ISSN 1725-2423

# Official Journal of the European Union

C 288

English edition

Information and Notices

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19 November 2005

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**Commission**



EN

I

*(Information)*

# COMMISSION

## Euro exchange rates [1]
## 18 November 2005

(2005/C 288/01)

**1 euro** =

| | Currency | Exchange rate | | Currency | Exchange rate |
|---|---|---|---|---|---|
| USD | US dollar | 1,1679 | SIT | Slovenian tolar | 239,52 |
| JPY | Japanese yen | 139,27 | SKK | Slovak koruna | 38,684 |
| DKK | Danish krone | 7,4563 | TRY | Turkish lira | 1,6033 |
| GBP | Pound sterling | 0,68150 | AUD | Australian dollar | 1,5966 |
| SEK | Swedish krona | 9,5675 | CAD | Canadian dollar | 1,3892 |
| CHF | Swiss franc | 1,5468 | HKD | Hong Kong dollar | 9,0554 |
| ISK | Iceland króna | 72,48 | NZD | New Zealand dollar | 1,7028 |
| NOK | Norwegian krone | 7,8820 | SGD | Singapore dollar | 1,9872 |
| BGN | Bulgarian lev | 1,9559 | KRW | South Korean won | 1 210,29 |
| CYP | Cyprus pound | 0,5734 | ZAR | South African rand | 7,8526 |
| CZK | Czech koruna | 29,347 | CNY | Chinese yuan renminbi | 9,4404 |
| EEK | Estonian kroon | 15,6466 | HRK | Croatian kuna | 7,3610 |
| HUF | Hungarian forint | 252,63 | IDR | Indonesian rupiah | 11 789,95 |
| LTL | Lithuanian litas | 3,4528 | MYR | Malaysian ringgit | 4,415 |
| LVL | Latvian lats | 0,6961 | PHP | Philippine peso | 63,721 |
| MTL | Maltese lira | 0,4293 | RUB | Russian rouble | 33,7180 |
| PLN | Polish zloty | 3,9734 | THB | Thai baht | 48,129 |
| RON | Romanian leu | 3,6452 | | | |

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

## FINAL REPORT OF THE HEARING OFFICER IN CASE COMP/M.3440 — EDP/ENI/GDP

*(pursuant to Article 15 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)*

(2005/C 288/02)

**(Text with EEA relevance)**

On 9 July 2004, the Commission received notification, pursuant to Article 3(1)(b) of Council Regulation (EEC) No 4064/89, of a proposed merger under which the undertakings EDP and ENI would acquire joint control of the undertaking GDP.

At the end of the first stage of the procedure, the Commission concluded that the transaction raised serious doubts as to its compatibility with the common market. On 12 August 2004, therefore, the Commission initiated proceedings in accordance with Article 6(1)(c) of the Merger Regulation.

On 12 October 2004, the Commission sent the parties a statement of objections in which it concluded, on a provisional basis, that the proposed transaction was incompatible with the common market since it would (i) reinforce EDP's dominant position on the Portuguese electricity wholesale and retail markets and on the market for the supply of ancillary services and (ii) reinforce GDP's dominant position on the Portuguese markets for the supply of gas to combined-cycle plants, large industrial customers and local distribution companies and on the market for the supply of gas to small customers (industrial, commercial and individual).

The parties were given access to the file by means of a CD-Rom which was sent with the statement of objections. They replied to the statement of objections on 27 October 2004. The parties waived the right to a formal hearing.

On 28 October 2004, the parties offered commitments designed to meet the competition concerns identified by the Commission in its statement of objections. The proposed commitments were the subject of a market test, whose result was communicated to the parties. The commitments were deemed to be quite insufficient by the Commission. On 17 November 2004, the parties submitted new commitments involving only slight changes to those initially submitted.

On 19 November 2004, the Commission sent the Members of the Advisory Committee on Concentrations a draft Decision pursuant to Article 8(3) of the Merger Regulation declaring the proposed merger, as amended by the proposed commitments, incompatible with the common market.

The case does not call for any particular comments as regards the right to be heard.

Brussels, 29 November 2004.

Serge DURANDE

**Opinion of the Advisory Committee on concentrations given at its 130th meeting on 26 November 2004 concerning a preliminary draft decision relating to Case COMP/M.3440 — EDP/ENI/GDP**

(2005/C 288/03)

**(Text with EEA relevance)**

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 and that it has a Community dimension.

2. The Advisory Committee agrees with the Commission that for the purposes of assessing the present operation, the relevant product markets are:

   in electricity:

   (a) the wholesale supply of electricity consisting of the production of electricity at power stations and electricity imported through interconnectors

   (b) the provision of balancing power and ancillary services, the exact delineation of this(these) emerging market(s) can be left open

   (c) the retail supply of electricity to Large Industrial Customers (LICs) (HV and MV)

   (d) the retail supply of electricity to small customers (i.e. smaller industrial, commercial and domestic customers) (LV);

   in natural gas, as soon as the product markets are open:

   (e) gas supply to gas-fired power plants (CCGTs)

   (f) gas supply to local distribution companies (LDCs)

   (g) gas supply to Large Industrial Customers (LICs)

   (h) gas supply to small customers (i.e. smaller industrial, commercial and domestic customers).

3. The Advisory Committee agrees with the Commission that for the purposes of assessing the present operation, the relevant geographic markets are as follows:

   (a) the electricity wholesale market is Portuguese in scope and will remain so in the timeframe considered for the purposes of the decision, in particular in view of the different competitive conditions between both Iberian countries that currently exist and are likely to remain in the foreseeable future

   (b) the retail electricity markets are Portuguese in scope

   (c) the geographic market for electricity balancing power and ancillary services will remain national

   (d) with regard to the above gas product markets, that all markets except the market for supply of gas to small customers are national in scope whereas the exact geographic scope of the market for supply to small customers, which can be expected to become national within a short period of time after opening of the market to competition but which is no larger than national, can be left open.

4. The Advisory Committee agrees with the Commission that the notified concentration will strengthen:

   (a) EDP's dominant position in Portugal on the market for wholesale electricity

   (b) EDP's dominant position in Portugal on the market for ancillary services

   (c) EDP's dominant position in Portugal on the markets for retail electricity supply to LICs

   (d) EDP's dominant position in Portugal on the markets for retail electricity supply to small customers

(e) GDP's dominant position in Portugal on the market for the supply of natural gas to CCGTs

(f) GDP's dominant position in Portugal on the market for the supply of natural gas to LDCs,

(g) GDP's dominant position in Portugal on the market for the supply of natural gas to LICs

(h) GDP's dominant position in Portugal on the national market (or on five regional markets) for the supply of natural gas to small customers;

as a result of which effective competition will be significantly impeded in a substantial part of the common market within the meaning of Article 2(3) of the Merger Regulation.

5. The majority of the Advisory Committee agrees with the Commission that the commitments submitted by the parties are insufficient to remove:

(a) the competitive concern in the wholesale electricity market resulting from the horizontal effects of the transaction (elimination of the main potential competitor)

(b) the competitive concerns in the wholesale electricity market resulting from each of the vertical effects:

(i) the privileged access to gas infrastructure

(ii) raising of rivals costs

(iii) access to proprietary information (gas price and daily nomination)

(c) the competitive concerns in the market for ancillary services

(d) the competitive concerns in the retail supply of electricity to LICs

(e) the competitive concerns in the retail supply of electricity to small customers

(f) the competitive concerns in the market for gas supply to CCGTs

(g) the competitive concerns in the market for gas supply to LDCs

(h) the competitive concerns in the market for gas supply to LICs

(i) the competitive concerns in the market(s) for gas supply to small customers

and that, as a result, the concentration should be declared incompatible with the common market.

A minority abstains.

6. The Advisory Committee agrees to ask the Commission to take into account the remarks and comments made by the Advisory Committee and recommend the publication of its opinion in the *Official Journal of the European Union*.

**Publication of an application for registration pursuant to Article 6(2) of Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin**

(2005/C 288/04)

This publication confers the right to object to the application pursuant to Articles 7 and 12d of the abovementioned Regulation. Any objection to this application must be submitted via the competent authority in a Member State, in a WTO member country or in a third country recognized in accordance with Article 12(3) within a time limit of six months from the date of this publication. The arguments for publication are set out below, in particular under 4.6, and are considered to justify the application within the meaning of Regulation (EEC) No 2081/92.

SUMMARY

**COUNCIL REGULATION (EEC) No 2081/92**

**'AZEITONAS DE CONSERVA DE ELVAS E CAMPO MAIOR'**

**EC No: PT/00216/10.12.2001**

**PDO (X) PGI ( )**

This summary has been drawn up for information purposes only. For full details interested parties, in particular the producers of products covered by the PDO or PGI in question, are invited to consult the complete version of the specification, obtainable at national level or from the European Commission [1].

1. *Responsible department in the Member State:*

Name: Instituto de Desenvolvimento Rural e Hidráulica

Address: 3 Av. Afonso Costa
PT-1949-002 Lisbon

Tel.: (351-21) 844 22 00

Fax: (351-21) 844 22 02

E-mail: idrha@idrha.min-agricultura.pt

2. *Group:*

2.1. Name: Agrodelta Indústrias Alimentares Lda (application for registration presented not by a producers' group but by a legal person under Article 1 of Regulation (EEC) No 2037/93).

2.2. Address: Zona Industrial, PT-7370 Campo Maior
Tel.: (351) 268 680 140
Fax: (351) 268 680 141
E-mail: agrodelta@delta-cafes.pt

2.3. Composition: producer/processor (X) other ( )

3. *Type of product:*

Group 1.6 — Fruit, vegetables and cereals, fresh or processed

4. *Specification:*

(Summary of requirements under Article 4(2)):

4.1. Name: 'Azeitonas de Conserva de Elvas e Campo Maior'

[1] European Commission, Directorate-General for Agriculture, Agricultural product quality policy Unit, B-1049 Brussels.

4.2. Description

Product made from fruit of Azeiteira, Carrasquenha, Redondil and Conserva varieties belonging to the species *Olea europea sativa* Hoffg Link, suitably preserved by means of the following processes:

— soaking of sweetened green olives in brine;

— soaking of broken natural green olives in brine;

— soaking of mixed cut natural olives brine.

The fruit are sound, free from defects, unpeeled and with a fine, bright and even skin. They have a large endocarp and their largest diameter is in the middle (in the case of the Conserva variety the largest diameter may be lower down). The green olives vary in colour from light green to yellowish green; the mixed ones from dark reddish green to black. The minimum approved sizes are as follows:

— 280-320 fruit/kg for whole green olives in brine;

— 340-360 fruit/kg for green olives, stuffed (containing red pepper flesh) or stoned, in brine;

— 240-260 fruit/kg for broken green olives in brine;

— 300-320 fruit/kg for mixed olives in brine, cut and flavoured with oregano and/or thyme.

When picked, the olives have a flesh to stone ratio of more than 5 and are easy to stone. Thanks to the soil and climate, regional know-how and the special characteristics of the varieties used, *Azeitonas de Conserva de Elvas e Campo Maior* feature the following chemical characteristics: a pH of 4 or more; free acidity, expressed as lactic acid, or more than 0,6g/100 ml; 6,5 to 7,5g of sodium chloride per 100 ml of brine; a combined acidity of less than 0,140 N; and a free acidity to volatile acidity ratio greater than 1. Organoleptically, the olives are classified as being of typical, superior or good quality in accordance with standard evaluation criteria (external and internal appearance, smell and taste).

4.3. Geographical area

In view of the soil and weather conditions required for growing and preparing the olives, the special know-how of the local population, and the authentic and unvarying local methods of production used, the geographical area in which production, treatment and packing may take place is limited to the municipalities of Elvas and Campo Maior. Packing must take place in the geographical area in order to ensure the traceability and control of the product and its designation and preserve the qualitative characteristics of a product which otherwise could have olives grown elsewhere mixed in with it.

4.4. Proof of origin

Olive-growing for preserves is part of a long-standing tradition in the municipalities concerned, with reference varieties already being collected in 1900. The product is of major economic importance at regional level. *Azeitonas de Conserva de Elvas e Campo Maior* are shipped to all parts of the country and even abroad and enjoy an excellent reputation. They are used in numerous traditional Portuguese recipes and are asked for by name, in particular as a first course. The olive groves are registered and approved by the Group after consulting the inspection body. The entire production process is subject to stringent checks that allow the product to be fully traceable. The tending of the olive groves, the picking and transport of the olives, and the various processes used are monitored, checked and registered. The certification mark on the packaging is numbered, allowing the origin of the product to be ascertained at any stage in the production chain.

4.5. Method of production

The olives come from groves situated in the geographical area. The spacing of the trees is traditional (10 × 9 or 10 × 8 metres) or more intensive (7 × 7/7 × 6 metres). The irrigation techniques used tend to be simpler in the older olive groves (spray irrigation), more sophisticated in the modern ones (drop irrigation). Cultivation operations are, throughout, conducted in a manner that is in keeping with environmental conditions and reflect the know-how that has built up over time. The olives are picked by hand or by stripping branches in a single action, taking care to avoid damaging the fruit. For the production of green olives the fruit is picked when it has reached its maximum size and, at the beginning of the ripening process, has a firm texture. When cut across and twisted lightly between the fingers it readily sheds its stone.

Suitably large and markedly green olives of the *Carrasquenha* variety are used for the production of broken green olives. For the production of mixed olives, however, the fruit is picked before it is fully ripe, and may feature pink, chestnut-brown, greenish or thin black tinges.

The olives are graded by size and are rejected if they show signs of damage or are not suitably ripe.

Whether produced by following a traditional or a more industrial approach, the processes to which the olives are subjected are invariably gentle, e.g. using brine or dilute solutions of sodium hydroxide and lactic acid. Fermentation may be induced by certain yeasts and lactic flora.

The olives may where necessary be seasoned using herbs from the region (lemon tree or orange tree leaves, garlic, laurel, oregano and thyme) and are in some cases stuffed with red pepper flesh.

The breaking of the olives is done by hand or, in small quantities, by machine, in order not to pulverise the flesh or crack the olive stones.

When the production process is over the olives for preserving are packed in inert, waterproof packaging — specially selected for the product concerned — that does not adversely affect the contents. They are then covered in a suitable liquid to prevent oxidation or the formation of a film.

4.6. Link

The area of production features a mild climate with, however, wintertime temperatures which, while sufficiently low to allow vegetative rest and encourage subsequent fruit-bearing, are not such as to adversely affect the crop.

Together with average rainfall and mild temperatures, the depth and fertility of the soil in the region help the fruit to mature and give it the ideal characteristics for the type of product concerned.

The varieties used are perfectly adapted to the region, yielding olives with a low oil content and a suitable consistency.

Ambient temperature is a key aspect of the preparation of preserved olives.

The average temperature at the beginning of the season is around 22° C. Exploiting the natural conditions helps to speed up the process and, early on, achieve ideal chemical characteristics in the brine.

The fact that the herbs, etc. used for seasoning the olives are available naturally is another major factor.

The organoleptic characteristics of the product are thus closely linked to the geographical area of production, the composition of the olive groves, and the soil and climate.

This type of olive-growing is part of a long-standing tradition, resulting in countless bibliographical references — in some cases dating back more than one century — both to it and to the extreme care shown in tending the olive groves and preserving the olives.

A number of farming and industrial traditions have built up which centre on the importance of olive-growing and the techniques used, in particular typical dress, songs and regional cooking.

4.7. Inspection body

Name: AGRICERT *Certificação de Produtos Alimentares Lda*

Address: R. Dr. António Pires Antunes, 4 r/c Esq. Sala C
PT-7350 Elvas

Tel.: 268 769 564/5

Fax: 266 769 566

E-mail: agricert@clix.pt

4.8. Labelling

*Azeitonas de Conserva de Elvas e Campo Maior* PDO and the Community logo must appear on the labelling, together with the certification mark, which must contain the name of the product and the form of wording concerned, the name of the inspection body and the serial number (numerical or alphanumeric code enabling the product to be traced).

4.9. National requirements: —

## Prior notification of a concentration

## (Case COMP/M.4006 — Crédit Agricole/Banca Intesa/Nextra Investment Management)

## Candidate case for simplified procedure

(2005/C 288/05)

**(Text with EEA relevance)**

1. On 9 November 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 [1] by which the undertakings Credit Agricole SA ('CA', France) and Banca Intesa SpA ('Intesa', Italy) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Nextra Investment Management SpA ('Nextra', Italy) by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for undertaking CA: banking and financial services,

— for undertaking Intesa: banking and financial services,

— for undertaking Nextra: asset management.

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. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 [2] it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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 (No (32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4006 — Crédit Agricole/Banca Intesa/Nextra Investment Management, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
BE-1049 Brussels

(1) OJ L 24, 29.1.2004, p. 1.
(2) OJ C 56, 5.3.2005, p. 32.

**Prior notification of a concentration**

**(Case COMP/M.4039 — Arrow/DNS)**

**Candidate case for simplified procedure**

(2005/C 288/06)

**(Text with EEA relevance)**

1. On 16 November 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which Arrow Electronics, Inc., Melville, USA ('Arrow') will acquire within the meaning of 3(1)(b) of the Council Regulation, sole control over DNSint.com AG, Fürstenfeldbruck, Germany ('DNS') by way of a transfer of shares.

2. The business activities of the undertakings concerned are:

— for Arrow: wholesale distribution of electronic components and computer products;

— for DNS: wholesale distribution of computer products.

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. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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 (No (32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4039 — Arrow/DNS, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
BE-1049 Brussels

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ C 56, 5.3.2005, p. 32.

## Prior notification of a concentration

## (Case COMP/M.4022 — Belgian State/CVC/Post Danmark/De Post-La Poste)

## Candidate case for simplified procedure

(2005/C 288/07)

**(Text with EEA relevance)**

1. On 14 November 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]) by which the Belgian State on one hand and the undertaking Post Invest Europe Sàrl, jointly controlled by the CVC group ('CVC', Luxembourg) and Post Danmark A/S ('Post Danmark', Denmark), on the other hand, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking De Post NV-La Poste SA, currently controlled by the Belgian State ('De Post-La Poste', Belgium), by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for De Post-La Poste: Belgian universal postal services operator;

— for CVC: private equity company;

— for Post Danmark: incumbent postal operator in Denmark.

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. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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 (No (32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4022 — Belgian State/CVC/Post Danmark/De Post-La Poste, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
BE-1049 Brussels

([1]) OJ L 24, 29.1.2004, p. 1.
([2]) OJ C 56, 5.3.2005, p. 32.

## Prior notification of a concentration

## (Case COMP/M.4003 — Ericsson/Marconi)

(2005/C 288/08)

**(Text with EEA relevance)**

1. On 15 November 2005, 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 Telefonaktiebolaget LM Ericsson ('Ericsson', Sweden) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of parts of the undertaking Marconi Corporation plc ('Marconi', United Kingdom) by way of purchase of assets.

2. The business activities of the undertakings concerned are:

— for Ericsson: provides telecommunications equipment and related services to mobile and fixed network operators globally;

— for Marconi: provides equipment and services to telecommunications service providers and other telecommunications network operators.

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 (No (32-2) 296 43 01 or 296 72 44) or by post, under reference number COMP/M.4003 — Ericsson/Marconi, to the following address:

European Commission
Directorate-General for Competition
Merger Registry
J-70
BE-1049 Brussels

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

## STATE AID — UNITED KINGDOM

### State aid No C 36/2005 (ex N 373/2005 and CP 255/2005) — United Kingdom Investbx

### Invitation to submit comments pursuant to Article 88(2) of the EC Treaty

(2005/C 288/09)

**(Text with EEA relevance)**

By means of the letter dated 20 October 2005 reproduced in the authentic language on the pages following this summary, the Commission notified the United Kingdom of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid measure.

Interested parties may submit their comments on the aid measure in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission
Directorate-General Competition
State aid Greffe
BE-1049 Brussels
Fax (32-2) 296 12 42

These comments will be communicated to the United Kingdom. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

TEXT OF SUMMARY

**PROCEDURE**

By letter dated 26 July 2005, registered at the Commission on 28 July 2005, the United Kingdom notified the aid measure mentioned above, pursuant to Article 88(3) EC.

The Commission asked for further information on 19 August 2005, following to which a meeting between representatives of the United Kingdom and the Commission was held on 8 September 2005. During this meeting, additional information was provided by the United Kingdom representatives.

On 26 September 2005, the Commission received a complaint from the enterprise PLUS Markets Group plc, the holding company for Ofex plc, which operates and regulates the London-based Ofex market.

**DESCRIPTION**

The primary objective of the notified project is to create a means for SMEs in the West Midlands region to raise equity gap finance. Investbx is being set up to act as an intermediary exchange facility. It will bring together SMEs and investors to make it easier for SMEs to raise equity financing by creating a practical form for exchanging and/or issuing new shares of between GBP 0,5 million to GBP 2 million on an electronic platform (‘*eBay approach*’).

AWM — Advantage West Midlands, the regional development authority, will provide the funding of GBP 3,8 million for a period of five years. The funding will solely serve to set up and operate Investbx. None of these funds will be transferred to SMEs or to investors. After the period of five years, AWM will either sell its shares of Investbx or close it down.

Pursuant to the United Kingdom, the measure addresses a market failure particularly caused by imperfect information on both the demand and the supply side. SMEs usually face problems in finding adequate funding on the financial market. Investors have difficulties to gain appropriate and reliable information about potential investees. The United Kingdom claims that Investbx is a completely novel measure, serving a need that is currently not offered on the market.

However, following the arguments put forward by the complainant, Ofex, being described as an independent market in the United Kingdom focussed on trading in shares of SMEs, is already operating, and seeking to grow, in the same marketplace as the one in which Investbx will operate. It is further stated that, contrary to Investbx, Ofex had to obtain equivalent finance from the private sector on private sector terms whereas Investbx will be relieved of the costs of such funding. Allegedly, the public funding of Investbx may lead to an unfair competition with Ofex as a result of the aid and will damage the commercial interest of Ofex.

**PRELIMINARY ASSESSMENT**

The Commission considers the measure as constituting State aid in the meaning of Article 87(1) EC to Investbx, but neither the investors nor the SMEs using Investbx’s services *prima facie* seem to be aid beneficiaries.

However, the Commission wishes to further verify the presence of State aid at the level of the investors and the enterprises invested in in the context of a formal investigation procedure.

Although the measure aims at bridging the equity gap for SMEs, the risk capital communication [1] does not foresee rules for such kind of measure. As none of the other existing State aid regulations, frameworks or guidelines seem to be applicable, an assessment could be based directly on Article 87(3)(c) EC.

The Commission at this stage has doubts as to the compatibility of the measure with Article 87(3)(c) EC, particularly in view of the third party comments.

The Commission wishes to assess further into detail the compliance with Article 87(3)(c) EC and in particular the presence of a well-targeted market failure, whether the aid instrument targets the identified market failure and whether the distortions of competition and the effect on trade are limited to ensure that the aid measure is not, on balance, against the European common interest.

TEXT OF LETTER

'The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities and by a complainant on the ad hoc aid referred to above, it has decided to initiate the procedure laid down in Article 88(2) EC.

## 1. PROCEDURE

(1) By letter dated 26 July 2005, registered at the Commission on 28 July 2005, the UK notified the aid measure mentioned above, pursuant to Article 88(3) EC.

(2) The Commission asked for further information on 19 August 2005, following to which a meeting between representatives of the UK and the Commission was held on 8 September 2005. During this meeting, additional information was provided by the UK representatives.

(3) On 26 September 2005, the Commission received a complaint from the enterprise PLUS Markets Group plc.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Primary objective of Investbx

(4) The primary objective of the measure is to create a means for small and medium-sized enterprises [2] (hereafter: SMEs) in the West Midlands region of the UK to raise equity gap finance. Investbx is being set up to act as a catalyst in bridging the equity finance gap. It will bring together SMEs and investors to make it easier for companies to raise money by creating a practical forum for exchanging and/or issuing new shares. Investbx will also provide and facilitate the provision of services at market rates to SMEs to enhance their ability to raise funds.

### 2.2. Innovative and novel measure

(5) Pursuant to the UK authorities, Investbx is a completely novel measure, for which there is no precedent. While traditional Venture Capital Funds aim at improving the supply of equity capital, Investbx envisages instead to improve the efficiency with which information can circulate on investee companies. Investbx will kick-start the creation of an effective local equity market, by connecting companies to investors, offering them a viable, simple, cost effective solution to raising equity, trading their shares and showcasing their activities. This trading facility will be different to traditional stock markets (namely the London Stock Exchange with its "Alternative Investment Market" — AIM) because it will operate through a visible online electronic auction market, matching buyers and sellers at a single price with investment via an online execution-only broker. Online auctions will only be carried out a few times per month. At the same time Investbx will encourage a longer term view of investing, emphasising the main objective of raising money for SMEs in the community rather than the ability to frequently trade shares as provided by the existing London based markets.

### 2.3. Budget and duration

(6) The West Midlands Regional Development Agency AWM (Advantage West Midlands) will provide the funding of GBP 3,8 million for a period of five years. After this period, AWM will either sell its shares of Investbx on the market or close it down.

### 2.4. Beneficiary of the measure

(7) The beneficiary of the measure is Investbx. Investbx will receive GBP 3,8 million by way of grant of AWM. The grant will cover pre-launch development and a five-year period of operation. As a not-for-profit enterprise, any surpluses from Investbx will be reinvested back into Investbx to benefit the regional economy, all of which correspond to AWM's mission.

(8) Investbx will not grant funds to any other company. Its role is purely that of a catalyst for local SMEs to raise equity gap finance. Companies and investors making use of Investbx will pay market rates for services received. All service providers to Investbx have been selected by competitive tender procurement process published in the *Official Journal of the European Union*.

### 2.5. Benefits flowing from Investbx

(9) SMEs: Access to Investbx will be open to all SMEs located in the West Midlands Region on a non-discriminatory basis. Investbx will provide a showcase for these local SMEs.

(1) OJ C 235, 21.8.2001, p. 3.
(2) The definition complies with Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

(10) The measure intends to overcome the acknowledged equity gap of between GBP 0,5 million and GBP 2,0 million and solely addresses SMEs located in the West Midlands region looking for long-term equity funding. They have a solid performance, but are often considered being not profitable as aimed at by Venture Capital funds. In these circumstances, Investbx may also offer another exit possibility for VC funds until they qualify for more senior trading markets like LSE, AIM or the off-market trading facility Ofex (escalator function).

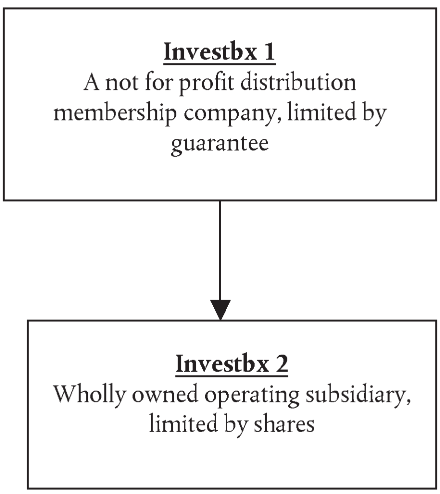
(11) Investors: Investors will receive improved access to information about companies including independent research reports and news which will be made available through the website to inform investors' investment decisions. Investbx will enable investors to interact directly and indirectly with companies. In order to provide protection for investors, companies joining Investbx must meet a set of regulatory and disclosure requirements.

### 2.6. **Corporate structure of Investbx**

(12) There are two distinct roles for Investbx: one to act as a forum for inclusive discussion and debate around the whole issue of SMEs across the region raising equity investment and the other, the trading activities that will see it contracting with a number of service providers and with customers (investors and SMEs).

(13) The corporate structure of Investbx responds to these distinct roles as follows: Investbx will comprise two limited companies: (i) Investbx 1, a not for profit distribution membership company, limited by guarantee with all profits being reinvested and not distributed; and (ii) Investbx 2, a company limited by shares, which will be wholly owned by Investbx 1.

(14) The company status allows Investbx 2 to enter into contracts in its own right. However, the main reason behind this structure is the facilitation of a possible transfer of the company in the future. If Investbx is successful, it will become a private sector company (Investbx 1 will sell Investbx 2). At this time any outstanding funds from the original grant form AWM will revert to AWM.




(15) The classes of members owning Invstbx 1 proposed are: individual investors, corporate investors, investee companies, intermediaries, AWM and general. Membership liability will be limited to GBP 10 per member. Members will be required to pay a modest annual fee, dependant upon the class of member, which has yet to be determined. The level of this fee will be set such that it is not considered to be a deterrent to becoming a member.

(16) AWM will retain a strong influence on the board. The ultimate power of the guarantee company is the ability, as sole shareholder of the subsidiary company, to control the Board of the subsidiary company and ensure that it complies with policies set out by the Board of the guarantee company. In addition, the Board of the guarantee company will have power over appointments to the subsidiary Board.

(17) The Board of Investbx 1 will be the decision making authority and there will be six directors. The first four categories will have the right to elect a Board member as their representative. AWM will have the right to appoint two directors, with one of these being the Board's chair. Any Board committees to which the Board delegates power must include at least one director appointed by AWM. The general members class would not have the right to elect a Director, although its interests would be represented at Board meetings by a special representative.

(18) Investbx 1 will act as corporate director of Investbx 2, delegating delivery of the business plan to Investbx 2. The board of the guarantee company will give operating guidelines for the board of the subsidiary company.

(19) The AWM appointed Chair of Investbx 1 will also be the Chair of Investbx 2 and at least one other director of the guarantee company will also be on the board of Investbx 2. The Chair will have the right to exercise all guarantee company powers as sole shareholder of the operating company, including the right to appoint directors.

(20) The board of Investbx 1 will have responsibility for appointment and appraisal of the Investbx 2 executive team in addition to the right to remove members of this team whose activities divert from or fail to deliver the agreed business plan.

(21) Investbx 2 will have a small executive team responsible for delivery of the business plan. Key to delivery will be establishing an outsourcing relationship with a third party organisation that has already invested in the infrastructure and permission necessary to operate Investbx. Procurement of services using this "white label" arrangement has already taken place with a publication in the *Official Journal of the European Union*. *The Share Centre* was selected as preferred bidder, who has already the appropriate FSA permissions to conduct business of this nature.

### 2.7. **The current market in the United Kingdom**

(22) The traditional market for buying and selling shares in the UK is dominated by the London Stock Exchange (LSE), which is primarily engaged in hosting large stock trades in a global marketplace. SMEs are increasingly shut out as blue-chip stocks of larger companies are preferred.

(23) The LSE sought to cater for this situation by the introduction of its "Alternative Investment Market" (AIM) in 1995. This operates as a second tier market targeting new and smaller companies. Membership requires no minimum trading record, no minimum assets or profit levels, no minimum capitalisation and no minimum free float of shares.

(24) Outside the realms of the LSE and AIM is the off-market trading facility Ofex. It has been stated in the notification that Ofex is neither regulated nor a market, but aims to provide a more cost effective and less regulated alternative to AIM.

(25) Despite the above developments, the UK claims that there is still a long-term equity gap for investment in SMEs located outside the South-East. Some of the lowest levels of listed companies and total market capitalisation exist in the Midlands.

## 3. COMMENTS PRESENTED BY THIRD PARTIES

(26) By letter dated 26 September 2005, the company PLUS Markets Group plc commented as an interested party pursuant to Article 20(2) of Council Regulation (EC) No 659/1999 [3] on the project under scrutiny. PLUS Markets Group plc (formerly Ofex Holdings plc) is the holding company for Ofex plc, which operates and regulates the Ofex market, which is described as being an independent market in the UK focussed on trading in shares of SMEs from around the world and representing a wide range of sectors and all stages of development.

(27) Ofex was created in October 1995 as a trading facility for unquoted and unlisted securities. In 2002, Ofex became a prescribed market under Section 118 of the Financial Services & Markets Act 2000, authorized and regulated by the UK's Financial Services Authority, and Ofex plc took over the operation of the market.

(28) Ofex Holdings plc changed its name to PLUS Markets Group plc in 2004 following a process of refinancing and restructuring, which raised net funds from the private sector. In 2005, further funds were raised from institutional and other investors.

(29) Pursuant to the third party comments, Ofex has served over 500 companies, and has not only provided a market for these companies' shares but also an opportunity to raise equity-based finance since its launch in 1995. Allegedly, the overwhelming majority of fund raisings were of amounts considerably less than GBP 1,5 million, with actually 33 companies raising less than GBP 1 million, principally form non-institutional investors. It is claimed that there are currently 137 companies traded on Ofex of which approximately 10 % are based in the Midlands region of the UK. It is further claimed that there are also 57 Midlands-based companies traded on the AIM market of the London Stock Exchange.

(30) It is claimed that Ofex is already operating, and seeking to grow, in the same marketplace as the one in which Investbx will operate. It is further stated that, contrary to Investbx, Ofex had to obtain equivalent finance from the private sector on private sector terms whereas Investbx will be relieved of the costs of such funding. Allegedly, the public funding of Investbx may lead to an unfair competition with Ofex as a result of the aid and will damage the commercial interest of Ofex.

## 4. PRELIMINARY ASSESSMENT OF THE MEASURE

(31) According to Article 6 of the Procedural Regulation [4], the decision to initiate the formal investigation procedure shall summarise the relevant issues of fact and law, shall include a preliminary assessment of the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

### 4.1. Presence of State aid pursuant to Article 87(1) EC

(32) In accordance with Article 87(1) EC, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(33) The assessment of the presence of State aid must consider the possibility that the measure may confer aid on at least three different levels:

— aid to Investbx,

— aid to investors,

— aid to the SMEs invested in.

#### 4.1.1. *Aid to Investbx*

(34) The activities of Investbx will be financed through State resources from AWM.

(35) Investbx will be a new actor in the financial markets business and has to be considered as an undertaking, performing an economic activity by providing financial services to investors and SMEs located in the West Midlands region. It would not have been able to raise the capital to be used for its activities under the same favourable terms under normal market conditions. This is why the Commission considers that the grant provided by AWM to Investbx does not correspond to the behaviour of a private market investor. The funding provided by AWM to Investbx is either a grant or an interest-free loan, i.e. a funding free of charge. Investbx thus receives funding that it would otherwise not be able to seek from private sector sources at market rates. Accordingly, the undertaking Investbx receives an advantage.

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

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

(36) As effects on existing financial services providers such as Ofex cannot be completely excluded, the measure has the potential to distort competition and affect intra-Community trade.

(37) Therefore, Investbx is considered to be a beneficiary of aid pursuant to Article 87(1) EC.

4.1.2. *Aid to Investors and/or to the SMEs invested in*

(38) Neither the investors nor the SMEs using Investbx's services *prima facie* seem to be aid beneficiaries as no State resources will be transferred to them and as Investbx's services are open to all investors.

(39) However, the Commission will have to further scrutinise whether the measure involves a transfer of aid to investors and or SMEs invested in and particularly needs to have more information on the identity of both investors and SMEs invested in (number; age; size; investment phase etc.) and the remuneration they will pay to Investbx. In addition, the question whether Investbx 1's investors benefit from Investbx 2's envisaged sale also merits further examination.

### 4.2. **Legality of the aid**

(40) The UK respected its obligations pursuant to Article 88(3) EC.

### 4.3. **Compatibility of the aid**

(41) Although the measure aims at bridging the equity gap for SMEs, the risk capital communication ([5]) does not foresee rules for such kind of measure. Even if the risk capital communication allows grants for setting up a venture capital fund, it has to be noted that Investbx cannot be regarded as such a fund and does not provide any venture capital to SMEs. The measure at stake solely aims at setting up the infrastructure for an exchange facility for investors and SMEs and therefore falls outside the risk capital communication. Also none of the other existing State aid regulations, frameworks or guidelines seem to be applicable. It is true that the West Midlands do qualify for the derogation in Article 87(3)(c) EC ([6]), and the Commission also notes that this region has suffered from the Rover crisis. But the grant to Investbx is not an application of an aid scheme for regional development. It is rather an ad hoc aid, which does not seem to be limited to initial investment in the meaning of the regional aid guidelines ([7]).

(42) However, an assessment of this ad hoc aid could be based directly on Article 87(3)(c) EC. Accordingly, a well-defined market failure has to exist, the aid instrument has to target the identified market failure and distortions of competition and the effect on trade should be limited to ensure that the aid measure is not, on balance, against the common interest.

4.3.1. *Presence of a well-defined market failure*

(43) The measure intends to address an alleged market failure particularly caused by imperfect information on both the demand and the supply side. SMEs usually face problems in finding adequate funding on the financial market. Investors have difficulties to gain appropriate and reliable information about potential investees.

(44) The proposed aid addresses the market failure described by offering an electronic platform enabling the SMEs to present themselves and the investors to inform themselves. The match-making of investors and SMEs will be achieved through the electronic auctioning.

(45) Investbx targets equity funding in the area of GBP 0,5 million to GBP 2 million, a deal size range for which an equity gap was established in several studies put forward by the UK in the context of the ECF — Enterprise Capital Funds which was approved by the Commission on 3 May 2005 ([8]). The question is whether this assessment of an equity gap in the UK and particularly in the West Midlands region is still valid.

(46) Accordingly, the Commission wishes to further verify whether the arguments presented can justify the presence of a well-defined market failure, particularly in view of the above and any further third party comments.

4.3.2. *The aid instrument has to target the identified market failure*

(47) The measure intends to change the behaviour of both investors and SMEs by increasing their information on their potential matches. In this context it is noted positively that the measure is limited to five years. AWM will either sell its shares of Investbx after this period or close it down.

(48) Compared to usual risk capital schemes, the amount of public funding used is rather limited. Regional risk capital schemes covering regions similar in size as the West Midlands normally involve far higher amounts of aid than foreseen for this measure ([9]).

(49) However, the Commission wishes to further assess any incentive effect of the aid instrument. Also the relation between the notified measure and the ECF merits further examination.

([5]) OJ C 235, 21.8.2001, p. 3.

([6]) Commission decision of 17 August 2000 on State aid No N 265/2000 — UK concerning the UK regional aid map for 2000–2006 (OJ C 272, 23.9.2000, p. 43).

([7]) OJ C 74, 10.3.1998, p. 9.

([8]) See State aid No C 17/2004 — UK, not yet published in the Official Journal.

([9]) Take as example State aid No C 17/2004 — UK ("Enterprise Capital Funds") and State aid No C 72/2003 — UK ("Invest Northern Ireland Venture 2003").

4.3.3. *Distortions of competition and the effect on trade should be limited to ensure that the aid measure is not, on balance, against the common interest*

(50) As to the balancing of distortion of competition and effects on trade, the existing London based markets, namely the London Stock Exchange (LSE), its Alternative Investment Market (AIM) and the off-trading facility Ofex, may be the potential competitors of Investbx. Another source of perceived competition could be from traditional sources of finance such as bank debt, friends and family, business angels or venture capital funds.

(51) However, LSE, AIM and Ofex use classical market making mechanisms using bid and offer price, the primary focus being institutional investors, with retail investors having no access to new issued shares. These traditional exchanges generate revenues primarily from companies joining the market and subsequently paying an annual fee in order to stay on the exchange.

(52) Investbx seems, at first sight, to differ from these traditional markets. It, for instance, has no market makers. Market makers generate revenues based on the share price "spread", i.e. the margin between bid and offer price. Market makers achieve revenues either by selling large volumes of shares at low spread, or by selling low volumes of shares at high spread. Both of these factors may contribute to them not working well with SMEs, which have, for instance, lower volumes of shares to sell.

(53) Investbx furthermore seems to aim, unlike the traditional markets, also at providing a bridge between the above-mentioned traditional sources of finance and the more senior markets LSE, AIM and Ofex ("escalator function").

(54) However, at this stage, the differences to traditional markets and in particular to Ofex merits further examination and competition with LSE, AIM and Ofex as well as with debt financing from private banks needs to be verified further, particularly in view of the above and any further third party comments.

## 5. **DECISION**

The Commission at this stage concludes that the measure involves State aid pursuant to Article 87(1) EC to Investbx. It nevertheless wishes to further verify the presence of State aid at the level of the investors and the enterprises invested in. In addition, also in view of the third party comments, it currently has doubts as to the compatibility of the measure with the common market, in particular the presence of a well-targeted market failure, whether the aid instrument has an incentive effect and whether the distortions of competition and the effect on trade are limited to ensure that the aid measure is not, on balance, against the common interest.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) EC, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter.

The Commission wishes to remind the United Kingdom that Article 88(3) EC has suspensory effect, and would draw its attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.'

III

*(Notices)*

# COMMISSION

## NOTICE OF CALL FOR PROPOSALS INFSO-MEDIA 11/05

## MEDIA — Training (2001-2006)

(2005/C 288/10)

### 1. Objectives and description

This notice of a call for proposals is based on Decision No 163/2001/EC of the European Parliament and of the Council on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA-Training) (2001-2006), published in *Official Journal of the European Communities* L 26 of 27 January 2001.

One of the measures to be implemented under this Decision involves improving the continuous vocational training of professionals in the audiovisual sector, so as to give them the know-how and skills needed to create competitive products on the European and other markets, in particular in the field of:

— the application of new technologies, and in particular digital technologies, for the production and distribution of audiovisual programmes;

— economic, financial and commercial management, including the legal framework;

— script-writing techniques.

### 2. Eligible candidates

This notice is addressed to candidates in one of the categories of establishment below whose activities contribute to the abovementioned measures:

— film and television schools,

— universities,

— specialist vocational training establishments,

— private companies in the audiovisual sector,

— organisations/professional associations specialising in the audiovisual sector.

Applicants must be established in one of the following countries:

— the 25 countries of the European Union,

— the EFTA and EEA countries: Iceland, Liechtenstein, Norway, Switzerland,

— the candidate country for EU membership: Bulgaria.

### 3. Budget for projects

The European Union has allocated a total amount of EUR 59 400 000 for the implementation of the MEDIA — Training programme over the period 2001-2006.

The total budget allocated for co-financing of projects is EUR 8 000 000.

The financial assistance from the Commission may not exceed 50 % (in certain cases 60 %) of the total eligible costs.

The financial contribution will be awarded in the form of a grant.

The maximum duration of projects is 12 months.

4. **Deadline for submission of applications**

Applications must be submitted to the Commission by no later than 1 March 2006.

5. **Full details**

The full text of the call for proposals, together with the application forms, can be found at the following Internet address:

http://europa.eu.int/comm/avpolicy/media/index_en.html.

Applications must comply with all the terms of the full text and be submitted on the form provided.