

EN

***Case No COMP/M.4426 -
SABIC / HUNTSMAN
PETROCHEMICALS UK***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20/12/2006

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4426 - SABIC / HUNTSMAN UK
Notification of 16 November 2006 pursuant to Article 4 of Council
Regulation No 139/2004¹**

INTRODUCTION

1. On 16 November 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking SABIC UK Petrochemicals Holdings Limited (UK) ("SABIC UK", UK), belonging to the group SABIC ("SABIC", Saudi Arabia), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Huntsman Petrochemicals (UK) Limited ("Huntsman UK", UK) by way of purchase of shares. However, two specific assets (the company "Tioxide Europe Limited" and a benzene pipeline) of Huntsman UK located in the UK will not be acquired by SABIC UK.

I. THE PARTIES

2. **SABIC UK**, a newly formed company, is part of SABIC which is an international industrial group primarily active in the production and sale of hydrocarbons and basic chemicals, intermediates, polymers, fertilizers and metals. Saudi Basic Industries Corporation, the parent company of the group, is incorporated in Saudi Arabia, where most of its production assets are located. SABIC's activities in Europe are owned and managed by a group of companies headed by SABIC Europe B.V., which has production assets in The Netherlands and Germany.

¹ OJ L 24, 29.1.2004 p. 1.

3. **Huntsman UK** is primarily active in the production and sale of basic chemicals and certain by-products. The main production assets of Huntsman UK are its ethylene and propylene production facility and its aromatics production facilities. All of Huntsman UK's production assets are located in the UK.

II. THE OPERATION

4. According to a sale and purchase agreement dated 27 September 2006, SABIC UK will acquire 100% of the issued share capital of Huntsman UK from Huntsman Petrochemicals (UK) Holdings.

III. THE CONCENTRATION

5. As a result of the notified operation, SABIC, through SABIC UK, will acquire sole control of Huntsman UK. The operation thus constitutes a concentration within the meaning of Article 3(1)(b) of the ECMR.

IV. COMMUNITY DIMENSION

6. The parties have a combined worldwide turnover of more than €5,000 million (SABIC €16.8 billion; Huntsman UK [...]). The individual Community-wide turnover for each of at least two of the undertakings concerned exceeds €250 million (SABIC €[...]; Huntsman UK €[...]). Neither SABIC nor Huntsman UK have achieved in 2005 two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

V. RELEVANT MARKETS

A Relevant product markets

Horizontal markets

7. SABIC and Huntsman UK both produce the following products in the EEA: propylene, ethylene, pyrolysis gasoline (pygas), benzene, Crude C4, butadiene, raffinate-1, fuel oil.
8. However, much of the parties' production of the above products is used for internal consumption. SABIC does not sell, or is a net purchaser in the EEA of propylene and raffinate-1. With respect to benzene, and Crude C4, there also are no horizontal overlaps in terms of net sales as Huntsman UK is a net purchaser of these products. Thus, the concentration results in four merchant markets with horizontal overlaps: (i) ethylene, (ii) pygas, (iii) butadiene and (iv) fuel oil.
9. In previous decisions, the Commission has found that ethylene², butadiene³, and fuel oil⁴ constitute separate product markets.
10. Regarding pygas, which is a by-product of ethylene, the Commission has left open the question whether there are two separate markets: (i) untreated pygas and (ii) treated pygas⁵. Likewise, for the case at hand, this question can be left open as the notified

² Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

³ Ibid.

⁴ Case COMP/M.3543 - PKN Orlen / Unipetrol

⁵ Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

transaction will not lead to competition concern under any alternative product market definition.

Vertical relationships

11. One or both parties sell the following products in the EEA which are upstream or downstream of a market in which the other party is active in the EEA: propylene, polypropylene, ethylene, polyethylene, ethylene glycol, fuel oil, polyvinyl chloride (PVC), pygas, benzene, cyclohexane, crude C5, toluene/xylenes mixture, xylenes, paraxylene, ethylbenzene, styrene, methyl tertiary butyl ether (MTBE).

Propylene and downstream markets

12. Both SABIC and Huntsman UK produce propylene, whereas SABIC produces polypropylene which is a downstream product. Both the parties also produce fuel oil (see supra) which is a by-product of the production of ethylene and propylene.
13. Propylene is principally produced from naphtha in steam-cracking equipment. Propylene is used for the production of polypropylene, propylene oxide, acrylonitrile, cumene and other chemicals. In line with the Commission's previous decisions⁶, the notifying party considers that propylene constitutes a relevant product market due to its physical characteristics and the absence of substitutes for its specific uses.
14. Polypropylene (PP) is derived from propylene and is one of the main kinds of plastics used worldwide. In the past the Commission has distinguished between PP resins, on the one hand, and PP compounds on the other hand⁷.
15. PP compounds are products involving a mixture of PP resins and other materials. Although SABIC produces PP compounds, this is not relevant to the transaction because Huntsman UK does not produce PP resins, the upstream product.
16. Among PP resins, the Commission has also distinguished between (i) homopolymers, (ii) random copolymers and (iii) impact (block) copolymers⁸.
17. In the notifying party's view, there is a single market for PP resins, since, inter alia, all producers of impact copolymers are capable of producing homopolymers and random copolymers as well, and, in fact, there is no PP producer that produces only impact copolymers.
18. For the case at hand, the precise market definition for PP resins can be left open, since the notified transaction will not give rise to competition concerns in any alternative product market definition.

Ethylene and downstream markets

19. Both SABIC and Huntsman UK produce ethylene (see supra), whereas SABIC produces polyethylene, ethylene glycol and PVC which are downstream products. Both parties also produce fuel oil (see supra) as a by-product of the production of ethylene and propylene.

6 Ibid.

7 Case COMP/M. 2806 SABIC/DSM Petrochemicals.

8 Case COMP/M. 1751 Shell/BASF/Project Nicole.

20. Polyethylene (PE) is derived from ethylene through the process of polymerisation in which monomers react with one another to produce polymers. It is used in a wide array of applications, including films, coatings, packaging, bags, plastic pipes, bottles and various moulded plastic products.
21. There are three main categories of PE: (i) high density PE (HDPE), (ii) low density PE (LDPE) and (iii) linear low density PE (LLDPE). Moreover, there are three main types of LLDPE, categorised according to the co-monomer used in the manufacturing process: C4 LLDPE, C6 LLDPE and C8 LLDPE.
22. The Commission has previously considered HDPE⁹ and C8 LLDPE¹⁰ to constitute two distinct markets, whereas it has left the question open whether LDPE, C4 LDPE and C6 LDPE constitute one single product market or whether LDPE constitutes a separate market from C4 LDPE and C6 LDPE together¹¹. For the case at hand, this question can be left open as the notified transaction will not lead to competition concern under any alternative product market definition.
23. Ethylene glycol (EG) is a mixture of ethylene oxide and water. Ethylene oxide is produced from ethylene. The main use of EG is the manufacturing of fibre grade polyesters, antifreeze and coolant products. There are three types of EGs: mono-ethylene glycol (MEG), di-ethylene glycol (DEG) and tri-ethylene glycol (TEG). The notifying party believes that EG should be treated as a single market, although the Commission has left open the question whether each of the three types of EGs constitutes a separate product market. For the case at hand, this question can also be left open as the notified transaction will not give rise to competition concern under any alternative product market definition.
24. PVC is produced from vinyl chloride monomer (VCM). VCM is downstream from ethylene dichloride and ultimately ethylene. The Commission has left open the question whether “standard” PVC (mainly used in construction, packaging and pipes and fitting industries) and “special” PVC (used in the automotive and flooring industries) constitute two separate product markets. For the case at hand this question can also be left open as SABIC's sales of PVC are insignificant and as Huntsman does not sell VCM or ethylene dichloride.

Pygas and downstream markets

25. Both SABIC and Huntsman UK produce pygas (see supra), whereas only SABIC or Huntsman produce several downstream products: benzene, Toluene/Xylene mixture (TXM) and styrene for SABIC; cyclohexane, crude C5, xylenes, paraxylene and ethylbenzene for Huntsman UK.
26. Benzene is derived from a number of sources, including pygas. The notifying party believes that benzene is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses. In previous decisions the Commission has found that benzene constitutes a distinct product market¹².

⁹ Case COMP/M.3733 - Dow/DDE ; case .

¹⁰ Case COMP/M.2806 – SABIC / DSM Petrochemicals

¹¹ Case COMP/M.2845 – SABIC / DSM Petrochemicals

¹² Case COMP/M.2806 – SABIC / DSM Petrochemicals

27. Cyclohexane is an aromatic derived from benzene and is used as an intermediate to produce nylon. The notifying party believes that cyclohexane is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses, even though the Commission has left open this question¹³.
28. Crude C5 is extracted from pygas, and can be used to make adhesives. The notifying party believes that Crude C5 is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses. In previous decisions the Commission pointed out that, according to the respondents to its market investigations, crude C4 and crude C5 are two separate markets¹⁴. However the Commission left open the precise product market definition. For the case at hand, it is not necessary to finally decide the product market definition as the notified transaction will not lead to competition concern under any alternative product market definition.
29. TXM occurs as a co-product of extracting benzene from pygas. In principle, customers can use this product as a gasoline component or to extract toluene and xylenes for chemical applications (e.g., in the production of paraxylene). The notifying party considers that TXM should be regarded as part of the overall market for gasoline additives. However, for the case at hand, it is not necessary to finally decide the product market definition as the notified transaction will not lead to competition concern under any alternative product market definition.
30. Xylenes are aromatic chemicals extracted from reformed naphtha or from the TXM derived from pygas. Xylenes are a colourless, sweet-smelling liquid which occur naturally in petroleum and coal tar, and are also formed during forest fires. The vast majority of xylene molecules are never extracted from petroleum. However, xylenes also can be processed into paraxylene and sold as a general purpose solvent. When used as a chemical (as opposed to a gasoline additive), xylenes are predominantly used to process paraxylene. The notifying party believes that xylenes may be regarded as part of the overall market for gasoline additives. However, for the case at hand, it is not necessary to finally decide the product market definition as the notified transaction will not lead to competition concern under any alternative product market definition.
31. Paraxylene is an aromatic product processed from xylenes or toluene, or a toluene/xylenes mix. Paraxylene is used primarily as a feedstock for the manufacture of purified terephthalic acid, the principal raw material to produce most polyester. The notifying party believes that paraxylene constitutes a separate market due to its physical characteristics and the absence of substitutes for its specific uses. The Commission has considered that paraxylene could constitute a separate product market¹⁵. For the case at hand it is not necessary to define this market precisely as the parties' positions in terms of vertical relationships are not likely to give rise to competition concerns.
32. Ethylbenzene is an intermediate compound used predominantly for the production of styrene. The notifying party believes that ethylbenzene is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses (due to the fact that the vast majority of styrene producers can only produce styrene from ethylbenzene).

¹³ Case COMP/M.3288 – TNK / Sibneft / Slavneft JV

¹⁴ Case COMP/M.2806 – SABIC / DSM Petrochemicals ; Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

¹⁵ Case COMP/M.1859 -ENI / GALP.

33. Styrene can be produced from ethylbenzene. In addition, in Europe SABIC uses a special process to extract styrene from pygas without the intermediate step of creating ethylbenzene. Styrene is an intermediate chemical product used as a base material for the production of polystyrene and as a co-monomer in the production of a number of plastics and synthetic rubbers. In line with the Commission practice¹⁶, the notifying party believes that styrene is a distinct product market.

Crude C4 and downstream markets

34. Both SABIC and Huntsman UK produce Crude C4. They also both produce and sell butadiene (see supra) which is a downstream product. Moreover, SABIC produces and sells MTBE and Huntsman UK produces and sells Raffinate-1¹⁷, these two products being downstream from Crude C4.
35. Crude C4 is a by-product of the production of ethylene and propylene, and is used in the production of butadiene and raffinate-1. The notifying party believes that Crude C4 is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses. In previous decisions the Commission pointed out that, according to the respondents to its market investigations, crude C4 and crude C5 are two separate markets¹⁸. However the Commission has left open the precise product market definition. For the case at hand, it is not necessary to finally decide the product market definition as the notified transaction will not lead to competition concern under any alternative product market definition.
36. Raffinate-1 is produced as a by-product when butadiene is extracted from Crude C4. The notifying party believes that raffinate-1 is a distinct product market due to its physical characteristics and the absence of substitutes for its specific uses. The Commission has left open the question whether Raffinate-1 constitutes a distinct product market¹⁹. For the case at hand, this question can also be left open as, under the narrowest product market definition (raffinate-1 considered as a single relevant product market) the notified transaction will not lead to competition concern.
37. MTBE is one of the additives that are used in the gasoline industry. The notifying party believes that MTBE forms part of an overall market for gasoline additives, in light of the numerous substitutes that exist from a customer's perspective, and the resulting price sensitivity of demand. The Commission has left open the question whether this product constitutes a separate market or whether it belongs to a broader market of gasoline additives²⁰. Likewise, for the case at hand, this question can be left open as the notified transaction will not lead to competition concern under any alternative product market definition.

B Relevant geographic markets

38. The parties believe that all the horizontal and vertical markets mentioned above are at least EEA-wide in scope, as in the parties' view the corresponding products are traded

¹⁶ Case COMP/M.1078 - BP/HÜLS.

¹⁷ Sabic produces Raffinate-1 but it uses all its EEA production internally.

¹⁸ Case COMP/M.2806 – SABIC / DSM Petrochemicals ; Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

¹⁹ Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

²⁰ Case COMP/M.2806 – SABIC / DSM Petrochemicals.

broadly across the EEA and most of them are easily transported (e.g., by barges and sea-going vessels, road tankers and rail tankers).

39. In previous decisions, the Commission has found that the geographic scope was at least Western Europe²¹ for propylene, polypropylene, ethylene, polyethylene, ethylene glycol, PVC, benzene, cyclohexane, Crude C5, paraxylene, Crude C4, Raffinate-1 and MTBE. However, for the case at hand, the precise geographic market definition can be left open as the notified transaction will not lead to competition concern under any alternative geographic market definition.
40. With respect to ethylene, the Commission has found in previous decisions that the geographic scope is determined by the relevant pipeline network²². As a matter of fact, the parties are active on the UK pipeline network (Huntsman UK) and on the ARG+ pipeline network (Huntsman UK and SABIC). Each of these two pipeline networks could constitute a separate geographic market. Nevertheless, in its most recent decision to discuss ethylene²³, the Commission noted that its investigation “was inconclusive as to whether the geographic market is the EEA or the geographic area covered by the pipeline network” However, for the case at hand, the precise geographic market definition can be left open as the notified transaction will not lead to competition concern under any alternative geographic market definition.
41. With respect to pygas, the Commission has left open the geographic market definition²⁴. The data provided by the notifying party shows that pygas is traded throughout the EEA. As a matter of fact, in 2005, Huntsman UK exported all of its surpluses of pygas from UK to The Netherlands. In addition, according to CMAI²⁵, most of the pygas used by the three customers ([...]) known to purchase pygas in the Netherlands (which is one of the largest import countries in Europe) is imported from their facilities outside of the Netherlands. However, for the case at hand the precise geographic scope can be left open as the parties do not sell pygas in Central and Eastern Europe and as the notified transaction will not lead to competition concern under any alternative geographic market definition.
42. With respect to Butadiene, the Commission has envisaged that the geographic scope could be Western Europe+, which includes Western Europe, Poland and the Czech Republic²⁶. However, for the case at hand, the precise geographic market definition can be left open as the parties do not sell butadiene in the ten new EU Member States and as the notified transaction will not lead to competition concern under any alternative geographic market definition.
43. With respect to fuel oil the Commission has found in previous decisions that the geographic was at most national. However the exact geographic market definition can be left open since the notified transaction will not lead to competition concern on this product market. As a matter of fact, SABIC and Huntsman UK sell very minor volumes of this product and the amount of fuel oil obtained from ethylene and propylene

21 Western Europe includes EEA Member States prior to the accession of new EU Member States in 2004.

22 Case COMP/M. 4041 - Basell / Craqueur de l'Aubette; case COMP/M.2533 – BP/E.ON ; case COMP/M.2389 – Shell/DEA.

23 Case COMP/M.4094 - Ineos/BP Dormagen.

24 Case COMP/M. 4041 - Basell / Craqueur de l'Aubette.

25 Chemical Market Associates, Inc., which provides data and surveys regarding the chemical industry.

26 Ibid.

production is minor compared to production from other sources (e.g., petroleum distillation)²⁷.

44. With respect to TXM, the geographic market definition can be left open since the notified transaction would not lead to competition concern under any alternative geographic market definition.

VI. COMPETITIVE ASSESSMENT

45. The parties have provided their market shares in terms of net sales. At the Commission's request, they have also provided figures for gross sales. It follows from these figures that calculating the market shares in terms of gross sales does not modify the competitive assessment.

A Horizontal overlaps

46. The concentration results in four horizontal overlaps: (i) ethylene, (ii) pygas, (iii) butadiene and (iv) fuel oil. However the parties' combined market shares are above 15% only for pygas.
47. As regards pygas, the parties only sell treated pygas. With respect to treated pygas their combined market shares (in terms of sales in volume) was [15-20]% in 2005 (SABIC: [10-15]%, Huntsman UK: [0-5]%), in Western Europe and in the EEA. According to the data provided by the parties, the new entity will continue to face several significant competitors: OMV ([20-30]% of sales in volume in the EEA), Repsol ([10-15]%), Polimeri Europa ([5-10]%), FAO ([5-10]%) and Ruhr Oel ([0-5]%).
48. In addition, the parties' combined share of pygas production capacity was [10-15]% in 2005 (SABIC: [5-10]%, Huntsman UK: [0-5]%) in the EEA.
49. Finally, it is worth noting that, normally, Huntsman UK is a net purchaser of pygas [...].
50. In the light of above, the notified transaction is unlikely to raise competition concern of a horizontal nature as to its compatibility with the common market.

B Vertical relationships

51. The notified transaction gives rise to various vertical relationships. This relates to 4 product markets where the parties have a market share in excess of the 25% threshold: (i) ethylene, (ii) cyclohexane, (iii) ethylbenzene, (iv) MTBE.

Ethylene

52. The UK pipeline network is the only (potential) geographic market where one of the parties has a market share above 25%²⁸. In this area, Huntsman UK is the main seller of

27 According to the CMAI's data provided by the parties, the parties would have a combined market share of [...] % in the EEA, and below [...] % in the Netherlands, which is the only country where they both sell fuel oil.

28 If the ethylene market were to be EEA-wide in scope, the parties would have a combined market share of [10-15] % (Huntsman UK: [10-15] % SABIC: [0-5] %). As to the production and the production capacity of ethylene, they would have a combined share of [5-10] %.

ethylene, with a market share of [80-90]%. However, the parties stress that Huntsman UK's market position for ethylene in the UK has been significantly affected by the loss of an important supply contract [...]. As a matter of fact, Huntsman UK's sales in the UK for 2006 have fallen significantly and are expected to be approximately [...] kt, down from [...] kt in 2005.

53. Only SABIC is active on three downstream markets from ethylene: polyethylene (market shares between [10-15]% and [20-30]%, depending on the product/geographic market), EG (between [10-15]% and [20-30]% depending on the product market), and PVC (less than [0-5]%). However, SABIC is not connected to any UK ethylene pipelines, and therefore does not purchase ethylene on the pipelines or sell ethylene to customers on these pipelines.
54. As a matter of fact, SABIC [...] on the ARG+ pipeline network which is a potential geographic market. Huntsman sells a small part of its UK production of ethylene on this pipeline network, but only has a market share of [0-5]%
55. In the light of above, the notified transaction does not raise any competition concerns in relation to the vertical relationship between (i) ethylene and (ii) polyethylene, EG and PVC.

Cyclohexane

56. Huntsman UK (but not SABIC) is active on the market for cyclohexane and has a market share of [20-30]% in the EEA. Huntsman UK has a share of [20-30]% in terms of production capacity and a share of [20-30]% in terms of production. Cyclohexane is produced from benzene, which is produced from pygas. Only SABIC sells benzene, with a market share of [5-10]% and a similar share in terms of production and capacity production. At the EEA level the parties have a combined market share of [15-20]% on the market for treated pygas. On this market, they have a lower combined share in terms of production ([10-15]%) and production capacity ([10-15]%). Therefore the proposed transaction does not raise any competition concerns in relation to the vertical relationship between cyclohexane, benzene and pygas.

Ethylbenzene

57. Huntsman UK (but not SABIC) is active on the market for ethylbenzene and has a market share of [90-100]% in the EEA. Huntsman UK produces ethylbenzene from xylenes, which are produced from TXM. TXM is produced from treated pygas. Ethylbenzene is used to produce styrene.
58. As regards upstream markets, only Huntsman UK is active on the market for xylenes, which is the direct upstream market from ethylbenzene, with a market share of about [0-5]% in Western Europe or in the EEA. With respect to TXM, only SABIC is active on this market with a market share of about [0-5]% in Western Europe or in the EEA. As already mentioned, the parties have a combined market share of [15-20]% on the market for treated pygas in the EEA, and a lower share in terms of production and production capacity.
59. With respect to styrene, which is downstream from ethylbenzene, only SABIC is active on this market with a market share of about [0-5]% in WE and in the EEA. The parties point out that Huntsman UK has a very small ethylbenzene production facility, with a capacity of [...] kt. As a matter of fact, Huntsman UK's production and capacity

production share is less than [0-5]% in the EEA. The reason for this low figure (in comparison to the overall market share) is that, according to the parties, all producers of styrene which use ethylbenzene produce their own ethylbenzene ("captured production"). Huntsman UK has a supply contract with only one customer, a styrene producer ([...]), which purchased [...] kt of ethylbenzene in 2005 [...]. This customer also produced [...] kt of ethylbenzene for internal use, meaning that only [5-10]% of its requirements were met under the Huntsman UK supply contract. Moreover, in Europe SABIC uses a special process to extract styrene from pygas without the intermediate step of creating ethylbenzene.

60. Therefore the transaction does not give rise to any competition concerns with respect to the vertical relationship between ethylbenzene and downstream and upstream markets from ethylbenzene.

MTBE

61. MTBE is produced from isobutene, which is produced from raffinate-1. Raffinate-1 is produced from Crude C4. Only SABIC is active on the market for MTBE with a market share of [30-40]% in Western Europe and in the EEA. However, SABIC's share is very much lower in terms of production and production capacity (about [5-10]%). On this market there are other significant suppliers as Lyondell (market share of [30-40]% in the EEA), Oxeno ([10-15]%) and Ecofuel ([5-10]%).
62. Neither SABIC nor Huntsman UK sell isobutene, which is the direct upstream market. Regarding the other upstream markets, only Huntsman UK produces and sells Raffinate-1 with a market share of [10-15]% in Western Europe and of [15-20]% in the EEA and the parties have a combined share of [5-10]% in terms of production capacity²⁹. Although SABIC and Huntsman produce Crude C4, Huntsman is a net purchaser of Crude C4. Sabic has a market share of [5-10]% in Western Europe and in the EEA and the parties have a share of [10-15]% in terms of production and production capacity. Therefore it can be concluded that the new entity is unlikely to be able to foreclose competitors with respect to this current vertical relationship.

²⁹ [...].

VI. CONCLUSION

63. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission,
signed,
Jan FIGEL
Member of the Commission