Subject: State aid / United Kingdom (Great Britain) 
Aid No NN 68/2002 (ex N 554/2001) 
Individual advertising campaign – lamb (MLC)

Madam,

I have the honour to inform you that, having examined the information supplied by your authorities on the aid scheme above, the Commission has decided to raise no objections to the state aid scheme in question.

In reaching this decision, the Commission based itself on the following considerations:

1. PROCEDURES

(1) The measure was notified pursuant to Article 88(3) of the EC Treaty by letter of 7 August 2001, registered on 9 August 2001, by the Permanent Representation of the United Kingdom to the European Union. Additional information was received by letter of 28 August 2001, registered on 29 August 2001, by letter of 5 June 2002, registered on 6 June 20021, by letter of 12 July 2002, registered on 19 July 2002, and by letter of 20 December 2006, registered on 20 December 2006. A meeting with the UK authorities took place on 3 October 2006. The issue was informally discussed several times with the UK authorities.

(2) As the aid had already been paid out, the case was re-registered as illegal aid under No NN 68/2002.

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1 The UK authorities have stated that they did not receive the information requests of 2 October 2001 and 8 March 2002.

The Rt Hon Margaret Beckett MP 
Secretary of State for Foreign and Commonwealth Affairs 
Downing Street 
LONDON SW1A 2AL 
United Kingdom
2. DESCRIPTION

2.1. Title

(3) Individual advertising campaign – lamb (MLC)

2.2. Beneficiaries

(4) All operators in the lamb sector

2.3. Budget

(5) Total expenditure £5.2 million (€7.9 million)

2.4. Duration

(6) September to November 2001

2.5. Measure

(7) The aim of the scheme was to promote sales of lamb to address the surplus due to the lack of export markets following the outbreak of foot and mouth disease in the UK.

2.5.1. Meat and Livestock Commission (MLC)

(8) Services were partly provided by the MLC, a Government-controlled public body in which there is no private capital investment.

(9) Besides the engagement of the MLC, providers were chosen and remunerated according to market principles, in a non-discriminatory way, using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement rules to be reviewed.

2.5.2. MLC parafiscal levy

(10) The budget is funded by a parafiscal levy. The MLC parafiscal levy is collected on cattle, pigs and sheep slaughtered in Great Britain for human consumption.

(11) The MLC levy is applicable to all animals slaughtered in the UK for human consumption (irrespective of weight, breed etc). The levy consists of two parts: a general levy which is paid in equal shares by the producer (farmer) and slaughterhouse operator and may be used for any activities, and a promotion levy which is paid by the producer and is used for promotional purposes, including advertising. The levy rates for sheep are as follows:
<table>
<thead>
<tr>
<th>Species</th>
<th>General levy pence per animal</th>
<th>Promotion levy pence per animal</th>
<th>Total levy pence per animal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheep</td>
<td>34</td>
<td>-</td>
<td>34</td>
</tr>
</tbody>
</table>

(12) The UK authorities have given assurances that the levy is not charged on live animals brought into the UK from other Member States if these live animals are brought in less than three months (in the case of sheep, two months) before the date on which they are slaughtered.

(13) The MLC levy also applies to animals designated other than as slaughter animals and purchased by livestock exporters only. The levy rates are the same but no promotion levy has to be paid for sheep.

### 2.5.3. Advertising

(14) Sales of lamb had to be maximised in the period from September 2001 to March 2002 in order to minimise the effect of an oversupply during those months. This regime was a continuation of the approved State aid scheme N 253/1994 – Recipe for Love.

(15) Four different measures were implemented: consumer advertising, public relations, retail trade marketing and foodservice trade marketing.

(16) The Commission services expressed concern over the "quiche" element of the campaign. The UK authorities removed this element from the notification and gave assurances that no public money was used for this measure.

### 2.5.4. Regulation 1860/2004 ("de minimis aid")

(17) The UK authorities have given assurances that the campaign complied with the conditions of Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid in the agriculture and fisheries sectors² ("de minimis aid").

(18) The budget was £5.2m. The number of beneficiaries was 69,500 (equivalent to the number of lamb producers in Great Britain all of whom would have benefited from the campaign). The amount of aid per beneficiary was therefore £74.82, well below the maximum ceiling for agricultural de minimis aid of €3,000 per beneficiary over 3 years.

### 2.6. Legal basis

(19) Agriculture Act 1967

### 2.7. Aid intensity

(20) Up to 100% (parafiscal taxes)

3. EVALUATION

(21) Under Article 87(1) of the EC Treaty, 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 is prohibited, insofar as it affects trade between Member States. It is obvious that there is substantial crossborder trade in agricultural products.3

(22) The aid measure is financed through parafiscal taxes and public funds. Therefore, it has to be qualified as being granted through State resources.

(23) It favours certain enterprises in the lamb sector in the United Kingdom. It is therefore liable to distort competition and to affect trade between Member States.

(24) Consequently, Article 87(1) of the EC Treaty applies.

(25) According to Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities or of certain economic areas can be regarded as compatible where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(26) For this derogation to apply, the relevant Community guidelines must be respected. In this case, the Commission states that the present notification was notified before the entry into force of the new Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007 to 20134 (hereinafter: New Guidelines) but that the decision is not applicable after the entry into force of the New Guidelines.

(27) In accordance with point 194 of the New Guidelines, notifications pending on 31 December 2006 will be assessed according to the Community State aid guidelines that were applicable in the agricultural sector on the date of notification of the aid.

(28) At the date of notification, the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products5 were applicable. Before applying these guidelines, the applicability of Regulation No 1860/2004 will be assessed.

(29) The UK authorities have not limited the eligible beneficiaries to small and medium-sized enterprises.

(30) The MLC is a non-departmental public body set up by UK statute (Agriculture Act 1967). The MLC is to use its own staff for providing administrative

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3 Trade in agricultural products of the United Kingdom with other Member States in 2001: imports €20 278 million, exports €8 985 million (source: Eurostat).
activities and some advertising activities. The UK authorities have given assurances that the MLC is a Government-controlled public body.

(31) However, this decision in no way prejudges any further analysis by the Commission as far as the respect for public procurement rules is concerned.

(32) The scheme is financed by MLC parafiscal levies. The MLC levy is charged on domestic animals; it is charged on imported live animals only after a three-month period of stay in the UK (sheep: two months). In line with Commission practise (see State aid decision N 716/02 - Meat Quality Advertising Scheme (Wales)\(^6\)), such animals are no longer to be considered imported animals any more.

(33) Parafiscal levies are considered to be discriminatory internal taxation prohibited by Article 90 of the EC Treaty if and to the extent to which charges imposed on the products produced and processed on the national market are only partially compensated by advantages deriving from the use made of their its revenue, thereby disadvantaging exported domestic products.\(^7\) The levy is charged at the point of slaughter or export. The UK authorities have given assurances that the MLC levy will be refunded at an appropriate level where exporters do not receive a benefit proportionate to that obtained by operators processing or marketing on the UK national market.

(34) The UK authorities have confirmed that the provisions of Regulation No 1860/2004 will be applied to the advertising measure described above.

(35) In the light of the experience acquired by the Commission it can be affirmed that very low levels of aid granted in the agriculture sector do not fulfil the criteria of Article 87(1) of the Treaty, provided that certain conditions are met.

(36) According to Article 3 of Regulation No 1860/2004, aid not exceeding a ceiling of € 3 000 per beneficiary over any period of three years, where the total amount of such aid granted to all enterprises over three years remains below a ceiling to be set by the Commission at around 0.3% of the annual agricultural output, does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

(37) Pursuant to Article 5 of Regulation No. 1860/2004, this also applies to aid granted before its entry into force, if the requirements of the Articles 1 and 3 are fulfilled.

(38) The Commission takes note that the UK authorities have given assurances that the conditions of Regulation No 1860/2004 are respected.

(39) The measure therefore does not constitute aid within the meaning of Article 87(1) of the EC Treaty.


\(^7\) Case C-234/99, [Nyård, [2002] ECR I-3657.\]
This decision does not represent a formal statement of position by the Commission whether this measure conforms to Article 28 of the EC Treaty. The Commission reserves the right to further examine the matter from this point of view.

IV. DECISION

The Commission notes with regret that the United Kingdom already implemented the measure before the notification.

The measure fulfils the conditions of Regulation No 1860/2004. The measure therefore does not constitute aid within the meaning of Article 87(1) of the EC Treaty.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to disclosure to third parties and to publication of the full text of the letter in the authentic language on the Internet site http://ec.europa.eu/community_law/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate H
Office: Loi 130 5/98A
B-1049 Brussels
Fax No.: 0032.2.296 7672

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission