance submitted to it by the Commission ([2]).

5. The Hearing Officer, in a report dated 24 January 2008, took the view that the right of the parties to be heard had been respected ([3]).

I. THE RELEVANT MARKETS

Relevant Product Markets

6. The Commission's investigation showed that the relevant product markets were the following: commodity S-PVC, liquid caustic soda, S-PVC compounds and S-PVC films.

7. The main product market discussed in the decision is the market for commodity S-PVC. There are two types of PVC depending on the production process used: suspension (or commodity) PVC ('S-PVC') accounting for about 90 % of all the PVC produced in the EEA, and emulsion PVC ('E-PVC') which accounts for the remaining 10 % of the EEA production. The parties' activities overlap only with respect to commodity S-PVC and, following the results of the market investigation, the Commission has concluded that for the purposes of this decision the relevant product market is the one for commodity S-PVC.

8. The parties' activities also overlap on the market for liquid caustic soda. Although the market investigation suggested that solid and liquid caustic soda constitute two separate markets, the precise market definition has been left open.

9. The Commission's in-depth investigation has shown that S-PVC compounds constitute a separate product market from S-PVC given that the two products are not substitutable in the production process used by the vast majority of the compounds customers. However, a further segmentation into different types of compounds (i.e. dry blend and gelled compounds) did not seem necessary.

10. Only Ineos is active on the market for S-PVC films, which is downstream from S-PVC. While it would be possible to sub-segment the S-PVC films market based on the types of different end-uses of rigid PVC films, the precise product market definition has been left open for the purposes of this decision.

Relevant Geographic Markets

11. The key issue of the second phase market investigation was to define the relevant geographic scope for commodity S-PVC, in particular with respect to certain trade areas for which the first phase market investigation had given some

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ C 219, 28.8.2008, p. 16.
([3]) OJ C 219, 28.8.2008, p. 17.

indications pointing towards a national or regional dimension, namely Great Britain, and the Nordic Region comprised of Norway and Sweden.

12. The parties submitted that the geographic scope of the market for S-PVC is EEA-wide given that S-PVC is a commodity product readily and safely transportable, there exists considerable intra-community trade and transport costs are relatively low. During the market investigation, the majority of customers considered the market to be either regional or EEA-wide and in some cases even wider whilst all competitors confirmed that they view the market as being EEA-wide. Moreover, the data collected during the investigation showed that S-PVC, despite transport costs ranging from 5 % to 15 % depending on the distance, is subject to substantial trade flows throughout the EEA, sometimes over very long distances.

13. Regarding the Nordic Region, given the substantial trade flows of S-PVC from and into this region, the fact that Kerling's (the only local producer) sales from its plants in Sweden and Norway are evenly spread throughout the EEA, the fact that customers located in these countries consider the market to be at least Northern or North-Western Europe wide whilst some suggesting that the market may be even EEA-wide, the Commission concluded that the geographical scope of the S-PVC market is wider than national with respect to these two countries.

14. Regarding the United Kingdom, the majority of the UK-located customers consider that suppliers from Continent would not be in a position to provide them with the same degree of reliability of supply as local producers. In order to determine the geographic scope of the S-PVC market, the Commission has assessed British customers' sourcing and switching patterns (demand side) and, from the supply side perspective, analysed the extent to which S-PVC producers located in continental Europe would have the ability (and incentive) to expand their presence in the UK market. To this end, the Commission conducted a detailed qualitative and quantitative analysis and assessed the level and role of imports, transport costs, barriers to expansion and spare capacity in continental Europe. In that respect the Commission found out that:

— the majority of UK customers multi-source and are not completely dependent on local suppliers,

— over the last five years imports made by continental suppliers satisfied from 34 % to 40 % of the UK demand,

— by setting up local storage facilities, continental suppliers can overcome disadvantages caused by distance,

— transport costs do not constitute a barrier to supply the UK,

— there is sufficient spare capacity in the Continent in order to counteract any attempt to price increase by the new entity in the UK,

— during an outage in one of Ineos' UK plants importers were capable to increase supply which indicates that both Ineos and Kerling are constrained by importers.

15. Based on above, the Commission has come to the conclusion that the Nordic Region and the United Kingdom do not present characteristics that should lead the Commission to treat these areas differently from other areas within the EEA. It concluded in particular, that the scope of the geographic market for commodity S-PVC is wider than the UK and wider than the Nordic countries (Norway and Sweden) and is at least North-Western Europe.

16. The notifying party submitted that the geographic scope for the liquid caustic soda market is at least EEA-wide given the significant inter-Community trade and even inter-continental trade. However, many customers suggested that the market may be regional due to relatively high transportation costs or even national in the case of the UK. The exact scope of the geographic market for caustic soda has been left open.

17. The Commission's market investigation indicated that given the low transport costs the market for S-PVC compounds is at least EEA-wide. The Commission has concluded that the scope of the geographic market is wider than national and that it is not necessary to take a final decision on the exact scope of the geographic market for S-PVC compounds.

18. The market investigation confirmed that the geographic scope for the rigid PVC films market is at least EEA wide and, for certain end-products, even global, as it was concluded by the Commission with regard to flexible packaging. However, the exact scope of the geographic market for PVC films has been left open.

II. **ASSESSMENT**

19. On the market for commodity S-PVC, the parties combined market share in the EEA will amount to [20-30] %. On a North-Western Europe basis parties' combined market share would be below [30-40] %.

20. Given the relatively low parties' combined market share, the current spare production capacity and the fact that customers multi-source and conclude short-term contracts (one year on average) it is unlikely that Ineos would be able to unilaterally exercise market power on an EEA-wide or even a North-Western European market.

21. The possibility that this transaction could facilitate a coordinated conduct is also remote given the number of players (six significant competitors) that will remain in the market post-merger. Moreover, most customers negotiate or seek price offers from many competing suppliers on a monthly basis, which makes it all the more difficult to adhere and stick to a common pattern. In light of the above, the Commission concluded that the proposed transaction is not likely to give rise to any coordinated anti-competitive concerns.

22. The parties' combined market share in liquid caustic soda would be approximately [10-20] % on an EEA-wide basis which is the most likely geographic market. Although the parties' combined shares are higher on some national markets, (ranging from [40-50] %, [40-50] % and [50-60] % in Norway, Sweden and Denmark respectively and up to [50-60] % in the UK), given the relatively small overlaps and number of significant competitors present in the market, it is unlikely that the present transaction would raise competitive concerns under any alternative market definition.

23. The parties estimate their combined market share on the overall S-PVC compounds market on an EEA-wide basis to be less than [20-30] %. The market shares would be [10-20] % and [20-30] % on a Western European and a North-Western European basis respectively.

24. With respect to possible vertical issues, it is unlikely that Ineos will be in a position to curtail supplies of S-PVC to non-integrated compounders as it will not enjoy market power on the S-PVC market where it will continue to be constrained post-merger by a number of competitors active throughout the EEA.

25. In light of the above and in view of the limited horizontal overlap and the absence of substantial vertical issues, it is unlikely that the present transaction will have anticompetitive effects on the S-PVC compounds market.

26. On a broad product market for rigid films (including *inter alia* PVC, PET, polypropylene and polyethylene films), Ineos enjoys a market share of [5-10] % in the EEA. Should narrower segments for rigid S-PVC films be considered, Ineos market shares are below [20-30] % in all segments except for the pharma-mono and pharma-duplex films segments where Ineos' market shares amount to [30-40] % and [30-40] % respectively.

27. Given that the Commission has concluded that the proposed concentration will not impede effective competition in the provision of S-PVC, it follows that Ineos' competitors in the downstream market of rigid PVC films would continue to have the ability to source S-PVC at competitive conditions and remain effective competitors in the provision of rigid film products. Accordingly, it is unlikely that the present transaction would raise competitive concerns on the market for S-PVC films.

III. **CONCLUSION**

28. For the reasons set out above, the Commission concluded that the proposed concentration does not significantly impede effective competition in the common market or a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. The concentration is therefore to be declared compatible with the common market and the EEA Agreement, in accordance with Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.

NOTICES FROM MEMBER STATES

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the EC Treaty to national regional investment aid

(Text with EEA relevance)

(2008/C 219/16)

Aid No	XR 33/07
Member State	Austria
Region	Alle Regionen gemäß genehmigter Fördergebietskarte für Regionalbeihilfen in Österreich 2007-2013 (N 492/06)
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Gewährung von Beihilfen (Förderungen) gemäß § 51a Abs. 3-5 AMFG (Arbeitsmarktförderungsgesetz) (Gewährung von Zuschüssen und Zinsenzuschüssen sowie von Darlehen für Investitionen von Großunternehmen unter Wahrung der beihilfenrechtlich genehmigten Förderobergrenzen)
Legal basis	Richtlinien für die Gewährung von Beihilfen (Förderungen) gemäß § 51a Abs. 3-5 AMFG (Arbeitsmarktförderungsgesetz)
Type of measure	Aid scheme
Annual budget	EUR 60 million
Maximum aid intensity	30 %
	In conformity with Article 4 of the Regulation
Date of implementation	1.6.2007
Duration	31.12.2013
Economic sectors	Limited to specific sectors
	NACE: D, 55, K
Name and address of the granting authority	Bundesministerium für Wirtschaft und Arbeit Stubenring 1 A-1010 Wien Tel. (43) 711 00 63 90
Internet address of the publication of the aid scheme	www.awsg.at/portal/media/2505.pdf
Other information	—

Aid No	XR 41/07
Member State	Austria
Region	Niederösterreich
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Förderungsaktion der Niederösterreichischen Grenzlandförderungsgesellschaft mbH
Legal basis	Richtlinien zur Förderungsaktion der Niederösterreichischen Grenzlandförderungsgesellschaft mbH
Type of measure	Aid scheme
Annual budget	EUR 0,32 million
Maximum aid intensity	15 %
	In conformity with Article 4 of the Regulation
Date of implementation	21.3.2007
Duration	31.12.2013
Economic sectors	All sectors eligible for regional investment aid
	—
Name and address of the granting authority	Niederösterreichische Grenzlandförderungsgesellschaft mbH A-1011 Wien, Lugeck 1 Tel. (43) 513 78 35 Fax (43) 513 78 40 NOeG@ecoplus.at
Internet address of the publication of the aid scheme	http://noeg.grenzland.at/
Other information	—

Aid No	XR 13/08
Member State	Czech Republic
Region	87(3)(a)
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Operační program Podnikání a inovace 2007–2013 Podprogram Školící střediska (výzva I)
Legal basis	Zákon č. 47/2002 Sb., o podpoře malého a středního podnikání Zákon č. 218/2000 Sb., o rozpočtových pravidlech a o změně některých souvisejících zákonů
Type of measure	Aid scheme
Annual budget	CZK 133 million
Maximum aid intensity	40 %
	In conformity with Article 4 of the Regulation

Date of implementation	3.3.2008
Duration	30.6.2010
Economic sectors	All sectors eligible for regional investment aid
Name and address of the granting authority	Ministerstvo průmyslu a obchodu České republiky Na Františku 32 CZ-110 15 Praha 1
Internet address of the publication of the aid scheme	www.mpo.cz
Other information	—

Aid No	XR 14/08
Member State	Czech Republic
Region	87(3)(a)
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Operační program Podnikání a inovace 2007–2013 Podprogram ICT a strategické služby (výzva I)
Legal basis	Zákon č. 47/2002 Sb., o podpoře malého a středního podnikání Zákon č. 218/2000 Sb., o rozpočtových pravidlech a o změně některých souvisejících zákonů
Type of measure	Aid scheme
Annual budget	CZK 200 million
Maximum aid intensity	40 %
	In conformity with Article 4 of the Regulation
Date of implementation	1.3.2008
Duration	30.6.2009
Economic sectors	All sectors eligible for regional investment aid
Name and address of the granting authority	Ministerstvo průmyslu a obchodu České republiky Na Františku 32 CZ-110 15 Praha 1
Internet address of the publication of the aid scheme	www.mpo.cz
Other information	—

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises

(Text with EEA relevance)

(2008/C 219/17)

Aid No	XS 134/08
Member State	Poland
Region	Podkarpackie
Title of aid scheme or name of company receiving individual aid	Przedsiębiorstwo produkcyjno usługowo handlowe Akpil Kazimierz Anioł
Legal basis	Ustawa z dnia 8 października 2004 r. o zasadach finansowania nauki art. 10, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego (Dz.U. 221 z 14.11.2007 r.), § 3 ust. 1, umowa nr II-192/P-224/2008
Type of measure	*Ad hoc*
Budget	Overall budget: EUR 115 684
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation
Date of implementation	2.4.2008
Duration	2.4.2008
Objective	Small and medium-sized enterprises
Economic sectors	All sectors eligible for aid to SMEs
Name and address of the granting authority	Ministerstwo Nauki i Szkolnictwa Wyższego Ul. Wspólna 1/3 PL-00-529 Warszawa

Aid No	XS 135/08
Member State	Poland
Region	Śląskie
Title of aid scheme or name of company receiving individual aid	Jumarpol Przedsiębiorstwo Prywatne S.C. Piotr Traczewski, Marek Kasperek
Legal basis	Ustawa z dnia 8 października 2004 r. o zasadach finansowania nauki art. 10, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego (Dz.U. 221 z 14.11.2007 r.), § 3 ust. 1, umowa nr II-193/P-225/2008
Type of measure	*Ad hoc*
Budget	Overall budget: EUR 27 883
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation
Date of implementation	2.4.2008
Duration	2.4.2008
Objective	Small and medium-sized enterprises
Economic sectors	All sectors eligible for aid to SMEs
Name and address of the granting authority	Ministerstwo Nauki i Szkolnictwa Wyższego Ul. Wspólna 1/3 PL-00-529 Warszawa

Aid No	XS 137/08
Member State	Poland
Region	Wielkopolskie
Title of aid scheme or name of company receiving individual aid	Mechanika Maszyn i Urządzeń Rolniczych Dozamech Donat Zawidzki
Legal basis	Ustawa z dnia 8 października 2004 r. o zasadach finansowania nauki art. 10, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego (Dz.U. 221 z 14.11.2007 r.), § 3 ust. 1, umowa nr II-198/P-228/2008
Type of measure	*Ad hoc*
Budget	Overall budget: EUR 112 060
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation
Date of implementation	7.5.2008
Duration	7.5.2008
Objective	Small and medium-sized enterprises
Economic sectors	All sectors eligible for aid to SMEs
Name and address of the granting authority	Ministerstwo Nauki i Szkolnictwa Wyższego Ul. Wspólna 1/3 PL-00-529 Warszawa

Aid No	XS 138/08
Member State	Poland
Region	Dolnoslaskie
Title of aid scheme or name of company receiving individual aid	Metalerg J.M.J Cieślak S.J.
Legal basis	Ustawa z dnia 8 października 2004 r. o zasadach finansowania nauki art. 10, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego (Dz.U. 221 z 14.11.2007 r.), § 3 ust. 1, umowa nr II-195/P-213/2008
Type of measure	*Ad hoc*
Budget	Overall budget: EUR 17 292
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation
Date of implementation	15.4.2008
Duration	15.4.2008
Objective	Small and medium-sized enterprises
Economic sectors	All sectors eligible for aid to SMEs
Name and address of the granting authority	Ministerstwo Nauki i Szkolnictwa Wyższego Ul. Wspólna 1/3 PL-00-529 Warszawa

Aid No	XS 141/08
Member State	Poland
Region	Podkarpackie
Title of aid scheme or name of company receiving individual aid	Metal-Odlew Lesław Kwiatkowski, Agnieszka Witkowska, Sp. Jawna
Legal basis	Ustawa z dnia 8 października 2004 r. o zasadach finansowania nauki art. 10, Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego (Dz.U. 221 z 14.11.2007 r.), § 3 ust. 1, umowa nr II-197/P-221/2008
Type of measure	*Ad hoc*
Budget	Overall budget: EUR 49 739
Maximum aid intensity	In conformity with Articles 4(2)-(6) and 5 of the Regulation
Date of implementation	22.4.2008
Duration	22.4.2008
Objective	Small and medium-sized enterprises
Economic sectors	All sectors eligible for aid to SMEs
Name and address of the granting authority	Ministerstwo Nauki i Szkolnictwa Wyższego Ul. Wspólna 1/3 PL-00-529 Warszawa

Information communicated by Member States regarding State aid granted under Commission Regulation (EC) No 1628/2006 on the application of Articles 87 and 88 of the EC Treaty to national regional investment aid

(Text with EEA relevance)

(2008/C 219/18)

Aid No	XR 131/07
Member State	Hungary
Region	—
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Az Új Magyarország Vidékfejlesztési Program keretében nyújtható regionális beruházási támogatásokról szóló támogatási program
Legal basis	77/2007. (VII. 30.) FVM rendelet
Type of measure	Aid scheme
Annual budget	HUF 17 500 million
Maximum aid intensity	50 %
	In conformity with Article 4 of the Regulation
Date of implementation	15.10.2007
Duration	31.12.2012
Economic sectors	All sectors eligible for regional investment aid
Name and address of the granting authority	Földművelésügyi és Vidékfejlesztési Minisztérium Kossuth tér 11. H-1055 Budapest
Internet address of the publication of the aid scheme	www.fvm.hu
Other information	—

Aid No	XR 161/07
Member State	Hungary
Region	—
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Regionális beruházási támogatás a Környezet és Energia Operatív Programból
Legal basis	23/2007. (VIII. 29.) MeHVM rendelet a Környezet és Energia Operatív Program prioritásaira rendelt források felhasználásának részletes szabályairól és egyes támogatási jogcímeiről
Type of measure	Aid scheme
Annual budget	HUF 11 010 million
Maximum aid intensity	50 %
	In conformity with Article 4 of the Regulation
Date of implementation	24.10.2007

Duration	31.12.2013
Economic sectors	All sectors eligible for regional investment aid
Name and address of the granting authority	Környezetvédelmi Programok Irányító Hatósága Pozsonyi út 56. H-1133 Budapest
Internet address of the publication of the aid scheme	www.nfu.hu/palyazatok
Other information	—

Aid No	XR 197/07
Member State	Hungary
Region	—
Title of aid scheme or the name of the undertaking receiving *ad hoc* aid supplement	Regionális beruházási támogatás az EGT és Norvég Finanszírozási Mechanizmusból
Legal basis	242/2006 Korm. rendelet 92/A-92/F. § 201/2005 Korm. rendelet
Type of measure	Aid scheme
Annual budget	HUF 1 006,2 million
Maximum aid intensity	50 %
	In conformity with Article 4 of the Regulation
Date of implementation	15.10.2007
Duration	30.4.2011
Economic sectors	All sectors eligible for regional investment aid
Name and address of the granting authority	Nemzeti Fejlesztési Ügynökség Pozsonyi út 56. H-1133 Budapest
Internet address of the publication of the aid scheme	www.nfu.gov.hu www.eeagrants.hu
Other information	—

Commission notice pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92

Modification by Italy of the public service obligation in respect of the scheduled air services on the following routes: Trapani-Rome and *vice versa*, Trapani-Cagliari and *vice versa*, Trapani-Bari and *vice versa*, and Trapani-Milan and *vice versa*

(2008/C 219/19)

Pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92, the Italian Government has decided to amend the public service obligations in respect of scheduled air services on the routes Trapani-Rome and *vice versa*, Trapani-Cagliari and *vice versa*, Trapani-Bari and *vice versa*, and Trapani-Milan and *vice versa*, as published in the OJ C 150, 28.6.2006, OJ C 141, 26.6.2007 and OJ C 121, 17.5.2008.

The public service obligations in respect of the route Trapani-Cagliari and *vice versa* are repealed, and point 1 of the notice published in the OJ C 150, 28.6.2006 is amended as follows:

Routes concerned:

Trapani-Rome and *vice versa*,

Trapani-Bari and *vice versa*,

Trapani-Rome and *vice versa*.

For Rome and Milan, the airports of Rome Fiumicino and Milano Linate are meant respectively.

V

(Announcements)

ADMINISTRATIVE PROCEDURES

COMMISSION

Operation of scheduled air services — Invitation to tender issued by the Åland Provincial Government pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92 for the operation of scheduled air services between Mariehamn on Åland and Stockholm/Arlanda in Sweden

(Text with EEA relevance)

(2008/C 219/20)

1. **Introduction**

On 26 June 2008, the Åland Provincial Government decided to supplement the current public service obligation for scheduled air services on the MHQ-ARN route for the period 1 March 2009-29 February 2012 in accordance with Article 4(1)(a) of Council Regulation (EEC) No 2408/92.

The details of this public service obligation were published in the *Official Journal of the European Union* C 218, 27.8.2008, p. 17.

If no air carrier has commenced or is about to commence scheduled air services in accordance with the public service obligation imposed and without requesting financial compensation, the Åland Provincial Government will limit access to this route to only one air carrier for three years. The right to operate air services on the route in question will then be offered by invitation to tender in accordance with the procedure laid down in Article 4(1)(d) of the above Regulation. On 26 June 2008, the Åland Provincial Government decided to publish an invitation to tender.

2. **Objective of the tender procedure**

To provide scheduled air services from 2 March 2009 to 29 February 2012 on the above route in accordance with the public service obligation published in the *Official Journal of the European Union*, C 218, 27.8.2008, p. 17.

3. **Participation in the tender procedure**

Participation is open to all air carriers holding a valid operating licence issued by a Member State under Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

4. **Basis for the tender procedure**

This tender procedure is subject to the provisions of Article 4(1)(d)-(i) of Regulation (EEC) No 2408/92. The awarding authority has the right to reject all tenders if the price is too high or if the circumstances or conditions for operating the air services have changed radically so that the planned service is unsuitable or cannot be operated in the way specified in the invitation to tender.

Prior to conclusion of the contract, the Åland Provincial Government may postpone the date on which the services are due to commence. In this case the end date shall be postponed accordingly.

5. **Tender dossier**

The complete tender dossier comprising the invitation to tender, the conditions relating to the tender procedure, the contract terms, a description of the public service obligation and destination details as well as the tender form can be obtained from:

Åland Provincial Government, PB 1060, AX-22111, MARIEHAMN, Åland.

The documents can also be requested by e-mail at registrator@ls.aland.fi, telephone (358-18) 250 00 or fax (358-18) 237 90. The contact person is Chief Engineer Niklas Karlman, e-mail niklas.karlman@ls.aland.fi, telephone (358-18) 251 30.

6. **Financial compensation**

The tender must clearly indicate the amount in euro which is requested to operate the above service during the period in question. The amount of compensation indicated must be based on an assessment of the actual costs and revenue relating to the activity and on the minimum requirements which the public service obligation involves. Compensation will be granted only for the air-transport-related costs incurred at Arlanda and Mariehamn airports which are directly attributable to the service in question. Compensation will not be paid for costs, such as take-off and landing fees, which are attributable to other routes or airports.

7. **Ticket prices**

The tender must specify the prices and types of tickets and the conditions applicable. Ticket prices must be in keeping with the public service obligation imposed on the route.

8. **Selection method**

The air carrier will be selected from among the tenders which comply with the invitation to tender and which meet the requirements laid down in the tender documents. The criteria set out in Article 4(1)(f) of Regulation (EEC) No 2408/92 will be taken into account when making the selection.

9. **Period of validity of the contract**

The contract will be in force from the date on which it is signed by both parties until the delivery by the air carrier, in accordance with the tender documents, of a final report to the Provincial Government after the last month of operation, which is February 2012, unless the start and end date have been postponed.

10. **Contract amendment and termination**

The contract may be amended only if the changes are in line with the public service obligation published for the route in question. Any changes to the contract must be made in writing. Either party may terminate the contract, subject to six months' notice. This is without prejudice to the right to terminate the contract on specific grounds.

11. **Penalties for failure to fulfil the contract**

The air carrier is responsible for performance of its contractual obligations. In the event of failure to perform, or incomplete performance of, the contract by the air carrier for reasons attributable to it, the awarding authority is entitled to reduce the compensation payment proportionately. The awarding authority also reserves the right to claim damages.

12. **Final date for submission of tenders**

Tenders must be submitted no later than **31 calendar days** after the publication of this notice in the *Official Journal of the European Union*.

13. **Submission of tenders**

Tenders must be delivered to the registry of the Åland Provincial Government during the office hours stated below no later than the date stipulated in point 12. The tender must be submitted in a sealed envelope marked 'Anbud flygtrafik MHQ-ARN' (Tender for route MHQ-ARN). It may be sent by post or messenger or delivered in person to the Åland Provincial Government at the address given in point 5.

The office address of the Provincial Government is Självstyrelsegården, Strandgatan in Mariehamn, Åland. The opening hours of the Provincial Government are 8.00-16.15 from Monday to Friday.

The tender and all documentation must be written in Swedish or English and submitted in the original with two complete sets of copies.

The tender will be valid up to and including 30 January 2009.

Tenders sent by fax or e-mail will not be accepted.

14. **Validity of invitations to tender**

In accordance with Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of the tender procedure is subject to the condition that no air carrier has commenced or is about to commence scheduled air services on the route in question.

Air carriers intending to operate the route in question as of 2 March 2009 in accordance with the public service obligation without enjoying exclusive rights, without receiving financial compensation and with a guarantee that the route will operate for at least six months must apply to the Finnish Civil Aviation Authority by no later than 2 February 2009. The Åland Provincial Government will be responsible for examining the application.

If such an application is made and the Provincial Government considers that the air carrier's approach meets the requirements of the public service obligation, this tender procedure will not apply.

If this is not the case, the Provincial Government will limit access to the route to only one air carrier.

The contract award is subject to the necessary funds being granted by the Åland Parliament.

P-Lisbon: Operation of scheduled air services

Invitation to tender issued by Portugal under Article 4(1)(d) of Council Regulation (EEC) No 2408/92 in the context of the international public tender in respect of the operation of scheduled air services for the route Lisbon-Vila Real-Bragança-Vila Real-Lisbon

(Text with EEA relevance)

(2008/C 219/21)

1. **Introduction:** Pursuant to Article 4(1)(a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, Portugal has decided to amend the public service obligation imposed in respect of scheduled air services operated on the route Lisbon-Vila Real-Bragança-Vila Real-Lisbon.

   Consequently, an invitation to tender in the context of the international open tender in respect of the operation of scheduled air services on the route Lisbon-Vila Real-Bragança-Vila Real-Lisbon was published in *Official Journal of the European Union* C 143 of 10 June 2008.

   Since, within the period allowed for the submission of the tenders referred to in the previous paragraph, no proposal was submitted by any air carrier, the international open tender is considered to have received no response.

   However, given the need to ensure the continuity of scheduled air services for the above-mentioned route and the public interest involved in operating the service covered by the invitation to tender, a new international public tender was launched for the operation of scheduled air services on the route Lisbon-Vila Real-Bragança-Vila Real-Lisbon, so that any potential tenderers who had not been aware of the previous tender in time may now submit their proposals.

   The Portuguese Government therefore invites, by means of this notice, air carriers to submit proposals for the operation of scheduled air services on the route Lisbon-Vila Real-Bragança-Vila Real-Lisbon under the terms established in the following paragraphs.

   If on 15 December 2008 no air carrier is in a position to begin operating scheduled air services on the above-mentioned route in accordance with the public service obligation imposed and without requesting financial compensation, one air carrier will be selected by public tender, in accordance with the procedure provided for in Article 4(1)(d) of the above-mentioned Regulation, which will be awarded the right to operate these services.

2. **Object of the invitation to tender:** Provision of scheduled air services on the above route from 12 January 2009 in accordance with the public service obligation as published in the *Official Journal of the European Union* C 143 of 10 June 2008.

3. **Participation in the tender procedure:** All air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers, and an appropriate air carrier's certificate may operate these services.

4. **Tender procedure:** This invitation to tender is subject to the provisions of Article 4(1)(d), (e), (f), (g), (h) and (i) of Regulation (EEC) No 2408/92.

5. **Tender dossier:** The complete tender dossier, comprising the specific rules governing the invitation to tender, may be obtained at the price of EUR 100 from: Instituto Nacional da Aviação Civil I.P., Rua B, Edifícios 4, 5, e 6 — Aeroporto da Portela 4 — P-1749-034 Lisbon.

6. **Financial compensation:** Tenders submitted must explicitly indicate the amount required by way of financial compensation for operating the service for three years from the scheduled starting date (with an annual breakdown). If the tenders include the operation of flights at weekends, these should not entail any increase in the financial contribution to be borne by the Member State. The financial impact resulting from the operation of flights at weekends (not to be borne by the Member State) will have to be duly explained and justified in the proposal of the tenderer. The exact amount of compensation finally granted will be determined annually *ex post*, on the basis of the proven costs and revenue actually generated by the service, up to the amount stated in the tender.

7. **Fares:** Tenderers' bids must indicate the planned fares, which must be in accordance with the public service obligations published in the *Official Journal of the European Union* C 143 of 10 June 2008.

8. **Duration, amendment and termination of contract:** The contract will enter into force on 12 January 2009 and end after three years. The amount of the financial compensation may be revised in the event of unforeseen changes in operating conditions.

9. **Penalties:** Should the carrier be unable to operate the service owing to *force majeure*, the amount of the financial compensation may be reduced in proportion to the flights not operated. If the carrier fails to operate the service for reasons other than *force majeure* or fails to fulfil the public service obligation, the Portuguese authorities may:

   — reduce the amount of the financial compensation in proportion to the flights not operated,

   — initiate legal proceedings under which fines and additional penalties provided for in the law might be applied,

   — apply contractual penalties,

   — terminate the contract, in compliance with Portuguese law, without prejudice to the situations provided for in the contract in this respect,

   — invoke the grounds for revocation provided for in Portuguese law and in the licensing contract.

10. **Submission of tenders:**

   1. Tenders must be submitted by 17.00 hours on the thirtieth day following publication of this invitation to tender in the *Official Journal of the European Union*.

   2. Tenders and any accompanying documents may be delivered by hand — against receipt — to the headquarters of the Instituto Nacional de Aviação Civil I.P., Rua B, Edifícios 4, 5, e 6, Aeroporto da Portela 4 — P-1749-034 Lisbon, between 9.00 and 17.00 hours, or sent by registered letter provided these are delivered by the date and time laid down in paragraph 1 above. The tenderer shall bear sole responsibility for late delivery.

11. **Validity of the invitation to tender:** In accordance with the first sentence of Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier eligible to operate the service in question submits by 2 December 2008 an application to operate the routes in question from 14 August 2007, in accordance with the public service obligation imposed, without receiving any financial compensation.

    If by 15 December 2008 INAC, I.P. establishes that one or more carriers have are able to operate the route, in accordance with the public service obligations imposed, this invitation, as well as any tender submitted in its framework, will be of no effect.

Operation of scheduled air services — Invitation to tender issued by the United Kingdom under Article 4(1)(d) Council Regulation (EEC) No 2408/92 in respect of the operation of scheduled air services between Stornoway-Benbecula and Benbecula-Barra (Scotland)

(Text with EEA relevance)

(2008/C 219/22)

1. **Introduction**

In pursuance of Article 4(1)(a) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, the United Kingdom has imposed public service obligations (PSOs) in respect of scheduled air services operated between Stornoway-Benbecula and Benbecula-Barra. The standards required by these PSOs were published for **Stornoway-Benbecula** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008; and were published for **Benbecula-Barra** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 295, 5.12.2003, OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008.

If, by 1 March 2009, no air carrier(s) has (have) commenced or is (are) about to commence scheduled air services between Stornoway-Benbecula and Benbecula-Barra in accordance with the PSOs imposed and without requesting compensation, the United Kingdom has decided, in accordance with the procedure laid down in Article 4(1)(d) of the above-mentioned Regulation, to continue to limit access to each of these routes to a single air carrier (although for the avoidance of doubt one single carrier may provide services for both of these routes) and to offer the right to operate such services from 1 April 2009 by public tender.

2. **Object of Invitation to Tender**

Operation from 1 April 2009 of scheduled air services between Stornoway-Benbecula and Benbecula-Barra in accordance with the PSOs imposed on these routes and published for **Stornoway-Benbecula** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008; and published for **Benbecula-Barra** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 295, 5.12.2003, OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008.

3. **Participation**

Participation is open to all air carriers holding a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 on 23 July 1992 on licensing of air carriers. The respective services will operate under the Civil Aviation Authority (CAA) regulatory regime.

4. **Tender Procedure**

This invitation to tender is subject to the provisions of Article 4(1)(d), (e), (f), (g), (h) and (i) of Regulation (EEC) No 2408/92.

5. **Tender Dossier/Qualification, etc.**

The complete tender documentation, including forms of tender, specifications, conditions of contracts/schedules to the conditions of contracts, as well as the texts of the original PSOs published for **Stornoway-Benbecula** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008; and published for **Benbecula-Barra** in the OJ C 53, 4.3.1995, as modified in the OJ C 143, 8.5.1998, OJ C 154, 29.5.2001 and OJ C 310, 13.12.2002, and as further modified in the OJ C 295, 5.12.2003, OJ C 285, 17.11.2005 and OJ C 218, 27.8.2008, may be obtained free of charge from the Awarding Authority as follows:

Comhairle nan Eilean Siar
Council Offices
Sandwick Road, Stornoway
Isle of Lewis, HS1 2BW
Scotland
United Kingdom
Tel. (44) 18 51 70 94 03
Fax (44) 18 51 70 94 82
(Contact: Murdo J Gray, Director of Technical Services)
E-mail: mgray@cne-siar.gov.uk

Airlines will be required to include in their tender documents, evidence of their financial standing (an annual report and audited accounts for the past 3 years, if these are available, must be provided and must include turnover and pre-tax profit for the past 3 years), previous experience and technical capability to provide the services described. The Awarding Authority reserves the right to solicit further information about any applicant's financial and technical resources and abilities.

The right to operate the Stornoway-Benbecula and Benbecula-Barra services is being offered on the basis that they may be combined together into one contract, or tenders may be made to operate either one of the services or both services.

Accordingly, the Awarding Authority reserves the right to exercise discretion in accepting bids which are to provide one service only or both services, and tenderers should provide separate costings for each bid; however tenderers should note that the Awarding Authority may also accept single bids for the provision of both services, and should provide costings for such bids. Bids whether separate or combined will be evaluated according to which bid(s) is (are) the most economically advantageous to secure the operation of both services for the duration of their respective specified tender periods. In addition to all applicants being able to demonstrate that specificed aircraft can operate safely in and out of the relevant airports, tenderers must also have, when the tender is submitted, appropriate approval from the relevant regulatory authority for the operation of all aspects of the 2 routes. Tenders should be priced in Sterling and all supporting documents must be in English. The contract(s) shall be considered as a contract(s) made under Scottish Law and subject to the exclusive jurisdiction of the Scottish courts.

6. **Financial Compensation**

The tenders submitted should indicate the amount required by way of grant for operating the service(s) for the period specified in 7 below from the scheduled starting date to 31 March 2012 (with an analysis for each year). The grant should be calculated in accordance with the specifications. The maximum limit finally granted may be revised only in the event of an unforeseen change in the operating conditions.

The contract(s) will be awarded by *Comhairle nan Eilean Siar*. All payments under the contract(s) will be in Sterling.

7. **Period of validity, amendment and termination of the contract(s)**

A 3-year contract commencing 1 April 2009 will terminate on 31 March 2012 for the Stornoway-Benbecula service and a 3-year contract commencing 1 April 2009 will terminate on 31 March 2012 for the Benbecula-Barra service. A combined contract for the provision of air services between Stornoway-Benbecula and Benbecula-Barra would commence on 1 April 2009 and in respect of rights and obligations pertaining to the provision of these air services such rights and obligations contained therein would cease on 31 March 2012. A new Regulation of the European Parliament and of the Council on common rules for the operation of air transport services in the Community is expected to repeal and recast Council Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92. The period of this contract will be extended to 31 March 2013 if that Regulation, if it is adopted and in force before 1 April 2009, so permits. Any amendment or termination of the contract(s) will be in accordance with the conditions of the contract(s). Variations in the services will be permitted only with the agreement of the Awarding Authority.

8. **Penalties in the event of the carrier failing to comply with the contract(s)**

In the event of the carrier failing to operate any flight for any reason then, subject as aftermentioned, *Comhairle nan Eilean Siar* may reduce the grant(s) on a pro rata basis for each occasion on which a flight is not operated provided that *Comhairle nan Eilean Siar* shall not make any such reduction in the grant(s) where the failure to operate the flight(s) is/are as a consequence of any of the following, and the appropriate occurrence has not arisen as a consequence of the acts or omissions of the carrier:

— weather/tidal conditions,

— closure of the airports,

— security reasons,

— strikes,

— reasons of safety.

An explanation from the carrier(s) for such non-operation is also required in accordance with the conditions of the contract(s).

9. **Deadline for submission of bids**

1 month after the date of publication of this notice.

10. **Application procedure**

Tenders must be sent to the address at 5 above addressed to the Chief Executive. Persons admitted to open tenders are designated staff from Technical Services and the Chief Executive's Departments of *Comhairle nan Eilean Siar*.

11. **Validity of invitation to tender**

In accordance with Article 4(1)(d) of Regulation (EEC) No 2408/92, the validity of this invitation to tender is subject to the condition that no Community air carrier presents, by 1 March 2009, a programme for operating one or both of the routes in question from 1 April 2009 or before that date, in accordance with the PSOs imposed, as amended, without receiving any subsidy.

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

COMMISSION

Prior notification of a concentration

(Case COMP/M.5303 — Arques/SHC)

(Text with EEA relevance)

(2008/C 219/23)

1. On 21 August 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the undertaking Arques Industries AG ('Arques', Germany) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking SHC GmbH & Co. KG ('SHC', Germany), which is currently controlled by the undertaking Siemens AG ('Siemens', Germany), by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Arques and its affiliated companies: restructuring of companies; wholesale and resale of information technology products, telecommunication products and home-media products, assembling of information technology products,

— for SHC: development, manufacturing and distribution of landline and Voice over IP-phones, broad-band devices (primarily routers and gateways), home-media products (set-top boxes).

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of Regulation (EC) No 139/2004. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax ((32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.5303 — Arques/SHC, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
B-1049 Bruxelles/Brussel

([1]) OJ L 24, 29.1.2004, p. 1.