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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].

PUBLIC VERSION

WORKING LANGUAGE

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**Subject: State aid N208/2010 – The Netherlands
Aid for CO₂ delivery to Zuidplaspolder (NL)**

Dear Sir,

1. PROCEDURE

1. Following pre-notification contacts, the Dutch authorities notified the abovementioned aid measure on 27 May 2010. Further clarifications or information requested by the Commission were received on 16 June 2010, on 18 August 2010, on 2 November 2010, on 16 November 2010 and on 2 December 2010.

2. DESCRIPTION OF THE AID

Introduction to the project

2. The Dutch authorities intend to grant investment aid for the construction by Bio Supply CV of infrastructure for the off-take of waste CO₂ from a bioethanol plant and delivery of this CO₂ to greenhouses, where it is used to enhance crop growth, instead of using (the CO₂ in) flue gases by burning natural gas. The primary objective of the aid measure is to increase environmental protection by reducing the use of primary energy sources for conventional forms of CO₂ generation.

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Background

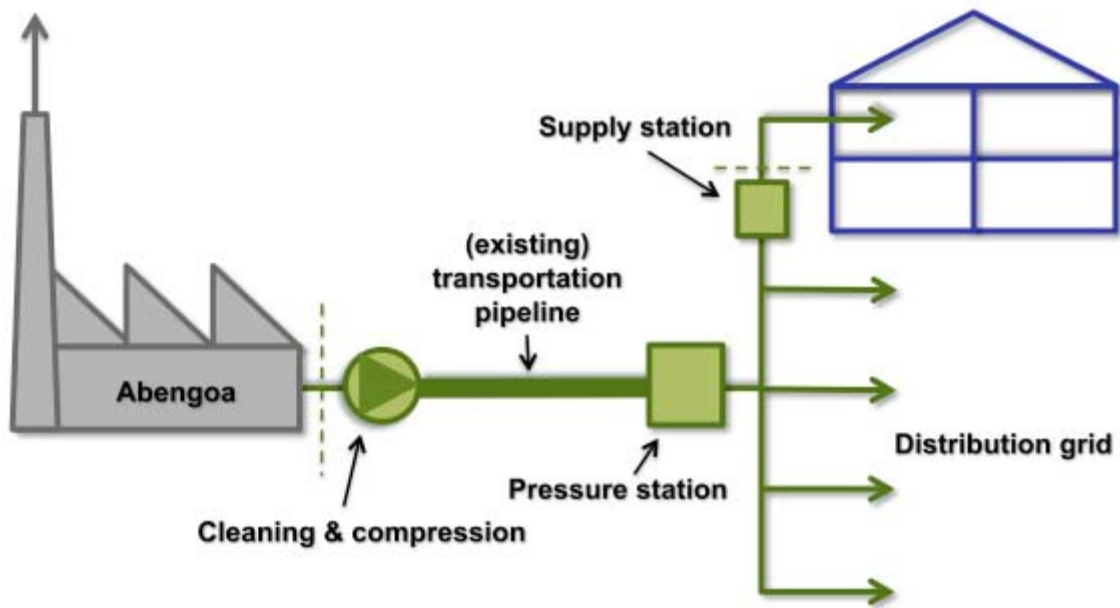
3. The greenhouses which need CO₂ for crop growth planned to be served by the project are located in the “Zuidplaspolder”, within a surface area of 250 to 270 hectares. Also, there are plans for the development of a new greenhouse area, which will add another 280 hectares of greenhouses to the region and will also be served by the project. The greenhouses currently produce their own CO₂ using cogeneration systems¹ or gas fired boilers, also in summer when heat is not needed (so-called “summer heating”). The availability of “external” CO₂ and in particular waste CO₂ from industry enables the growers to avoid “summer heating” and to save on the use of natural gas for producing their own CO₂, provided indeed that the CO₂ released from the bioethanol plant is channelled to the greenhouses.
4. Currently, greenhouses in the areas “Westland” and “Oostland” are supplied by OCAP CO₂ Vof using waste CO₂ originating from a Shell refinery in Rotterdam. OCAP CO₂ Vof is a joint venture between: Linde Gas Benelux, a supplier of industrial gases, Volker Wessels Stevin Deelnemingen, a construction company, and Reggeborgh Deelnemingen, an investment company (and affiliated with Koninklijke Volker Wessels Stevin).
5. OCAP CO₂ Vof owns a CO₂ transport pipeline and distribution grid located in the regions “Westland” and “Oostland”. OCAP CO₂ Vof purchases CO₂ from Shell Nederland Raffinaderijen BV that comes free at their hydrogen production plant. The CO₂ is compressed by OCAP CO₂ Vof and subsequently transported through the pipeline to be delivered to CO₂ buyers in the region (being greenhouses). This concerns the supply of some 300 000 ton of CO₂ per year to some 500 greenhouses, resulting in a CO₂ reduction of some 170 000 ton per year. The capacity of the existing CO₂ supply source is however insufficient to also cover the “Zuidplaspolder” area of greenhouses both at present and –even less so- with the planned extension.
6. After the completion of the project, Bio Supply CV will send pure CO₂ to OCAP CO₂ Vof; the latter will use the new infrastructure, on the basis of a contract signed with Bio Supply CV to sell pure CO₂ to the greenhouses.

Detailed description of the project

7. The planned infrastructure will be linked to a new bioethanol plant currently under construction in the harbour area of Rotterdam by Abengoa Bioenergy Netherlands BV. It is in the nature of the bioethanol production process that a significant amount of nearly pure CO₂ comes free. Cleaning and drying can bring this raw CO₂ gas to the right quality for delivery to greenhouses². As part of the proposed project, OCAP CO₂ Vof would capture and process the available raw CO₂ gas at the plant of Abengoa and deliver this CO₂ to the “Zuidplaspolder” greenhouse area.

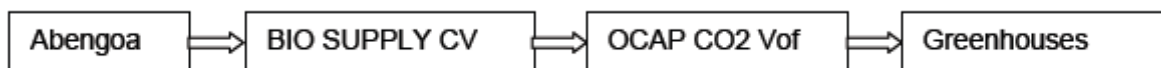
¹ A cogeneration system has three functions: production of heat, electricity and CO₂. During summer the production of heat is a waste byproduct.

² The CO₂ is treated at source so that it complies with the specifications and is compressed to a transport pressure of 21 bar. A connecting transport pipe must be laid between the location of the source and OCAP's existing transport pipes.



8. Thus, Bio Supply CV plans to invest in the facility for capturing, cleaning and compressing the CO₂ from Abengoa and in the transportation and distribution infrastructure for delivering the CO₂ to the greenhouses (see the schematic overview above). The new transportation and distribution infrastructure will connect to the existing transportation pipeline of OCAP (see graphic above), which is located in the regions “Westland” and “Oostland”. As further specified in point 16 below, these investments, i.e. the collection and compression facility upstream of the existing pipeline and the necessary new transportation and distribution infrastructure downstream of the pipeline are the main elements of a total projected investment cost of EUR 33.570.547. Abengoa must invest on its own around EUR 3 million to install facilities for collection of the raw CO₂ in the plant and making it available for off-take by Bio Supply CV. Based on the planned annual quantities and off-take price supplied by the Dutch authorities, the return on the investment for Abengoa would be around 6.1%.

9. The infrastructure will be used by OCAP CO₂ Vof to deliver the CO₂ to the “Zuidplaspolder” greenhouse area. Bio Supply CV plans to purchase the CO₂ from Abengoa and to sell it to OCAP CO₂ Vof. OCAP CO₂ Vof will subsequently deliver the CO₂ to the greenhouses. The following picture may serve as a further illustration of this constellation.



10. Together with the Province of South-Holland, local municipalities and the branch organisation for greenhouses, OCAP CO₂ Vof has concluded an energy covenant (*Energie Convenant*) for a sustainable development of the Zuidplaspolder greenhouse area. This covenant aims to commit parties to the environmental and climate objective of the Dutch government resulting in a CO₂ neutral horticulture industry in 2020.

The financial viability of the project

11. The total investment costs for the project amount to EUR 33 570 547 and can be split into (i) Preparation: EUR 1 651 931, (ii) Collection and compression: EUR 15 486 116, (iii) Transport pipeline: 2 760 000 and (iv) Distribution pipelines: EUR 13 672 500. Net

operating costs³ and benefits are estimated at EUR 18 864 330 during the first five years. Furthermore, an amount of EUR 3 205 615, a benefit from the Energy Investment Deduction, is also deducted⁴. This gives a total eligible investment cost of EUR 11 500 602. The planned aid amount of EUR 5 000 000 represents approximately 43.5% of the eligible investment costs.

12. The Dutch authorities have explained that the costs of producing CO₂ using a cogeneration system depend on whether it is used to produce heat with CO₂ as a byproduct, or only to produce CO₂. It also depends on whether this production is during peak or during off-peak hours as this determines the value of the produced electricity. According to the Dutch authorities, the costs of CO₂ without the usage of heat are between 30 and 60 EUR/ton at the current prices for natural gas and electricity. When the heat can be used, the costs are close to zero. The costs to produce CO₂ using a boiler also depend on whether it is used to produce heat with CO₂ as a byproduct, or only to produce CO₂. The authorities have submitted that the cost of CO₂ without the usage of heat is some 80 EUR/ton at the current prices for natural gas. When the heat can be used, the costs are close to zero. The only current alternative, instead of producing CO₂ from natural gas, is to purchase liquid CO₂ delivered by truck. The price of liquid CO₂ starts at around 100 EUR/ton. Given the discrepancy in price, liquid CO₂ is not considered competitive to the alternatives.
13. The market for the supply of gaseous CO₂ is at present virtually inexistent, except the existing supply by OCAP CO₂ Vof in the other greenhouse areas (“Westland” and “Oostland”). Although the prices of such alternatives constrain the pricing behaviour of OCAP CO₂ Vof to a certain extent, no market price can be defined, other than the price OCAP CO₂ Vof uses in the current supply areas. This price ranges from 38 to 72 EUR/ton, depending on the purchase volumes.
14. The range of sales price for OCAP CO₂ Vof in this project, which will ultimately depend on commercial negotiations with clients, is raised to 47 and 79 EUR/ton to enhance the economics of this project, depending on the purchase volume⁵. In comparison with alternatives which deliver CO₂ as a byproduct this price is lower than the price of liquid CO₂ and at the same time competitive to the costs that greenhouse owners have to make for producing CO₂ themselves. An overview of the CO₂ costs, provided by the Dutch authorities, is presented in the table below:

³ The operating costs assume synergy with the existing project of OCAP CO₂ Vof regarding CO₂ supply to the areas “Westland” and “Oostland” and therefore possible scale effects (cost reductions) from the extension of the existing network have been accounted for in the calculation of the operating costs of the notified project. The Dutch authorities have confirmed that there are no overlapping eligible costs between the existing project of OCAP CO₂ Vof in the areas “Westland” and “Oostland” and the costs for the notified project relating to Zuidplaspolder.

⁴ The Energy Investment Deduction (‘EIA’) is a tax exemption meant to stimulate investments in energy reduction or renewable energy. The EIA does not constitute state aid in the sense of article 107(1) TFEU, as it is a general measure which is open to all companies on an equal basis. See also Commission decision N266/2003 of 15 July 2003 (section 3.2).

⁵ The Dutch authorities have explained that there is a range of sales prices the growers pay for OCAP's gaseous CO₂: the more hours a certain installed capacity is used, the lower the (average) costs per supplied ton CO₂ are. Prices are thus being set on contracted supply capacity and the actual full load off-take hours. The higher the full load off-take hours, the lower the price the grower pays and vice versa. The authorities have given the following example to demonstrate this: the price at 2500 full load off-take hours will be EUR 47/ton whereas at 1250 full load off-take hours this will be EUR 79/ton.

Cost of CO₂ (EUR/ton)	
Cogeneration or boiler, use of heat	<10
Cogeneration, no use of heat	30-60
Boiler, no use of heat	80
Liquid CO ₂	>100
OCAP – Zuidplaspolder	47-79
OCAP – existing supply areas	38-72

15. The business plan supplied by the Dutch authorities shows that, without the planned aid, the profitability of the investment in terms of the internal rate of return (IRR) is [...] % over the time horizon by which the investment is fully depreciated (20 years). This return (without aid) is significantly lower than the minimum return rate required by the beneficiary's shareholders of [...] % for this and other projects, as evidenced by internal company documents. An IRR of less than [...] % is considered too low to attract the required project finance, given the demands from the bank (i.e. interest, reserve accounts, Debt-Service Coverage Ratio (DSCR) and repayment period). The projected revenues versus the necessary capital at an IRR of [...] % (without aid) are too low to meet these demands.
16. Moreover, based on the business plan supplied by the Dutch authorities, the prospective sales prices of between 47 and 79 EUR/ton would need to be raised in excess of 12% other things being equal (i.e. assuming totally inelastic demand) for reaching an adequate profitability level without the planned aid. That would, as a minimum, increase the price range to 53 and 89 EUR/ton, respectively. Given the prices of alternative CO₂ supply sources, any increase of that order of magnitude could put the beneficiary's commercial proposition out of the market for simple boiler's alternative price of EUR 80/ton and in the upper side of the price range of 30-60 EUR/ton for cogeneration.
17. The Dutch authorities identified a number of risks in connection with the proposed project. The biggest (investment) risks in the implementation phase are the lead time for obtaining licences and possible changes in land-use plans. As regards the operating risks, the Dutch authorities have emphasized that the new source of CO₂ is part of a bioethanol production factory that is being built, and that the long-term availability of CO₂ at the currently expected production level is uncertain given the young market for bioethanol and the surrounding political sensitivities. The Dutch authorities have furthermore noted that there are some uncertainties related to the sale of the CO₂, among other things because interest in the uptake of external CO₂ now and in the future depends on many factors, including the price of gas and electricity, the possible impact of emission allowances and legislative developments.

2.1. National Legal Basis

18. The national legal basis for the aid is the “Algemene Subsidieverordening Zuid-Holland” of the Province of Zuid-Holland. The measure constitutes individual aid which will be made available to the beneficiary as a direct grant, based on this by-law.

2.2. Beneficiary

19. Bio Supply CV is the beneficiary of the aid as it undertakes the necessary investments⁶. Bio Supply CV is a joint venture of Linde Gas Benelux, Reggeborgh Deelnemingen and Volker Wessels Stevin Deelnemingen, like OCAP CO2 Vof.

2.3. Budget

20. The budget constituting the aid amount is EUR 5 000 000.

2.4. Duration

21. The Dutch authorities have notified the aid for the period from 2010 until 2011. The aid will only be provided to Bio Supply C.V. subject to approval by the Commission.

2.5. Cumulation

22. The aid can be cumulated with EIA (Energy Investment Deduction), a tax exemption meant to stimulate investments in energy reduction or renewable energy. EIA however does not give rise to state aid as meant in article 107(1) of the Treaty on the Functioning of the European Union ("TFEU")⁷, considering that this concerns a general measure which is open to all companies on an equal basis⁸.

2.6. Views of the Dutch authorities

23. In the opinion of the Dutch authorities Bio Supply CV, being the recipient of the aid, must be considered as the sole beneficiary. Bio Supply CV will not, in any form, pass on the aid it receives. The authorities have explained that commercial negotiations at arms length have led to a purchase price that Bio Supply CV will pay Abengoa. Abengoa is therefore not considered a beneficiary of the aid.
24. Furthermore, no advantage is conferred to the greenhouse owners. More particularly, the investment aid is used to build the planned infrastructure and not used to subsidize the price to be paid by greenhouses for gaseous CO₂ from OCAP CO2 Vof. These undertakings are therefore no beneficiaries in the sense of article 107(1) TFEU.
25. The Dutch authorities have considered other ways to achieve the environmental goals envisaged by the measure, such as a direct subsidy to greenhouse farmers. A second potential alternative would be to publicly exploit the deliverance of external CO₂ to the greenhouses, but the Dutch authorities have indicated from the outset that they will not interfere with the greenhouse and energy markets in this way. However, they submit that at the moment they can see no other appropriate, less distortive and equally effective instrument, which will lead to the same result.
26. Moreover, in the light of the financial prognosis of the project, the Dutch authorities consider that the amount of subsidy to OCAP is proportional with a view to ensuring the viability of the project, without which it would not be carried out.

⁶ Nevertheless, Bio supply CV and OCAP CO2 Vof are part of the same economic entity, hence the cash flow scheme presented in the notification, which is based on the consolidated undertakings of these two entities.

⁷ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

⁸ See Commission decision N266/2003 of 23.07.2003.

3. ASSESSMENT

3.1. Presence of State Aid Pursuant to Article 107 (1) TFEU

27. A measure constitutes State aid under Article 107 (1) TFEU if it fulfils four conditions. Firstly, the funding stems from the State or from State resources. Secondly, the measure confers an advantage to certain undertakings or economic activities. Thirdly, the measure is selective. And fourthly, the measure affects trade between Member States and distorts or threatens to distort competition in the internal market.
28. The aid granted under the present scheme fulfils all the conditions mentioned above. The aid stems from State resources since it is funded by the Dutch federal and regional budget. The aid confers an advantage because it provides funding for an undertaking which this company would not obtain under normal market conditions. The aid is selective since it is granted only to one company. The aid has the potential to affect trade between Member States and to distort competition because the beneficiary is active in the supply of gaseous CO₂ to the horticulture sector, where trade between Member States may take place. Furthermore, as the measure is expected to lead to a replacement of natural gas (for the production of CO₂ by means of boilers and cogeneration systems) by CO₂ from OCAP CO₂ Vof, the measure may also have the potential to be distortive of competition between existing and competing means to produce CO₂ and have an adverse effect on trade between Member States, since the gas supply market concerned is open to competition and intra-community trade⁹. The aid granted to the beneficiary thus constitutes state aid pursuant to Article 107(3) TFEU.
29. The public funds made available for the planned grant will be released for the benefit of Bio Supply CV, which is therefore considered as the beneficiary of the State aid.
30. As regards other undertakings potentially interested on and/or benefitting in the future from the infrastructure once it is in place, such as Abengoa as supplier of raw CO₂ or the greenhouse undertakings that will buy the CO₂ supplied by the beneficiary, they will not receive the public funds planned for aid or a part thereof. Moreover, their contracts or transactions with the beneficiary all involve private profit maximising undertakings. It follows that the supply and demand prices for CO₂ and ensuing benefits and costs throughout the lifetime of operation of the infrastructure for third parties can be considered to be market prices not giving rise to undue economic advantages, as further shown below.
31. The investment aid granted to Bio Supply CV will not be passed on to Abengoa. Additionally, Abengoa will itself invest EUR 3 million to install facilities for collection of CO₂ in its plant and will recoup this investment through the sale of the CO₂ to Bio Supply CV, leading to a 6.1% return on investment, based on the possible sales price envisaged.
32. As for the greenhouses, they will pay a market price for the CO₂ purchased. Additionally, the price they will pay to OCAP for the CO₂ will not be disproportionately lower than their current costs for the production of CO₂ and will therefore not give them any undue cost advantage. The following may serve to clarify this.

⁹ Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC OJ L 176, 15.7.2003, p. 57–78 and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p. 94–136.

33. Large greenhouses generally use the least costly CO₂ supply source, i.e. cogeneration (EUR/ton 30-60; no use of heat), which is only commercially attractive as from a certain size, whereas small greenhouses use the more costly boiler (EUR/ton 80; no use of heat). With aid, the price for CO₂ from OCAP ranges from 47-79 EUR/ton, depending on commercial negotiations, based on the purchase volume. Such a higher price level does not as such give the large greenhouse undertaking the incentive to switch to OCAP's CO₂. Hence, it is considered unlikely that the measure confers an indirect advantage to the large greenhouses in the form of an undue low price. Moreover, in the absence of aid, OCAP's price range would increase to 53 and 89 EUR/ton. Any increase of that order of magnitude could clearly put the beneficiary's commercial proposition out of the market in the upper side of the price range of 30-60 EUR/ton for cogeneration.
34. Some 2 to 3 large greenhouses in Zuidplaspolder may be subject to the EU-ETS system and therefore have to pay the price of ETS allowances for each ton of CO₂ they emit¹⁰. The CO₂ production costs of these large greenhouses are on the lower side of the presented bandwidth of 30-60 EUR/ton. Even if the cost of emission allowances (current market price of 15 EUR/ton) would be added to the CO₂ price to be paid by large greenhouses, the current price level for such big greenhouses (i.e. the lower end of EUR/ton 45-75) would seem to be comparable if not lower compared to the OCAP price range of EUR/ton 47-79. Without aid, the discrepancy between the two price levels would be even higher (i.e. OCAP offering by and large the more costly solution at 53 and 89 EUR/ton).
35. Therefore, on the basis of the foregoing, the measure cannot be held to give rise to an undue indirect advantage to Abengoa or to the greenhouses in Zuidplaspolder and it is therefore concluded that these are not recipients of the planned State aid.

3.2. Legality of the Aid

36. By notifying the measure before its implementation, the Dutch authorities have fulfilled their obligation according to Article 108 (3) TFEU.

3.3. Compatibility of the Aid with Article 107 (3) (c) TFEU

3.3.1. Applicable legal basis for assessment

37. In derogation from the general prohibition of State aid laid down in Art. 107(1) TFEU, aid may be declared compatible if it can benefit from one of the derogations enumerated in the Treaty. For the present case, Article 107 (3) (c) TFEU may provide the appropriate basis for compatibility.
38. The Commission has wide discretion in matters falling under Art. 107(3) TFEU.¹¹ Exercising this discretion, it has issued guidelines and notices setting forth criteria for declaring certain types of aid compatible with the internal market based on Art. 107(3)

¹⁰ According to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, Article 2 this Directive shall apply to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II. The Directive applies to greenhouses, to the extent that their engage in the combustion of fuels in installations with a total rated thermal input exceeding 20 MW (see overview of activities covered by the Directive in Annex I of the Directive). According to Annex I sub 1, installations exclusively using biomass are not covered by this Directive. For this reason, supplier Abengoa is not subject to the EU-ETS.

¹¹ Case C-142/87 *Belgium v Commission*, 1990, ECR I-959, , paragraph 56, and Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 36

TFEU. It is constant jurisprudence that the Commission is bound by the guidelines and notices that it issues in the area of supervision of State aid inasmuch as they do not depart from the rules in the Treaty and are accepted by the Member States.¹² It is therefore necessary to first assess whether the notified aid falls into the scope of application of one or more guidelines or notices. If this is the case, the Commission is bound for the exercise of its discretion under Art. 107 (3) of the TFEU by the respective text. If this is not the case, the Commission needs to verify whether the aid can be declared compatible directly based on Art. 107 (3) (b) and/or 107 (3) (c) TFEU.

39. In the present case, the measure may fall, in view of its objective, within the scope of the Community Guidelines on State Aid for Environmental Protection¹³ ("Environmental Aid Guidelines").

40. The scope of the Environmental Aid Guidelines is defined in point 58 to 60 as follows:

(58) These Guidelines apply to State aid for environmental protection. They will be applied in accordance with other Community policies on State aid, other provisions of the Treaty establishing the European Community and the Treaty on European Union and legislation adopted pursuant to those Treaties.

(59) These Guidelines apply to aid [24] to support environmental protection in all sectors governed by the EC Treaty. They also apply to those sectors which are subject to specific Community rules on State aid (steel processing, shipbuilding, motor vehicles, synthetic fibres, transport, coal agriculture and fisheries) unless such specific rules provide otherwise.

(60) The design and manufacture of environmentally friendly products, machines or means of transport with a view to operating with fewer natural resources and action taken within plants or other production units with a view to improving safety or hygiene are not covered by these Guidelines.

41. Environmental protection is defined in point 70 (1) as follows:

1) environmental protection means any action designed to remedy or prevent damage to physical surroundings or natural resources by a beneficiary's own activities, to reduce the risk of such damage or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy [33].

42. In the present case, the environmental effect of the aid would be realised by the change in behaviour of the greenhouses using CO₂ from OCAP instead of the use of natural gas to produce their own CO₂, thus leading to primary energy savings on the part of the end consumers which should in turn reduce CO₂ emissions thus contributing to environmental protection.

43. However, point 70 (1) requires an action designed to prevent damage to physical surroundings by *a beneficiary's own activities*. This condition is not fulfilled in the case at hand: the beneficiary of the aid is the network company, Bio Supply CV, which does not carry out any activities of environmental protection in the sense of aforementioned point 70(1) of the Environmental Aid Guidelines.

44. Therefore, the present case falls outside the scope of the Environmental Aid Guidelines.

¹² Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, paragraph 36; Case C-311/94 *IJssel-Vliet* [1996] ECR I-5023, paragraph 43; and Case C-351/98 *Spain v Commission* [2002] ECR I-8031, paragraph 53.

¹³ Official Journal C 82 of 01.04.2008, page 1

45. There are no other frameworks or guidelines that may apply to the present case. Therefore, the Commission needs to assess the compatibility of the present measure directly on the basis of Article 107 (3) (c) TFEU.
46. The Commission has assessed State aid for infrastructure on the basis of Article 107 (3) (c) TFEU before. These cases concerned pipelines, transport infrastructure, and local networks for the transmission of a waste product, notably waste heat from local industry (compared to waste CO₂ from a local supplier in the case at hand). These previous infrastructure cases were assessed under the Treaty directly, as aid for infrastructure is explicitly excluded from the scope of the Environmental Aid Guidelines (as shown in footnote 44 of these guidelines), whereby the criteria of the Environmental Aid Guidelines were applied by analogy¹⁴.

3.3.2. Assessment directly under Article 107 (3) (c) TFEU

47. Article 107 (3) (c) TFEU states that "*...aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest...*" may be considered to be compatible with the common market.
48. It is established Commission practice¹⁵ that measures may be declared compatible directly under Art. 107(3)(c) TFEU, if they are necessary and proportionate and if the positive effects for the common objective outbalance the negative effects on competition and trade. In this regard, the Commission considers it appropriate to assess the following questions:
- (1) Is the aid measure aimed at a well-defined objective of common interest? ¹⁶
 - (2) Is the aid well designed to deliver the objective of common interest? In particular:
 - (a) Is the aid measure an appropriate and necessary instrument, i.e. are there other, better-placed instruments? ¹⁷
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
 - (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

¹⁴ E.g. state aid cases N485/2008 and N584/2008, both dated 17 June 2009.

¹⁵ Community framework for state aid for research and development and innovation OJ C 323, 30.12.2006, p. 1., point 1.3; Community guidelines on State aid for environmental protection, OJ C 82, 1.4.2008, p. 1., point 1.3.

¹⁶ Judgement of the court of 14 January 2009, Kronoply v. Commission (T-162/06, Rec. p. II-1; especially points 65, 66, 74, 75)

¹⁷ Judgement of the Court of 7 June 2001, Agrana Zucker und Stärke / Commission (T-187/99, Rec._p._II-1587) (cf. point 74); Judgement of the Court of 14 May 2002, Graphischer Maschinenbau / Commission (T-126/99, Rec._p._II-2427) (cf. points 41-43); Judgement of the Court of 15 April 2008, Nuova Agricast (C-390/06, Rec._p._I-2577) (cf. points 68-69).

Objective of Common Interest

49. The aid measure has to aim at a well-defined objective of common interest. An objective of common interest is an objective which has been recognised by the European Union as being in the common interest.
50. The measure at hand aims at making better use of waste CO₂ from industrial processes. To this end the measure supports the construction of the necessary infrastructure to transport such CO₂ to end consumers. The project is expected to lead to primary energy savings on the part of the end consumers, i.e. the greenhouses, which in turn should reduce CO₂ emissions from fossil fuels, thus contributing to environmental protection. The EU institutions have recognised on many occasions that the protection of the environment and the reduction of CO₂ emissions are in the common interest. In particular, the European Council made a commitment to achieve at least a 20% reduction in greenhouse gas emissions in 2020 as compared to 1990 and at least a 20% savings in energy consumption compared to the projections for 2020¹⁸, and the European Parliament and the Council adopted in 2009 the corresponding legislation to meet these targets.
51. According to the calculations of the Dutch authorities the measure would save in total 25 million m³ natural gas per year (assuming the supply of some 115 000 ton CO₂ per year to some 60 new customers in the Zuidplaspolder), thus achieving an annual reduction of CO₂ emissions of 45 000 ton.
52. It can thus be concluded that the proposed measure aims at a well-defined objective of common interest.

Appropriate Instrument

53. The aid granted for the envisaged measure is an appropriate instrument to achieve the increase in environmental protection through CO₂ reductions. An instrument is appropriate if there are no other less distortive instruments to achieve the same results. The planned public support aims at incentivizing the construction of dedicated infrastructure in a nascent market for gaseous CO₂ supply as input for horticulture.
54. The main alternative to the planned subsidy would be to encourage the greenhouse farmers with a subsidy for building a greenhouse that would deliver an environmental benefit. However, as explained by the Dutch authorities, there are as of yet no greenhouse farmers that own the land on which the greenhouses will be built and, as a result, there are no guarantees of achieving the environmental goals. Moreover, the greatest environmental benefits are derived from all the greenhouses working together in obtaining external CO₂. This cooperation is far more feasible by having a single pipeline grid connecting the greenhouses than giving direct subsidies to farmers and trying to make them all work together to organise and set up the commercial interface with the infrastructure grid.
55. The second alternative of publicly exploiting the deliverance of external CO₂ to the greenhouses, would involve higher interference with the greenhouse and energy market whilst there would be no guarantee that a public company would act only on market terms acceptable to a private investor. Indeed, even if a publicly owned company was to be set up for that purpose, as further shown below, it can be excluded that it could start

¹⁸ See paragraph 22 of the Presidency Conclusions of the Brussels European Council 11 and 12 December 2008, available at http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/104692.pdf.

operations without a similar subsidy for the initial investment, in conditions similar to the notified measure.

56. In line with the view of the Dutch authorities, the direct subsidy to the infrastructure operator offers a greater guarantee for reaching the environmental goals and doing so in a way that is efficient and transparent. It appears, therefore, that the envisaged aid in the form of a direct grant constitutes an appropriate instrument to achieve the desired CO₂ reductions.

Incentive Effect

57. The aid granted for the envisaged measure must have an incentive effect. State aid provides an incentive effect if the aid changes the recipients' behaviour towards reaching the objective of common interest. The Commission considers that aid does not have an incentive effect in all cases in which the project has already started prior to the aid application by the beneficiary.
58. It is apparent that the market alone does not provide sufficient incentives for companies to invest in the network and that there is currently a market failure.
59. In particular, the authorities have submitted that the market does not provide enough incentives for the aid recipient to invest. Most notably, the infrastructure is considered costly and, as evidenced from the business case, the project is characterised by a number of investment and operating risks.
60. Without aid, and given the investment and exploitation risks at stake (described in point 17 above), the internal rate of return (IRR) is too low and the project would not attract capital at market conditions. More precisely, the profitability of the investment in terms of the internal rate of return (IRR) without state aid is [...] % over the time horizon by which the investment is fully depreciated (20 years). This IRR is too low for the shareholders to provide the risk capital to Bio Supply CV for this investment and this low IRR is primarily the result of the relatively unfavourable situation of the Zuidplaspolder area in respect of the current transportation pipeline of Bio Supply. With the aid of EUR 5 million the IRR will increase to [...] %, according to the cash flow analysis submitted by the Dutch authorities. This percentage remains below the minimum return rate requested by shareholders ([...] %) but will still be acceptable for them in the light of secondary benefits in terms of brand image and reputation in this starting business¹⁹.
61. Moreover, the range of price increases that would be needed to reach the same [...] % IRR without the planned aid would be above 12% which, as indicated in paragraph 16, would put Bio Supply's commercial proposition out of the market vis-à-vis competing alternatives. This would in turn greatly reduce the expected benefits in terms of CO₂ reductions.
62. The Dutch authorities have confirmed that the project has not yet started pending authorisation from the Commission.
63. Since the project would in all likelihood not be undertaken without public support, the Commission considers that the proposed measure has an incentive effect.

¹⁹ The Dutch authorities have submitted that the Weighted Average Cost of Capital (WACC) is to the partners in the notified project no decision parameter. The shareholders assess the project on a stand-alone basis, pre-finance and pre-tax, and use an IRR calculation based on the investment and EBITDA of the project. The reported sales and EBITDA of OCAP CO₂ Vof in 2009 are EUR [...] and EUR [...]. Projected sales and EBITDA in 2010 are EUR [...] respectively EUR [...].

Proportionality

64. A State aid measure is proportional if the measure is designed in a way that the aid as such is kept to the minimum.
65. The Commission first of all observes that it has generally accepted in the past an aid intensity of 50% for investments into transport infrastructure and for investments into pipelines²⁰.
66. The Commission secondly observes that it has also accepted an aid intensity of 60% for investments into networks for district heating and cooling, as well as into networks for waste heat²¹.
67. Against this background, the Commission has analysed the economic viability of the notified project.
68. As indicated above, the aid amount of EUR 5 000 000 represents approximately 43.5% of the eligible investment costs of EUR 11 500 602.
69. It can thus be concluded that the State aid granted for the envisaged measure is proportional, because it is in line with aid intensities the Commission has accepted in the past for comparable projects and because the detailed economic analysis of the project at hand shows that the aid does not exceed what is necessary to break even.

Distortion of competition and impact on trade between Member States

70. The market for the supply of gaseous CO₂ is by definition bound to the location of the pipelines and therefore local by nature, i.e. the greenhouse region Zuidplaspolder in the Netherlands. Therefore any possible effect on trade between Member States would be limited only.
71. Moreover, considering the structure of this nascent market, the limited availability of transport facilities (pipelines and compression equipment) as well as the substantial investments required for entrance to the market it is not expected that competitors would enter this local segment within the foreseeable future²². There are indirect competitors who deliver liquid CO₂ by truck. However, the costs for liquid CO₂ are almost double those for gaseous CO₂ delivered by pipeline (as indicated in point 14 above). Therefore, without the ability to use gaseous CO₂ from the planned pipelines, most greenhouse undertakings will continue to produce their own CO₂.
72. Under these circumstances, the Commission considers it unlikely that the measure would have an adverse impact on competition in the supply of gaseous CO₂.

²⁰ E.g. the propylene pipeline cases C 67 to C 69/2003 (ex N355/03, N400/03 and N473/03), Commission decision of 02.03.2005 (point 55).

²¹ E.g. State aid case N584/2008, Commission decision of 18.06.2009 (aid intensity at most 60%, point 64); in Commission decision , N485/2008, of 18.06.2009 the aid intensity was limited to 50% (point 34).

²² The Dutch authorities have explained that there are a few other undertakings that are active in the joint supply of waste heat and CO₂ to greenhouses on a somewhat smaller scale. However, such undertakings are situated elsewhere in the Netherlands and not within feasible vicinity of Zuidplaspolder. In addition, Zuidplaspolder is not situated near a CO₂ source and therefore a nearby transportation grid is a *conditio sine qua non* for the economic viability of CO₂ supply to Zuidplaspolder. As indicated, OCAP CO₂ VOF owns a transportation pipeline that passes nearby and is also close enough to connect the Abengoa source in the Rotterdam harbour area. Without the possibility of using this existing pipeline, the investment would be too high and CO₂ supply not feasible. Therefore, it is not expected that competitors would enter this local market.

73. The measure may have the potential to distort competition in the market for the supply of natural gas, considering that as a result of the measure natural gas would be replaced as an input in the production process of greenhouses by gaseous CO₂ from OCAP. However, the supply of natural gas in the subject case takes place on a very local scale, i.e. the region of Zuidplaspolder in the Netherlands. Hence, any impact on competition and trade between Member States in the gas supply market would necessarily be limited only.
74. At the same time, the proposed measure ensures positive environmental effects. As described above, the network for the transmission of waste CO₂ would result in a reduction of primary energy savings on the part of the end consumers, the greenhouses, which in turn reduces CO₂ emissions.
75. Moreover, the Dutch authorities have given the commitment that third party access will be granted to the infrastructure of OCAP to which the subject notification relates (including the existing pipeline) on fair and non-discriminatory terms, if a third party wishes to have access to its transportation and distribution network. As a result, the distortions of competition identified above are mitigated.

Balancing Test

76. It is concluded that any possible distortion of competition or adverse effect on trade between Member States resulting from the envisaged measure can only be limited, so that the overall balance with regard to the objective of common interest of environmental protection is positive.

Conclusion

77. The Commission concludes therefore that the notified aid measure is compatible with 107(3)(c) TFEU.

4. DECISION

78. The Commission has accordingly decided not to raise objections to the notified measure, because the aid can be found compatible with the internal market in accordance with Article 107(3)(c) TFEU and Article 61(3)(c) of the EEA Agreement.
79. The Commission reminds the Dutch authorities that, in accordance with article 108(3) TFEU, plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 764/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (now 88) of the EC Treaty (OJ L 140, 30.4.2004, p.1).
80. 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/eu_law/state_aids/state_aids_texts_nl.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B-1049 Brussels
Fax No: (0032) 2-296.12.42

For the Commission

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Vice-President of the Commission