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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 361/2006
of 1 March 2006
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 1 March 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

<i>(EUR/100 kg)</i>		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	86,5
	204	42,4
	212	139,7
	624	92,6
	999	90,3
0707 00 05	052	122,1
	068	138,2
	204	68,2
	628	155,5
	999	121,0
0709 10 00	220	57,6
	999	57,6
0709 90 70	052	132,8
	204	57,4
	999	95,1
0805 10 20	052	56,9
	204	44,8
	212	45,1
	220	39,4
	400	61,8
	624	58,4
	999	51,1
0805 50 10	052	49,2
	624	67,2
	999	58,2
0808 10 80	388	115,2
	400	134,0
	404	105,3
	528	89,4
	720	89,3
	999	106,6
0808 20 50	220	60,6
	388	76,0
	400	77,1
	512	65,7
	528	72,5
	720	45,0
	999	66,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 362/2006**of 1 March 2006****opening a standing invitation to tender for the export of barley held by the United Kingdom intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 ⁽²⁾ lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Commission Regulation (EEC) No 3002/92 ⁽³⁾ lays down common detailed rules for verifying the use and/or destination of products from intervention.

(3) Given the current market situation, a standing invitation to tender should be opened for the export of 29 361 tonnes of barley held by the United Kingdom intervention agency.

(4) Special procedures must be laid down to ensure that the operations and their monitoring are properly effected. To that end, securities should be lodged to ensure that the goals of the operations are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(5) To forestall reimportation, exports under this invitation to tender should be limited to certain third countries.

(6) With a view to modernising the management of the system, provision should be made for the electronic transmission of the information required by the Commission.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The United Kingdom intervention agency shall issue a standing invitation to tender for the export of barley held by it in accordance with Regulation (EEC) No 2131/93, save as otherwise provided for in this Regulation.

Article 2

The invitation to tender shall cover a maximum of 29 361 tonnes of barley for export to third countries with the exception of Albania, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the former Yugoslav Republic of Macedonia, Liechtenstein, Mexico, Romania, Serbia and Montenegro ⁽⁴⁾, Switzerland and the United States of America.

Article 3

1. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

2. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

3. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, with no monthly increase.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender need not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 ⁽⁵⁾.

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 749/2005 (OJ L 126, 19.5.2005, p. 10).

⁽³⁾ OJ L 301, 17.10.1992, p. 17. Regulation as last amended by Regulation (EC) No 770/96 (OJ L 104, 27.4.1996, p. 13).

⁽⁴⁾ Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

⁽⁵⁾ OJ L 152, 24.6.2000, p. 1.

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time-limit for submission of tenders under the first partial invitation to tender shall be 09.00 (Brussels time) on 9 March 2006.

The time-limit for submitting tenders under subsequent partial invitations to tender shall be 09.00 (Brussels time) each Thursday thereafter, with the exception of 13 April 2006 and 25 May 2006, there being no invitation to tender in the weeks concerned.

The closing date for the submission of tenders for the last partial tendering procedure shall be 22 June 2006 at 09.00 (Brussels time).

2. Tenders must be lodged with the United Kingdom intervention agency:

Rural Payment Agency,
Lancaster House,
Hampshire Court,
Newcastle upon Tyne,
NE4 7YH.
Tel. 0191 226 5882
Fax 0191 226 5824.

Article 6

The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage.

In the event of a dispute, the analysis results shall be forwarded electronically to the Commission.

Article 7

1. The successful tenderer must accept the lot as established if the final result of the sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

- one kilogram per hectolitre as regards specific weight, which must not, however, be less than 64 kg/hl,
- one percentage point as regards moisture content,
- half a percentage point as regards the impurities referred to at B.2 and B.4 of Annex I to Commission Regulation (EC) No 824/2000 ⁽¹⁾,
- half a percentage point as regards the impurities referred to at B.5 of Annex I to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot remaining unchanged, however.

2. If the final result of the analyses carried out on the samples indicates a quality higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender and the difference exceeds the limits set out in paragraph 1(b), the successful tenderer may:

- (a) accept the lot as established, or
- (b) refuse to take over the lot concerned.

In the case of (b) above, the successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified using the form in Annex I.

3. Where the final result of sample analyses indicates a quality below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified using the form in Annex I.

Article 8

Should the cases mentioned in Article 7(2)(b) and 7(3) arise, the successful tenderer may ask the intervention agency to supply an alternative lot of barley of the requisite quality, at no extra cost. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof using the form in Annex I.

⁽¹⁾ OJ L 100, 20.4.2000, p. 31.

If, following successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed using the form in Annex I.

Article 9

1. If the barley is removed before the results of the analyses provided for in Article 6 are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress the tenderer might have against the storer.

2. The costs of taking the samples and conducting the analyses provided for in Article 6, with the exception of those referred to in Article 7(3), shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes, with the exception of the cost of inter-bin transfers. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 10

Notwithstanding Article 12 of Commission Regulation (EEC) No 3002/92, the documents relating to the sale of barley under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No

3002/92, the export declaration and, where applicable, the T5 copy shall carry one of the entries set out in Annex II.

Article 11

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17(1) of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded, but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 12

Within two hours of the expiry of the time-limit for the submission of tenders, the United Kingdom intervention agency shall electronically notify the Commission of tenders received. This notification shall be made by e-mail, using the form in Annex III.

Article 13

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 March 2006.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

Communication of refusal and possible replacement of lots under the standing invitation to tender for the export of barley held by the United Kingdom intervention agency

(Regulation (EC) No 362/2006)

- Name of successful tenderer:
- Date of award:
- Date of refusal of the lot by the successful tenderer:

Lot number	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			<ul style="list-style-type: none">— SW (kg/hl)— % of sprouted grains— % of miscellaneous impurities (<i>Schwarzbesatz</i>)— % of matter other than basic cereals of unimpaired quality— Other

ANNEX II

Entries referred to in Article 10

- *in Spanish:* Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) n° 362/2006
- *in Czech:* Intervenční ječmen nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 362/2006
- *in Danish:* Byg fra intervention uden restitutionsydelse eller -avgift, forordning (EF) nr. 362/2006
- *in German:* Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 362/2006
- *in Estonian:* Sekkumisoder, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 362/2006
- *in Greek:* Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 362/2006
- *in English:* Intervention barley without application of refund or tax, Regulation (EC) No 362/2006
- *in French:* Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) n° 362/2006
- *in Italian:* Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 362/2006
- *in Latvian:* Intervences mieži bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 362/2006
- *in Lithuanian:* Intervenciniai miežiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 362/2006
- *in Hungarian:* Intervenciós árpa, visszatérítés, illetve adó nem alkalmazandó, 362/2006/EK rendelet
- *in Dutch:* Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 362/2006
- *in Polish:* Jęczmień interwencyjny niedający prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 362/2006
- *in Portuguese:* Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 362/2006
- *in Slovak:* Intervenčný jačmeň, nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 362/2006
- *in Slovenian:* Intervencija ječmena brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 362/2006
- *in Finnish:* Interventioohra, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 362/2006
- *in Swedish:* Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 362/2006.

ANNEX III

Standing invitation to tender for the export of barley held by the United Kingdom intervention agency

Form (*)

(Regulation (EC) No 362/2006)

1	2	3	4	5	6	7
Serial numbers of tenderers	Lot number	Quantity in tonnes	Tender price (EUR/tonne) ⁽¹⁾	Increases (+) Reductions (-) (EUR/tonne) (p.m.)	Commercial costs ⁽²⁾ (EUR/tonne)	Destination
1						
2						
3						
etc.						

⁽¹⁾ This price includes the increases and reductions relating to the lot covered by the tender.

⁽²⁾ The commercial costs corresponding to insurance and services provision borne after the exit of the intervention stock up to the fob stage at the port of export, with the exception of transport costs. The notified costs shall be established on the basis of the average real costs recorded by the intervention agency in the six months preceding the opening of the tendering period and shall be expressed in euro per tonne.

(*) To be sent to DG AGRI (Unit D/2).

COMMISSION REGULATION (EC) No 363/2006**of 1 March 2006****on the issue of system B export licences in the fruit and vegetables sector (tomatoes)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽²⁾, and in particular Article 6(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2044/2005 ⁽³⁾ fixes the indicative quantities for which system B export licences may be issued.
- (2) In the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for

tomatoes will shortly be exceeded. This overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector.

- (3) To avoid this situation, applications for system B licences for tomatoes after 2 March 2006 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for tomatoes submitted pursuant to Article 1 of Regulation (EC) No 2044/2005, export declarations for which are accepted after 2 and before 17 March 2006, are hereby rejected.

Article 2

This Regulation shall enter into force on 2 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

⁽²⁾ OJ L 268, 9.10.2001, p. 8. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

⁽³⁾ OJ L 328, 15.12.2005, p. 54.

COMMISSION REGULATION (EC) No 364/2006**of 1 March 2006****fixing the import duties applicable to certain husked rice from 2 March 2006**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1549/2004 of 30 August 2004 derogating from Council Regulation (EC) No 1785/2003 as regards the import arrangements for importing rice and laying down separate transition rules for imports of basmati rice ⁽¹⁾, and in particular Article 1,

Whereas:

- (1) Based on the information provided by the competent authorities, the Commission notes that import licences for husked rice falling within CN code 1006 20 excluding import licences for Basmati rice have been issued in respect of 289 488 tonnes for 1 September 2005 to 28 February 2006. The import duty for semi-

milled or wholly milled rice falling within CN code 1006 20, other than Basmati rice, must therefore be amended.

- (2) As the applicable duty must be fixed no later than ten days from the end of the period referred to above, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The import duty for husked rice falling within CN code 1006 20 shall be EUR 65 per tonne.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 280, 31.8.2004, p. 13. Regulation as last amended by Regulation (EC) No 2152/2005 (OJ L 342, 24.12.2005, p. 30).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 October 2004

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

(Case COMP/M.3099 — Areva/Urenco)

(notified under document number C(2004) 3676)

(Only the English version is authentic)

(2006/170/EC)

On 6 October 2004 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(2) 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

I. THE JOINT REFERRAL REQUEST PURSUANT TO ARTICLE 22 OF THE MERGER REGULATION

- (1) On 8 and 26 April 2004, the Commission received a joint referral request from the authorities of France, Sweden and Germany, pursuant to Article 22 of Council Regulation (EEC) No 4064/89⁽²⁾, (the 'Merger Regulation') to investigate a proposed concentration by which the undertaking Société de participations du Commissariat à l'Énergie Atomique SA ('Areva', France) acquires joint control of Enrichment Technology Company Limited ('ETC', United Kingdom), formerly solely controlled by the undertaking Urenco Limited ('Urenco', United Kingdom).

II. THE PARTIES

- (2) Areva is controlled by Commissariat à l'Énergie Atomique ('CEA'), which in turn is controlled by the

French state. Areva is active in three main areas: (a) all stages of the nuclear power business, (b) the connector business, and (c) transportation and distribution of electricity. It is in particular active on the uranium enrichment services market via its subsidiary, Eurodif and it owns the largest European enrichment plant. The plant is ageing and uses the outdated and expensive gas diffusion technology. Eurodif has a nominal capacity of 10,8 million separative work units ('SWU') per year and in 2002 Eurodif made deliveries of approximately 9 million SWU.

- (3) Urenco Limited was established under the umbrella of the Treaty of Almelo which was concluded in the early 1970s between Germany, the Netherlands and the UK in order to develop and exploit centrifuge technology for uranium enrichment. Urenco is the holding company of the Urenco group, which includes two main companies, Uranium Enrichment Company ('UEC') and Enrichment Technology Company ('ETC'). UEC is active on a worldwide level in the provision of uranium enrichment services with the modern and efficient centrifugation technology. ETC is involved in the development, design and manufacturing of centrifuges for uranium enrichment. The shareholders of Urenco include British Nuclear Fuels, RWE and EON.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

⁽²⁾ OJ L 395, 30.12.1989, p. 1, corrigendum OJ L 257, 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

III. THE CONCENTRATION

- (4) The proposed operation consists of the acquisition by Areva of a 50 % interest in ETC which will become a joint venture between Areva and Urenco. ETC's activities will be limited to the upstream research and development, design and manufacture of centrifuge equipment, while Areva and Urenco will continue their activities on the downstream market for uranium enrichment.
- (5) Urenco has transferred to ETC all resources necessary to design and manufacture centrifuge equipment, including production facilities, technology (intellectual property rights), financial resources and employees. The joint venture has therefore been placed in a position to perform all the functions related to its business activity.
- (6) For a certain time, the joint venture will essentially sell centrifuge equipment to its parent companies. However, considering the particularly long lead times prevailing in the nuclear industry, this could be regarded as an initial period, after which other operators can be expected to become ETC's customers. The Commission therefore considers that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity within the meaning of Article 3(2) of the Merger Regulation and that the proposed operation thus constitutes a concentration. This view is supported by the German and French authorities.

IV. JURISDICTION

- (7) The concentration does not meet the turnover thresholds in Article 1 of the Merger Regulation and so it does not have a Community dimension. The parties notified the concentration to the national competition authorities in the UK, France, Germany and Sweden. The UK decided that the concentration did not qualify for investigation under its procedures, but the other three Member States jointly requested the Commission to investigate the concentration pursuant to Article 22 of the Merger Regulation. The three Member States concerned believed that the concentration threatened to create or reinforce a dominant position by creating a structural link between the two main European suppliers of uranium enrichment services and that, as the geographic markets were considered to be at least EEA-wide, there would be an effect on trade between Member States. The Commission found that that joint referral request meets the requirements laid down in Article 22(3) of the Merger Regulation and therefore accepted jurisdiction for the case.

V. RELEVANT MARKETS

Relevant product markets

- (8) The stages concerned in the production of nuclear fuel are: conversion; enrichment; and fuel fabrication. The

production of energy in nuclear reactors results from the fission or splitting of the U-235 atoms, a process which releases energy in the form of heat. U-235 is the main fissile isotope of uranium. Enrichment is the most expensive stage in the fabrication of nuclear fuel. Uranium enrichment consists of increasing the percentage of fissile U²³⁵ isotopes in the uranium compared to the U²³⁸ isotopes. For civil nuclear electricity generation, uranium is enriched to a 3-5 % level and is called Low Enriched Uranium (LEU). In most cases, the enrichment company provides enrichment services or supplies enriched uranium to utilities by transforming the uranium provided by the utility into LEU that meets internationally accepted standards. However, in some cases LEU is simply sold to utilities rather than enriched on their behalf (supply of LEU).

- (9) There are two ways to provide uranium enrichment services: the enrichment of uranium in centrifuges or gas diffusion plants; or the down blending of Highly Enriched Uranium ⁽¹⁾ (HEU), resulting from the decommissioning of Russian nuclear weapons, where the HEU is diluted to produce low enriched uranium (LEU). The Commission's market investigation clearly showed that from the demand side down blended HEU and enriched natural uranium are substitutes.
- (10) Uranium for fuel can be divided into three types of LEU: enriched natural uranium (ENU), enriched reprocessed uranium (ERU) and mixed oxide (MOX). The market investigation confirmed that these are not interchangeable products and thus constitute separate product markets.
- (11) It can be concluded that the product market comprises enriched natural uranium, enriched depleted uranium and down blended HEU with a 3-6 % content of U-235. On the basis of their different characteristics enriched reprocessed uranium and mixed oxide fuel should not be included in the relevant product market.

Relevant Geographic Markets

- (12) There are some indications that the market may be European wide in particular the following: (i) stability of market shares — in the last 13 years the two European enrichment companies shared constantly approximately 80 % of the European market; (ii) the indigenous suppliers in the different regions of the world in which LEU is consumed have strong positions in their domestic markets (Russia, US, Asia) whereas in the EU the combined shares of Asian and U.S. enrichers have been far below 5 % throughout that period; (iii) there is limited constraint from non-EU suppliers, in particular due to the operation of the so-called 'Corfu Declaration' which has as its aim the security of supply by European enrichers and the restriction of imports from Russia to a maximum 20 % threshold.

⁽¹⁾ In HEU the content of U235 exceeds 20 % whereas for enriched uranium used in civil nuclear reactors the content of U235 amounts to approximately 3-5 %.

- (13) However, the Commission also found indications that the Russian supplier, Tenex may exercise a certain competitive constraint on the parties and that conditions of competition might change in the foreseeable future as USEC might re-direct some of its capacity to Europe. In any case, for the purposes of this decision, the scope of the geographic market can be left open since the commitments submitted by the parties on 20 August 2004 remove the Commission's serious doubts as to the compatibility of the proposed concentration with the common market, whether the market is EU-wide or wider in scope.

VI. COMPETITIVE ASSESSMENT

- (14) The competition concerns resulting from the proposed transaction may be grouped into the following main elements:

- (a) The joint venture enables the parties to control each other's decisions on adding enrichment capacity;
- (b) The control on capacity levels is likely to lead to higher prices in the EU and, to a more limited extent, in the rest of the world (explicit coordination on capacity); and
- (c) The joint venture facilitates tacit coordination on supply into the EU.

- (15) *Control over capacity decisions.* According to the transaction notified neither Areva nor Urenco would be able to purchase centrifuges from ETC without the prior explicit approval of the other parent company. In other words, both parties will be able to prevent capacity increases by the other. The joint venture provides thus each party with the ability to control the capacity of the other party.

- (16) *Coordination on capacity.* In the field of centrifuge technology, there is a very strong link between capacity levels and total output. From a technical viewpoint the technology mandates that the centrifuges, once they have started spinning, should not be turned off during their entire life time ([...]). Turning the centrifuges off and restarting them significantly increases the risk of the centrifuges being damaged. In addition, the enrichment industry is highly capital intensive with very low marginal costs. In view of these technological and commercial constraints, output of centrifuges is therefore regularly close to capacity level.

- (17) Capacity (output) levels are among the main drivers of prices in the enrichment market. As a result of the transaction, the two main competitors in the uranium enrichment market (Areva and Urenco are the two

European enrichment companies with approximately 80 % of the European market for the last 13 years, and about 40 % at the world level) will be able to establish perfect coordination of capacity decisions. This is likely to lead to upward pressure on prices in the EU and the rest of the world.

- (18) *Tacit coordination on supply into the EU.* Over and above the likely negative impact on prices resulting from the joint capacity decisions, the transaction may also facilitate tacit coordination on supply into the EU. Rather than tacitly coordinating directly on price, which appears to be difficult in this market, coordination on supply in the form of maintaining a broad market share division in the EU market is feasible. Ultimately, such coordination on supply will have the effect of raising the price level in the market (or prevent it from falling, in the context of Areva's costs decreasing).

- (19) The factors that make coordination on supply more likely after the transaction than it was in the past are (i) the centralisation of capacity decisions in ETC, (ii) the structural link of ETC, and (iii) increased scope for information exchange.

— Reaching a common understanding

- (20) Under the hypothesis of an EU market, it should be noted that a common understanding has to be reached between only two market players, Areva and Urenco. USEC is unlikely to be a competitive threat for the foreseeable future, and Tenex faces regulatory constraints to supply into the EU.

- (21) Coordination on supply is by itself not too complicated. The number of customers in the EU market is limited. Not bidding for a specific contract, or bidding for it at non-attractive terms, is a way to leave a customer (or sales opportunity) to the other party so as to maintain a broad market share division in the EU market. There are only 13 European utilities (in the EU 15) that operate nuclear power plants. The number of supply opportunities, such as tenders for the supply of (part of) the requirements of European utilities, or the opportunity to conclude contract extensions, is equally somewhat limited, in the range of 10-20 per year.

— Transparency

- (22) The degree of transparency in this market appears to be sufficient to maintain coordination on supply in the European market. As indicated above, there are only few European customers and a few supply opportunities each year. More importantly, it requires only the coordination by two players, Areva and Urenco.

(23) The joint control of ETC by Areva and Urenco will increase transparency between the parties with respect to each other's capacity plans and other competitive parameters. This is mainly due to the information flows from ETC to its shareholders and more particularly to the decisive role of ETC's Board of Directors which is appointed by the Areva and Urenco.

— Disciplining mechanisms

(24) The scope for deviating and increasing sales into the EU may be limited. In the event that either party were to deviate from the common understanding, retaliation could be brought about by temporarily reverting to intense competition. Furthermore, the fact that each party is dependent on the other party for such vital strategic decisions as capacity decisions increases the likelihood that the companies will adhere to a common understanding.

— Reactions from competitors or customers

(25) On a hypothetical EU market, third parties, such as competitors or customers, may not be able to counter coordination on supply by the two main enrichment companies in the EU. The only two other significant competitors in sight, Tenex and USEC, may not be in a position to destabilise any common understanding between two parties.

(26) Customers, likewise, cannot be considered to be a position to prevent coordination on supply by the two parties. The only exception, if there is one, is EDF. In view of its size, it must be considered capable of maintaining at least a certain degree of competition between two parties. However, when the overall level of capacity is tight for both parties, the leverage of EDF is likely to be comparatively smaller.

(27) *Conclusion.* In view of the foregoing, the Commission had serious doubts and considered that the proposed transaction would be likely to lead to the creation of a joint dominant position for Areva and Urenco on a possible EU enrichment market within the meaning of Article 2(3) of the Merger Regulation.

(28) In view of the enhanced possibilities that the joint venture ETC offers the parties to coordinate downstream on enrichment capacity and output in the European market, any such coordination would be causally linked to the creation of the joint venture. Therefore, the Commission considered that the participation of Areva in the joint venture is also likely to appreciably restrict competition in the sense of Article 81(1) of the Treaty in combination of Article 2(4) of the Merger Regulation on either a European or worldwide market. It cannot be

concluded with sufficient certainty that the conditions for an exemption pursuant to Article 81(3) of the Treaty are fulfilled. In particular, there are no indications that any coordination between Areva and Urenco would be likely to benefit the consumer nor that the restrictions imposed by the agreements bringing about the proposed operation are indispensable.

VII. COMMITMENTS PROPOSED BY THE PARTIES

(29) On 20 August 2004, the parties submitted a package of commitments in accordance with Article 8(2) of the Merger Regulation. These were modified by the parties on 3 September 2004. The Commission is of the view that that the commitments address and resolve in a satisfactory manner the competition concerns raised by the concentration.

Summary of the Commitments offered by the parties

(30) The proposed commitments consist of the following key elements: (i) removal of the parties' veto rights over capacity increases; (ii) reinforcement of firewalls to prevent information flows between the parties and between the joint venture and the parties; and (iii) provision of information to Euratom Supply Agency (ESA) to enable it to monitor prices of enrichment and allowing ESA, if necessary, to take corrective actions, e.g. by increasing third party imports.

(i) Removal of veto rights on capacity expansion

(31) The initial shareholders' agreement for the JV foresees that the supply of centrifuges to Areva or Urenco, be it as part of the JV's business plan/budget or beyond that, will require the unanimous approval of the ETC board. As an equal number of board members will be nominated by Areva and Urenco, either of Areva and Urenco would be in a position to prevent capacity increases by the other beyond what is foreseen in the current business plan.

(32) In order to eliminate the Commission's concerns the parties committed that the shareholders agreement shall be amended in such a way that, when it is proposed that the JV enters into a new supply agreement for centrifuges with one of the parties, such a decision shall not require the approval of the board, but will be left to the executives, provided that: (a) the terms are not more favourable than other contracts with Areva or Urenco; (b) the contracts are conditional upon approval of the Joint Committee and the Quadripartite Committee, or any other required governmental regulatory approval or requirements, such approvals are granted and (c) the proposed additional capital expenditure does not exceed [< 20] million.

(33) The termination of the veto rights concerning the supply of centrifuges will exclude one party's right to veto the expansion of capacity of the other party. The executives, who are not members of the board, will fulfil any orders of the parent companies on the sole basis that the order is not contrary to the economic interest of the JV. In addition, the independent auditors to the JV shall report at regular intervals to the Commission on the fulfilment of this element of the commitments.

(ii) *Firewalls and related commitments*

(34) In order to eliminate the Commission's concern that the formation of the JV would facilitate coordination between Areva and Urenco by an increased scope for information exchange through ETC, the parties committed to reinforce firewalls between the parties and ETC and between each of the parties.

(35) The firewall mechanism involves a number of individual points directed at reducing the information flow between ETC and the parent companies and vice versa. It includes a provision that Areva/Urenco shall not have access to commercially sensitive information relating to the ETC group and vice versa, that Areva and Urenco shall not be involved in the day to day running of ETC and that the management structure of ETC shall be independent of the parties. It also sets out specific duties of the members of the board of ETC who may not hold commercial responsibility in the field of uranium enrichment of either of the parties. No board member of ETC may request or receive any commercial sensitive information not connected to reserved board matters, that he shall not use or circulate commercially sensitive information for any other purpose and that no board member shall be involved in the negotiation of any contracts with shareholders or third parties and no information on such individual agreements shall be disclosed to the shareholders. The board of ETC will only receive the information necessary to enable its members to fulfil their fiduciary duties. In addition, the independent auditors to the JV shall report at regular intervals to the Commission on the fulfilment of this element of the commitments.

(iii) *Monitoring by the Euratom Supply Agency*

(36) To enhance the monitoring role of ESA, the parties further committed to supply all relevant contractual elements of the enrichment contracts to the ESA. This information includes prices and payment conditions as well as all other relevant price information required by ESA in respect of contracts with enrichment customers, whether located inside or outside the EU. This information shall enable the ESA to closely monitor the development of prices of enriched uranium charged by each of the parties. If in future prices are raised by the parties, this information will give ESA the basis to take corrective actions in its supply policy to increase the

imports of non-European enriched uranium to counteract any unjustified price increases by the parties. The Commission is of the view that ESA already has the power to monitor prices of enrichment contracts and that it has the power and discretion to adapt its supply policy. ESA has confirmed that it is prepared to take on such a monitoring role.

Assessment of the Commitments offered by the notifying parties

(37) The termination of the veto rights concerning the supply of centrifuges will remove the parties' veto rights concerning the expansion of capacity of the other party. The executives, who are not members of the board, will fulfil any orders for the parent companies on the sole basis that the order is not contrary to the economic interest of the JV. The Commission considers that this commitment will remove concerns that the parties will coordinate on capacity extensions on the basis of the rights of the board.

(38) The Commission considers that the enhanced firewall mechanism will significantly reduce the information flow between the parties and thereby reduce the transparency resulting from the joint ownership of ETC.

(39) By providing ESA with comprehensive contract information, ESA will be in a position to monitor the pricing behaviour of the parties and, if pricing is considered to be inconsistent with the overall development of the enrichment market, ESA will be able to take corrective measures in particular by increasing the import of enriched uranium from Russia. The Commission expects that this will discipline the pricing behaviour of the parties.

(40) The market test on balance indicated that, subject to some modification, the proposed commitments may be appropriate to remove the Commission's concerns. In the revised commitments dated 3 September 2004, the parties additionally undertook to enable the external auditors of ETC to report to the Commission as part of their regular annual audit, on the compliance with the elements of the commitments relating to the amendment of the shareholders' agreement and construction of firewalls.

(41) On 23 September 2004, the Advisory Committee on Concentrations gave a favourable opinion on the draft decision and gave approval to the adoption of the draft decision.

VIII. CONCLUSION

(42) In the light of the above, it was concluded that the commitments proposed by the parties modify the notified concentration to such an extent that the serious doubts of the Commission as to the compatibility

of that concentration with the common market are removed. This is therefore declared compatible with the common market pursuant to Article 8(2) of the Merger Regulation and with the EEA Agreement pursuant to Article 57 thereof, subject to compliance with the Commitments

COMMISSION DECISION

of 3 May 2005

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

(Case COMP/M.3178 — Bertelsmann/Springer/JV)

(notified under document number C(2005) 1368)

(Only the English text is authentic)

(Text with EEA relevance)

(2006/171/EC)

On 3 May 2005 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 4 November 2004, the Commission received a notification under Article 4 of Council Regulation (EC) No 139/2004 ('the Merger Regulation') a proposed concentration by which the German undertakings Bertelsmann AG ('Bertelsmann'), its solely controlled subsidiary Gruner+Jahr AG & Co. KG ('G+J'), and Axel Springer AG ('Springer'), would acquire joint control of the German undertaking NewCo ('NewCo') by way of purchase of shares in a newly created company constituting a joint venture. Bertelsmann (and G+J) and Springer are collectively referred to as 'the Parties'.
- (2) On 29 November 2004 the German competition authority, the Bundeskartellamt, informed the Commission that the proposed concentration would threaten to affect significantly competition, either in the German market for rotogravure printing, or, in the alternative in the German market for time-critical print products, in particular magazines.
- (3) By decision dated 23 December 2004, the Commission found that the notified operation raised serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement. The Commission accordingly initiated proceedings in this case pursuant to Article 6(1)(c) of the Merger Regulation and decided that it should, by virtue of Article 9(3)(a) of the Merger Regulation, itself deal with the aspects raised by the German competition authority.
- (4) Bertelsmann is an international media company. Its printing activities are concentrated in its subsidiary Arvato AG ('Arvato'), which controls the German rotogravure printer maul-belser in Nuremberg, the offset printer Mohn Media in Guetersloh and various other printers in Europe, such as the rotogravure printers Eurogravure S.p.A. in Italy and Eurohueco S.A. in Spain. In addition, Arvato plans to start up a new rotogravure printing facility in Liverpool (UK) in the next two years. Furthermore, Bertelsmann's solely controlled publishing arm G+J, active in the publishing, printing and distribution of newspapers and magazines, has two rotogravure printing facilities in Germany, located in Itzehoe (near Hamburg) and Dresden.
- (5) Springer is active in the publishing, printing and distribution of newspapers and magazines, and holds shares in television and radio broadcasters. Springer operates two rotogravure printing facilities in Germany, namely in Ahrensburg (near Hamburg) and in Darmstadt. It also operates three off-set printing facilities which print exclusively newspapers.
- (6) The concentration consists in the contribution to NewCo of Arvato's, G+J's and Springer's five German rotogravure facilities and of Arvato's planned rotogravure printing facility in the UK. Following the transaction, Bertelsmann and G+J will each hold an interest of 37,45 % in NewCo and Springer will hold the remaining 25,1 %, with veto rights relating to strategic decisions. NewCo constitutes a full-function joint venture and is jointly controlled by Bertelsmann and Springer.
- (7) The Advisory Committee on Concentrations, at its 131st meeting on 22 April 2005, with majority supported the Commission's proposal to issue a clearance decision⁽²⁾.
- (8) The Hearing Officer, in a report dated 27 April 2005, took the view that the right of the parties to be heard had been respected⁽³⁾.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

⁽²⁾ OJ C 52, 2.3.2006, p. 2.

⁽³⁾ OJ C 52, 2.3.2006, p. 3.

I. THE RELEVANT MARKETS

Relevant Product Markets

- (9) With respect to the relevant product markets, the Commission's market investigation focused on the question whether and to what extent rotogravure and offset printing are interchangeable techniques and whether the different printing applications, namely magazines, catalogues and advertisements constitute separate product markets.
- (10) The market investigation has shown that rotogravure printing can generally not be substituted by offset printing. Rotogravure printing is mainly used for large-volume print orders, i.e. print orders with a big number of copies and pages while the use of the offset method is largely restricted to smaller volumes. The costs of a printing process strongly deviate for offset and rotogravure depending on the volume of a print order. While rotogravure presses are characterised by comparatively higher fixed costs, they have a bigger capacity and higher performance and can therefore process large numbers of pages faster and more cost-efficiently. Offset printing presses are, moreover, more limited in the number of different pages they can print in one print-run (maximum 72 pages as compared to up to 192 pages in rotogravure). The market investigation has confirmed that offset printing does not constitute a competitive constraint for rotogravure printing of magazines with more than 64 pages and more than 360 000 copies as well as for catalogues and advertisements with more than 64 pages and more than 450 000 copies.
- (11) A rotogravure printing press can print magazines, advertisements and catalogues. Nevertheless, at least for magazines a separate product market exists. Magazines are generally more time-critical than advertisements or catalogues due to the topicality of their content and the late deadlines for the insertion of advertisements. Magazine printing is, moreover, connected to higher requirements with respect to the finishing process, in particular for inserts and add-ons of sample products. The relevant finishing machines are in most cases installed at the printing site or close to it in order to allow for a timely finishing of the magazines whereas the finishing of catalogues for example is more often done by third parties. Furthermore, the distribution system for magazines differs considerably from the distribution of catalogues and advertisements, and the printing process has thus to be adapted to these specific requirements of magazines. With respect to catalogues and advertisements, it can be left open whether they constitute one single or separate product markets as no competition concerns arise under any market delineation.
- Relevant Product Markets**
- (12) At least for Germany, a national geographic market for magazine printing has to be assumed. For the rest of the EEA, the geographic market for magazine printing can be left open since even under the narrowest market definition (national markets) no competition concerns arise.
- (13) German magazines are almost exclusively printed in Germany. One reason for this is the time-criticalness of magazines as the risk of delays in delivery increases with the distance between the printing site and the distribution area. Moreover, many printers abroad currently encounter some difficulties to supply German publishers. The German magazine distribution system is comparatively complicated due to its decentralised structure (as opposed to the French one, for example, where Paris is the centralised distribution hub). In addition, publishers divide Germany into different so-called 'Nielsen-areas' which exhibit different compositions of target groups for advertisement. The printing process has to be adjusted accordingly which is difficult for many printers located outside of Germany.
- (14) As to catalogues, the market investigation showed that print orders are regularly split among several printers in order to ensure security of supply and a timely delivery of the required high volumes. It was broadly confirmed that not only catalogue customers in other countries import printing services, mostly from Germany, but also German customers regard foreign printers as viable alternatives. The relevant geographic market for catalogues can be defined as Germany plus the neighbouring countries (France, Belgium, Netherlands, Luxemburg, Switzerland, Austria, Czech Republic, Poland, Denmark) as well as Italy and Slovakia, covering the large foreign printers in this areas such as Quebecor, RotoSmeets, Mondadori, Ilte, Rotocalcografica and Ringier.
- (15) Advertisement printing for German customers is apparently to a large extent done in Germany. However, in spite of a lower import ratio for advertisement printing than for catalogue printing, German customers can easily turn to credible foreign printers. The printing of advertisement does not create any specific difficulties comparable to those in the magazine printing market, such as the special finishing or specific conditions of distribution. Moreover, advertisements are generally not as time-critical as magazines. Since most publishers of main catalogues also issue advertisements, it would in addition be easy for them to use their already existing links to foreign printers also for advertisement orders. For this reason, the geographic scope of the market for rotogravure advertisement printing can be considered to be the same as for catalogues, i.e. comprising Germany, its neighbouring countries, and Italy and Slovakia.

For the rest of the EEA the geographic market for catalogue and/or advertisement printing can be left open since even under the narrowest geographic market definition (national markets) no competition concerns arise.

II. ASSESSMENT

- (16) The proposed joint venture will be active in the markets for the rotogravure printing of magazines, catalogues and advertising in a number of countries belonging to the EEA. The most serious effects of the proposed concentration — due to the location of the five exiting printing facilities contributed to the joint venture — will be felt in Germany.

1. Market for the rotogravure printing of catalogues and advertising

- (17) The Commission found that in the market for rotogravure printing of catalogues and advertising, the market shares of NewCo would amount to [20-25] % (*) on a market including Germany, its neighbouring countries, and Italy and Slovakia according to the estimations of the parties on the basis of the volumes for 2003. On the basis of distinct markets for catalogues and advertising, the proposed joint venture would have a share of [15-20] % (*) in a market for catalogue printing and of [20-25] % (*) in one for advertising printing. For Bertelsmann's rotogravure printing activities remaining outside the joint venture, an additional [0-5] % (*) have to be added to each of these market shares. On separate markets as well as on a combined catalogue and advertisement market, Schlott and Quebecor would follow in short distance with market shares between [10-15] % (*) and [10-15] % (*) and TSB with approximately [10-15] % (*). On such a market, competition concerns therefore neither arise for a market combining catalogue and advertising prints nor for distinct markets for catalogue and advertising printing. Apart from this, in all other possible geographic markets in the EEA the market shares of the joint venture do not give rise to competition concerns⁽¹⁾.

2. Market for the rotogravure printing of magazines

- (18) The market share of the joint venture in the German merchant market for rotogravure printing of magazines will be around [0-50] % (*). The next players are TSB and Schlott with around [20-25] % (*) each and Burda with a share of [0-5] % (*). Imports account for [0-5] % (*), which are to a very considerable extent supplied by Burda's printing facilities in Vieux-Thann/France and Bratislava/Slovakia. Apart from these imports only one German magazine is printed abroad by the Dutch

printer RotoSmeets. In other affected national markets in the EEA the market shares of the joint venture do not give rise to competition concerns. Therefore, the Commission only analysed the German market.

- (19) In a German market for rotogravure printing of magazines, customers (the publishers) could be harmed if NewCo were able to raise prices and customers were not able to counter such price increases by switching to other printers due to a lack of available capacity. The volume supplied by the parties to the merchant market amounted to [150-200 kt] (*) ([100-150 kt] (*) for Bertelsmann; [45-50 kt] (*) for Springer) in 2003, and further [10-15 kt] (*) of this supply have become captive in the meantime due to the acquisition of publishing houses by the parties. Taking this into account, the volume supplied by the parties to the merchant market totalled [100-150 kt] (*).
- (20) The Commission has analysed whether: (1) competitors currently have sufficient spare capacity to replace these sales to a significant extent; (2) competitors could make such capacity available by shifting their capacity to the printing of magazines; (3) planned capacity extensions will make available additional capacity; and (4) whether potential competitors could contribute to making available further capacity for the printing of magazines in case of a price increase.
- (21) *Current spare capacity:* Capacity utilisation was quite high in this industry in recent years. On the basis of a careful approach of a maximum capacity utilisation of 95 % and the figures submitted for 2003, it appears safe to assume a spare capacity for magazine printing of the German competitors of 17 kt.
- (22) *Capacity by shifting:* Rotogravure printers can switch their capacity from catalogue and advertising printing to magazine printing only to a limited extent. This results in particular from the differences in periodicity, printing time and volume of the different print products. Magazines are printed periodically (weekly, fortnightly or monthly). Due to their long-term and periodical publication, they constitute the 'base load' for the printing facility which fills the presses over the entire year. By contrast, catalogues for mail-order companies or tour operators etc are usually released only twice per year with very high printing volumes (number of copies as well as number of pages) and longer printing times (up to several weeks). They are normally printed in May/June and October till December and constitute a 'peak load' for the printing presses. The third category of print products, advertising, is in essence used to fill the printing capacity between the catalogue printing seasons and on the days of the week when fewer magazines are to be printed. Due to these time characteristics, the majority of printing companies indicated that an unlimited switch from catalogues/advertisements to magazines would not be feasible.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(1) Even on a hypothetical national German market for catalogues and/or advertisements the joint venture would reach market shares between 22 % and 35 % but would be smaller than the leader on these markets, Schlott.

- (23) As a result, the competitors who replied to the Commission's market investigation by stating a figure indicated switching rates from the printing of advertisements and catalogues to magazines of up to [15-20] % (*) of their total capacity. One German printer did not provide any figure; as a cautious approach and in line with the other results of the market investigation, the Commission assumed that this printer, who currently has a comparatively low share of magazine printing, could dedicate another [10-15] % (*) of its capacity to magazine printing. On this basis, the three German printers could make available together approximately 130 kt for magazine printing which would account for a very large share of the entire capacity used by the parties for printing third parties' magazines ([150-200 kt] (*) in 2003). Magazine printing is generally more profitable than both advertisement printing and a mixture of advertisement and catalogue printing. The competitors would therefore not only have the possibility but also the incentive to shift their capacity to magazine printing.
- (24) *Planned capacity extensions:* The parties' three main competitors in Germany, Schlott, TSB and Burda, are planning to increase their net capacity by at least 50kt over the next two to three years. In addition, they could further increase their net capacity, at least on a temporary basis, in deferring the planned gradual dismantlement of older but still operative presses.
- (25) *Potential competition:* The likelihood of a price increase on the German market for magazine printing is further limited by the presence of several credible potential competitors, in particular RotoSmeets (Netherlands), Quebecor (France), Mondadori (Italy), and to a lower extent Ringier (Switzerland) who have printing sites which are fairly close to the German border. As a consequence, these printers would be able to meet the time-constraints in the printing of magazines at least when using the sites closest to the German border. The differences in the distribution system and in the methods of finishing would require some adjustment of the foreign printers and close cooperation with German clients. The example of RotoSmeets who currently is the only foreign printer who prints a German magazine shows that this adaptation process is possible. RotoSmeets, Quebecor and Mondadori have currently at least 32 kt of free capacity which they could readily dedicate to German magazine publishers. Additional capacity could be provided shortly following planned capacity extensions and shifts in the production mix.
- (26) Further competitive harm, apart from capacity considerations, could theoretically arise from the elimination of a competitor by the concentration. The concentration will remove Springer as an independent competitor. However, even if only the German rotogravure printers are considered, customers can still turn to three other significant players Schlott, TSB and Burda with a large installed capacity. In addition credible potential competitors as mentioned above can enter the market.
- (27) On the basis of the above calculations, the three most important German competitors, namely Schlott, TSB and Burda, would be able to offer approximately additional 197 kt (17 kt spare capacity, 130 kt production shifting, 50 kt net capacity extension) for magazine printing in response to a potential price increase for the printing of German magazines while the Parties' merchant market volume equals [100-150 kt] (*). Moreover, RotoSmeets, Quebecor and Mondadori can be considered as credible potential competitors to which German magazine customers could turn if the joint venture should undertake to raise prices.
- ### 3. Coordination on the market for magazine publishing
- (28) The Commission also assessed under Article 2(4) of the Merger Regulation whether the creation of the joint venture would lead to the coordination of the competitive behaviour of Bertelsmann (including G+J) and Springer's competitive behaviour on the downstream market for magazine publishing. In view of the comparatively low part of printing costs in the total costs of a magazine and in view of the pre-eminent importance of the Parties' magazine publishing business as compared to their rotogravure printing business, the Commission concluded that coordination in magazine publishing was not likely.
- ### III. CONCLUSION
- (29) 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, and that it does not restrict competition within the meaning of Article 2(4) of the Merger Regulation and Article 81 of the Treaty. The concentration is therefore to be declared compatible with the common market pursuant to Article 8(1) of the Merger Regulation and with the EEA Agreement pursuant to Article 57 thereof.

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL DECISION 2006/172/CFSP
of 27 February 2006
implementing Common Position 2004/852/CFSP concerning restrictive measures against Côte d'Ivoire

THE COUNCIL OF THE EUROPEAN UNION,

(3) The Annex to Common Position 2004/852/CFSP should be completed accordingly,

Having regard to Common Position 2004/852/CFSP of 13 December 2004 ⁽¹⁾, and in particular Article 6 thereof, in conjunction with Article 23(2) of the Treaty on European Union,

HAS DECIDED AS FOLLOWS:

Article 1

The list of persons set out in the Annex to this Decision shall be inserted in the Annex to Common Position 2004/852/CFSP.

Whereas:

Article 2

This Decision shall take effect on the date of its adoption.

(1) On 13 December 2004 the Council adopted Common Position 2004/852/CFSP concerning restrictive measures against Côte d'Ivoire in order to implement the measures imposed by the United Nations Security Council Resolution (UNSC) 1572 (2004), hereinafter referred to as 'UNSCR 1572 (2004)', against Côte d'Ivoire.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

(2) On 7 February 2006 the Committee established by paragraph 14 of UNSCR 1572 (2004) approved the list of individuals subject to the measures imposed by paragraphs 9 and 11 of UNSCR 1572 (2004) and renewed by paragraph 1 of UNSC Resolution 1643 (2005).

Done at Brussels, 27 February 2006.

For the Council
The President
U. PLASSNIK

⁽¹⁾ OJ L 368, 15.12.2004, p. 50. Common Position as last amended by Common Position 2006/30/CFSP (OJ L 19, 24.1.2006, p. 36).

ANNEX

List of persons referred to in Article 1

1. Surname, First Name: BLÉ GOUDÉ, Charles
Function: Leader of COJEP ("Young Patriots")
Date of birth: 1.1.1972
Passport or ID Number: PD. AE/088 DH 12
Nationality: Ivorian

 2. Surname, First Name: DJUÉ, Eugène Ngoran Kouadio
Date of birth: 20.12.1969 or 1.1.1966
Nationality: Ivorian

 3. Surname, First Name: FOFIE, Martin Kouakou
Function: Chief Corporal New Force Commandant, Korhogo Sector
Date of birth: 1.1.1968
Nationality: Ivorian'
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