

***Case No COMP/M.5732 -
HEWLETT-PACKARD/
3COM***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/02/2010

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EUROPEAN COMMISSION

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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.5732 – Hewlett-Packard/ 3Com
Notification of 8 January 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 8 January 2010, the Commission received notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 (the "EC Merger Regulation") by which the undertaking Hewlett-Packard Company ("HP", United States) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control over 3Com Corporation ("3Com", United States) by way of purchase of shares.

I. THE PARTIES

2. **HP** is a leading provider of products, technologies, software, solutions, and services to individual customers and businesses, including the public and education sector.
3. **3Com** is active in the research and development, production, and marketing of communications equipment that provide network solutions for businesses.

¹ OJ L 24, 29.1.2004, p. 1.

II. THE OPERATION

4. On 11 November 2009, HP, Colorado Acquisition Corp. (HP's wholly-owned subsidiary and a special purpose entity created for this transaction) and 3Com entered into the Agreement and Plan of Merger pursuant to which Colorado Acquisition Corp. will be merged with and into 3Com, with the result that 3Com will become a wholly-owned subsidiary of HP.
5. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

6. This operation does not have Community dimension within the meaning of Article 1 of the EC Merger Regulation because 3Com's total Community turnover for the year 2008/2009 is only EUR [...]². However, on 27 November 2009, the notifying party informed the Commission in a reasoned submission that the concentration was capable of being reviewed under the national competition laws of at least three Member States (Austria, Denmark, Germany, Greece, Ireland, Italy, and Slovenia) and requested the Commission to examine it. None of the Member States that were competent to examine the concentration indicated its disagreement with the request for referral within the period laid down by the EC Merger Regulation.
7. The case is therefore deemed to have a Community dimension according to Article 4(5) of the EC Merger Regulation.

IV. MARKET DEFINITION

8. The proposed transaction involves the IT sector, more particularly the provision of computer networking equipment.
9. Within computer networking equipment, HP's and 3Com's activities overlap in the following products: (i) Internet Protocol ("IP")/Ethernet switches, (ii) routers, (iii) Wireless Local Area Network ("WLAN") equipment, and (iv) access security solutions.

² HP had a worldwide turnover EUR 80 476 million worldwide and EUR [...] Community-wide for 2007/2008. 3Com had a worldwide turnover of EUR 959.7 million worldwide and a Community-wide turnover of EUR [...] million in the fiscal year 2008/2009 (ended 31 May 2009).

A. The Relevant Product Markets

IP/Ethernet Switches

10. A switch is a multi-port networking device that joins multiple computers and peripheral devices and serves as the foundation for transporting voice, video, and data within a Local Area Network ("LAN"). Switches operate both on the edge of the network, where individual sources and destinations of data (such as personal computers) reside and in the network's core, where the switch serves to aggregate and organize data from the switches located on the edge of the network.
11. In previous decisions³, the Commission has considered (i) whether switches based on different protocols and technologies, such as Time Division Mode ("TDM") switches and Asynchronous Transfer Mode ("ATM") switches, and IP/Ethernet switches, belonged to the same relevant product market; (ii) whether the network switching equipment sector should be segmented by type of activity (manufacture, distribution and offering of integrated solutions); and most recently⁴ (iii) whether there is a broader product market including both switches and routers, due to the growing multi-functionality and convergence between these two products. However, the Commission has left open the exact product market definition.
12. HP and 3Com produce and supply IP/Ethernet switches. Neither HP nor 3Com currently produces and/or supplies TDM or ATM switches. The notifying party considers that the market for IP/Ethernet switches constitutes the relevant product market for the purpose of the present transaction, while ultimately leaving the exact product market definition open as the transaction would not give rise to any serious doubts under any alternative product market definition.
13. The vast majority of respondents to the market investigation confirmed the notifying party's view. In particular, while acknowledging a growing trend toward a convergence between switches and routers from a technology perspective, they did not confirm the existence of an overall market including switches and routers as the two categories of products still differ in a number of ways, particularly in terms of price and functionalities. Moreover, respondents to the market investigation confirmed that switches are generally used for network connectivity within a given enterprise facility and primarily oriented within a LAN, while routers are used to interconnect networks across long distances and used in Wide Area Network ("WAN") connectivity.
14. As regards a further sub-segmentation of switches based on different protocols and technologies, the market investigation confirmed that switches that are based on Ethernet technology in combination with IP protocol constitute the de facto standard within LANs, mainly due to their enhanced flexibility, advanced features, and lower prices. As a result

³ See Commission decisions of 19 September 2008 in Case COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*, para 14; of 24 July 2006 in Case COMP/M.4214 - *Alcatel/Lucent Technologies*, para 24; of 20 December 2005 in Case COMP/M.4003 - *Ericson/Marconi*, para 12; of 19 May 2000 in Case COMP/M.1908 - *Alcatel/Newbridge Networks*, para 9; and of 11 May 2000 in Case COMP/M.1745 - *EADS*, paras 35 and 36.

⁴ See Commission decision of 19 September 2008 in Case COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*.

of the advantages offered, IP Ethernet/switches, which are based on open standards, have replaced traditional switches based on TDM protocol for new installations, while ATM switches are still used in WAN. Some respondents also suggested that the three types of switches (ATM, TDM, and IP/Ethernet switches) generally perform similar functions as they all transport voice and data between locations. However, the market investigation was not conclusive on this issue.

15. Further, the market investigation suggested a possible segmentation for switches based on customer size (number of network users). In this respect, although switches of different sizes may have the same technology, according to some respondents such distinction reflects different functionalities and performance as systems designed for small switches are usually less configurable with networking infrastructure solutions compared to switches that are meant for a large number of users.
16. For the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market can be left open, given that the proposed transaction does not raise any serious doubts under any alternative product market definition.

Routers

17. Routers are designed to route converged voice and data traffic across a WAN by controlling the path along which the data are sent, while preserving the quality of the service required for mission critical applications. Routers are different from switches in that they are primarily used for wide area connectivity, and may be deployed at the edge or core of a WAN, whereas, despite a trend for using switching technology in WANs, switches are primarily oriented for use within a LAN.
18. The Commission has considered in the past whether the market for routers should be segmented by activity, on a product-by-product basis, or should rather encompass multiple products⁵. However, the Commission has ultimately left open the relevant product market definition, while acknowledging the growing multi-functionality and convergence between switches and routers.
19. The notifying party takes the view that for the purpose of the present case the exact product market definition can be left open as the transaction would not give rise to any serious doubts under any alternative product market definition.
20. Similarly to network switches, the Commission's market investigation acknowledges a growing convergence between switches and routers, however pointing out various differences between both product categories. The majority of respondents also confirmed a possible further segmentation by reference to the technology used (ATM, TDM, and IP/Ethernet), as well as on the basis of the number of users. However, the market investigation was not conclusive on this issue.

⁵ See Commission decisions in Case COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*, para 14, and of 24 July 2006 in Case COMP/M.4214 - *Alcatel/Lucent Technologies*, para 24.

21. For the purpose of the assessment of the proposed transaction, the exact definition of the relevant product market can be left open, given that the proposed transaction does not raise any serious doubts under any alternative product market definition.

WLAN Equipment

22. WLAN is a computer network that allows a computer to connect without the need for a network cable. Wireless networking products and solutions enable wireless connectivity so that users can stay connected to the network while at their desk or roaming within an enterprise or campus setting.
23. Within the provision of networking equipment, the Commission has considered in the past a possible distinction between WLAN and LAN products as well as between single components of the respective systems, while ultimately leaving the product market definition open⁶.
24. For the purpose of the assessment of the proposed transaction, the exact product market definition can be left open, given that as the proposed transaction does not raise any serious doubts under any alternative product market definition.

Access Security Solutions

25. The internet and network security industry is rapidly growing as businesses and individual customers become more aware of the security threats caused by conducting transactions and exchanging information in a networked environment.
26. The notifying party submits that network security infrastructure products provide features embedded throughout the network that detect and respond to threats. There is an array of security products in the market. Virtual private network ("VPN") firewall platforms are the mainstream products. Unified threat management/security platforms, intrusion detective systems ("IDS") and intrusion prevention systems ("IPS") are the most commonly deployed systems for access security solutions.
27. For the purpose of the assessment of the proposed transaction, the exact product market definition can be left open as the transaction does not raise any serious doubts under any alternative product market definition.

⁶ See Commission decision in Case COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*, para 18; Commission decision of 8 January 2007 in Case COMP/M.4415 - *Motorola/Symbol*, para 14; and Commission decision of 1 December 2005 in Case COMP/M.3995 - *Belgacom/Telindus*, para 18.

B. The Relevant Geographic Market

IP/Ethernet Switches and Routers

28. In the past, the Commission has left open whether the geographic scope of the market for the supply of switching and routing equipment is worldwide or EEA-wide⁷.
29. The notifying party submits that the relevant geographic market for IP/Ethernet switches and routers is worldwide.
30. The market investigation confirmed to a great extent that the markets for switches and routers have at least an EEA-wide, if not worldwide, geographic scope. With respect to technical specifications, some respondents indicate that new products adhere to global standards. Some respondents however also flag differences in price trends according to the global regions.

WLAN Equipment

31. In the past, the Commission has left open whether the geographic scope of the market for the supply of WLAN equipment is worldwide or EEA-wide⁸.
32. The notifying party submits that the relevant geographic market for WLAN equipment is worldwide

Access Security Solutions

33. The notifying party submits that the relevant geographic market for access security products should be worldwide or at least EEA-wide, given the small proportion of transport costs relative to price, the similarity of product specifications and patterns of sales of the major manufacturers, which are active worldwide.

Conclusion on the relevant geographic market

34. For the purpose of the assessment of the present transaction, the Commission considers the geographic scope of the markets for switches, routers, WLAN, and access security to be at least EEA-wide, if not worldwide. However the exact definition of the relevant geographic market can be left open as the proposed transaction does not give rise to any serious doubts under any alternative geographic market definition.

⁷ See Commission decisions in Case COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*, para 15, and COMP/M.4214 - *Alcatel/Lucent Technologies*, para 38.

⁸ See Commission decisions in Cases COMP/M.5300 - *Gores Group/Siemens Enterprise Communications*, para 19; and COMP/M.4415 - *Motorola/Symbol*, para 30.

V. COMPETITIVE ASSESSMENT

35. According to the notifying party, the proposed transaction will combine HP's and 3Com's largely complementary product offerings and complementary geographical reach in the rapidly growing market for enterprise networking infrastructure equipment. For HP the rationale of the acquisition of 3Com is primarily to expand its switches offering in order to include core switches to be deployed in very large enterprise networks and compete more efficiently with Cisco on the market. From a geographic viewpoint, the transaction would allow HP to gain presence in China and Latin America where its own activities are currently very limited (well below [0-5%] in any networking product equipment).
36. HP's and 3Com's activities horizontally overlap in the following networking equipment products: (i) IP/Ethernet switches, (ii) routers, (iii) WLAN equipment, and (iv) access security solutions.
37. Moreover, HP is active in markets for supply of IT products (in particular servers, storage, and software) and IT services (following its acquisition of EDS)⁹ that are related to the markets for the provision of networking equipment, it could be considered that the proposed transaction has possible non-horizontal effects.

Horizontal assessment

38. According to the information submitted by the notifying party, it follows that the proposed transaction gives rise to only one affected market in relation to IP/Ethernet switches¹⁰.
39. The notifying party has provided market share data also in relation to routers, WLAN equipment, and access security solutions. However, the merged entity's combined market shares on these markets are below [10-20%] under any plausible market definition and therefore do not give rise to any affected markets¹¹.
40. With regard to IP/Ethernet switches, in Western Europe¹², the HP and 3Com's combined market shares for the first three quarters of 2009 is approximately [10-20%] in value

⁹ See Commission decision of 25 July 2008 in Case COMP/M.5197 – HP/EDS.

¹⁰ In particular, IP/Ethernet Switches Layer 2 and Layer 3.

¹¹ In particular, for routers at worldwide level, HP and 3Com's combined market share for the first two quarters of 2009 would be [0-5%] in value and [5-10%] in volume. In the EMEA, the parties combined market share for the same period would be less than [0-5%] in value and [0-5%] in volume. With regards to WLAN equipment, at worldwide level, HP and 3Com's combined market share for the first three quarters of 2009 would be [5-10%] in value and [5-10%] in volume. In the EMEA, the parties' combined market share for the same period would be [5-10%] in value and [5-10%] in volume. Finally, for access security solutions, at worldwide level HP and 3 Com's combined market share for the first three quarters of 2009 would be [0-5%] in value and [0-5%] in volume. In the EMEA for the same period, the parties' combined market shares would be [0-5%] in value and [0-5%] in volume.

¹² According to the notifying party, there is no publicly available market share for the EEA for the relevant products. The notifying party however estimates that their and their competitors' share of sales in the EMEA or in Western Europe constitute a reliable proxy for their and their competitors' EEA share of sales in each switches, routers, WLAN equipment, and access security solutions. The main reason for this is that

(HP: [5-10%], 3Com: [0-5%]) and [20-30%], in volume (HP: [10-20%], 3Com: [5-10%])¹³. At the worldwide level, HP and 3Com's combined market share for the same period is approximately [10-20%] in value (HP: [5-10%], 3Com: [0-5%]) and [20-30%] in volume (HP: [5-10%], 3Com: [10-20%]).

41. Considering a broader market including switches and routers, HP and 3Com's combined market share for the first three quarters of 2009 is [5-10%] in value and [10-20%] in volume in the EMEA and [5-10%] in value and [10-20%] in volume worldwide.
42. In IP/Ethernet switches, Cisco will continue to be the leading market player post merger, with a market share for the first three quarters of 2009 of approximately [60-70%] in value ([40-50%] in volume) in Western Europe and [60-70%] in value ([30-40%] in volume) worldwide. Other than Cisco, at the European level, the combined entity will also face competition from a number of other smaller but strong players, such as D-Link ([10-20%] in volume), Netgear ([10-20%] in volume), Alcatel-Lucent ([0-5%] in volume and [0-5%] in value), and Nortel ([0-5%] in volume and [0-5%] in value) and worldwide, such as D-Link ([10-20%] in volume and [0-5%] in value), Netgear ([5-10%] in volume), Nortel ([0-5%] in volume and value), Brocade ([0-5%] in value), and Alcatel-Lucent ([0-5%] in value).
43. The market investigation unanimously confirmed that post merger the combined entity will continue to face several effective competitors in the market for IP/Ethernet switches.
44. Furthermore, the market investigation showed that most customers of IP/Ethernet switches have generally a policy of multi-sourcing and pursue a "best of breed" strategy trying to select the best product from different vendors. Some customers have indicated that they do not multi-source. However, they would be able to start purchasing from different suppliers in order to preserve a competitive environment. As there are alternative switches manufacturers beside the parties, multi-sourcing will not be affected. Therefore HP and 3Com will continue to face competitive constraints post-merger.
45. Finally, the respondents to the market investigation did not express any significant objections against the proposed transaction. Some respondents indicated that they see this transaction as positive, as post-merger HP will be able to compete more effectively with Cisco.
46. The notifying party submits that switches are generally based on open international standards - as defined by standard bodies such as the Institute of Electrical and Electronics Engineers ("IEEE") and the Internet Engineering Task Force ("IETE") -

(1) the EEA countries included in IDC's definition of Western Europe account for the vast majority (between 80 and 90%) of the total sales of switches in EMEA; (2) the EEA countries included in Infonetics' definition of EMEA account for the vast majority (more than 70%) of the total sales of switches in the EEA and switches sales in Africa and the Middle East are fairly limited; and (3) the competitive and vendor landscape in the EEA. Western Europe, and the EMEA is not materially different with similar players (most of which are large multinational companies).

¹³ According to the parties, the fact that the parties' market shares in volume are higher than their market shares measured in value reflects the fact that their offerings are positioned in the medium-lower end of the switches market, providing higher volumes of lower-value products than the market leader Cisco and other producers of higher-end products (although 3Com's product portfolio also comprises such higher end products).

which enable interoperability between components from different suppliers. According to the notifying party, the vast majority of switches suppliers, including HP and 3Com, offer open standards switches¹⁴, which can interoperate with existing installed switches from different vendors¹⁵.

47. Several respondents confirmed that customers are generally not locked in with their existing suppliers but can install switches from different manufacturers within the same network. It appears that customers are able to switch supplier without incurring significant costs. As a result, customers can benefit from competition between different suppliers.
48. The notifying party submits that suppliers of IP/Ethernet switches and more generally of networking infrastructure products sell through a mixture of direct sales and sales through channel partners. Both HP and 3Com sell networking equipment almost exclusively via resellers/distributors, the overwhelming majority of which are non-exclusive and carry product from different vendors.
49. Direct customers are typically sophisticated companies enjoying significant countervailing buyer power and that make their purchases through competitive bidding processes, involving multiple vendors. Such purchasing patterns maintain pressure on all vendors to offer competitive and cost effective solutions.
50. The market investigation confirmed that the majority of the sales of IP/Ethernet switches is carried out through channel partners¹⁶, which also tend to multi-source in order to be able to select the supplier that best meets the requirements of the end customers. Moreover, channel partners usually also provide customers with additional services including network integration, assembly, and after sale assistance to end customers, which can ultimately influence the customer choice.
51. According to the notifying party, there are no significant barriers to existing competitors' expansion thus allowing them to include new products in their portfolio or increase production. In this respect, the notifying party points out that a number of smaller players (such as Brocade following the acquisition of Foundry) have begun to increase sales by expanding capacity and hiring additional sales staff.
52. The notifying party also mentions that there are no technological/commercial barriers to entry as would be evidenced by Juniper's successful entry in 2008. Currently Juniper holds a share of [0-5%] in the EEA and its product offering comprises six different product lines.
53. The market investigation confirmed the presence of recent entrants from neighbouring markets such as Juniper (already active in adjacent markets such as telecommunications

¹⁴ According to the notifying party, Cisco as well as Extreme and Netgear produce a small number of switches based on proprietary technology.

¹⁵ An example provided by the notifying party relates to the Power over Ethernet functionality, where power is supplied to a device using the same cable where the data is passed. Customers can use or mix different switches from different vendors to power their devices since they are built according to industry-wide standards.

¹⁶ [...].

or other IT equipment), which is considered already as an effective competitor, as well as the expansion of smaller players such as Brocade/Foundry. However, it should be noted that some respondents to the market investigation indicated that access to distribution network and R&D capabilities to enter into the IP segment represent the main barriers to entry in the IP/Ethernet switches and routers market.

Conclusion on horizontal assessment

54. In light of the above, it can be concluded that the concentration does not raise serious doubts with regard to its horizontal dimension.

Non-horizontal assessment

55. The proposed transaction will enable HP to complement its product offering in the networking equipment sector where it is already present.

56. The notifying party submits that the proposed transaction will not give rise to conglomerate concerns in the IP/Ethernet switches market and more generally in the provision of networking equipment. First, post-merger, Cisco will continue to have by far the largest portfolio of switches and networking equipment products. Second, while, in the past, customers tended to acquire most of their networking infrastructure solutions from one producer at the same time, now they generally select the most suitable products to meet their needs at a specific point in time from different vendors. Finally, switches sales are generally independent from other IT or networking infrastructure products.

57. During the market investigation a third party complained with respect to possible vertical and conglomerate effects as a result of the proposed transaction.

58. In particular, the complainant claimed that as a result of the proposed transaction, the new entity HP/3Com will become the only completely vertically-integrated firm in the world that can supply products covering every relevant technical "stack", including storage, servers, data centres, a comprehensive portfolio of networking products and related services through HP's Service Division ("HPS"). The complainant alleges that HPS is one of the largest IT consultancy and services businesses in the world.

59. As a result, the proposed transaction would give rise to possible conglomerate effects and the merged entity would have the ability and/or incentive to foreclose non-integrated competitors, including competing networking equipment suppliers, by means of tying and/or bundling of its IT products and services that would be offered through HPS.

60. The same third party also complained that the proposed transaction would give rise to (i) a risk of customer foreclosure as post merger the new entity HP/3Com would have the ability and incentive to favour HP/3Com products and stop purchasing from third parties certain networking equipment products ending HPS' current policy of implementing and reselling products from various suppliers; and (ii) a risk of input foreclosure as post merger the new entity HP/3Com would stop supplying or supply at less favourable terms to purchase certain networking equipment for competitors of HPS on the downstream markets for IT services.

61. The Commission analysed the impact of the potential vertical and conglomerate effects on competition as a result of the proposed transaction and concluded that it does not give rise to any serious doubts specific to the proposed transaction for the following reasons.

62. First, currently there are no vertical relationships between HP and 3Com. Also, as a result of the proposed transaction, HP will not expand its product line by entering into a new market, but will simply complement its product offering in the networking equipment sector where it is already present.
63. Second, according to the Non-horizontal Merger Guidelines, in order to be able to foreclose competitors, a firm must have a significant degree of market power in at least one of the relevant markets¹⁷. In the present case, the combined entity's market share in the provision of networking equipment (as indicated in paragraphs 38 to 40) as well as in IT services, servers, storage, and other related products is not indicative of a significant degree of market power and in any event not at a level that could give rise to foreclosure concerns¹⁸.
64. In particular, there are alternative players present in the networking equipment market (such as the market leader Cisco, as well as Brocade, Netgear, D-Link, Alcatel-Lucent and Juniper)¹⁹, as well as in IT services (such as IBM, Accenture, Capgemini, and Fujitsu), from which customers would be able to purchase products²⁰.
65. Given the lack of market power of the merged entity in any potentially relevant product market, it is unlikely that the merged will have the ability and/or the incentive to engage in tying and/or bundling practices of IT services and networking equipment.
66. Furthermore, similarly to other vendors, HP's switches sales appear to be generally independent from other IT or networking infrastructure products. In this respect, the market investigation indicated that customers retain a high degree of discretion in the choice of networking equipment trying to select the best product from different vendors.

Conclusion on non-horizontal assessment

67. Against this background, it can be concluded that the concentration does not raise any serious doubts with regards to its possible non-horizontal dimension.

¹⁷ See Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, (OJ C 265, 18.10 2008), paragraphs 23, 95 and 99.

¹⁸ According to information provided by the notifying party on the basis of industry analyst reports, in 2008, HP had a market share of [30-40%] in servers in Western Europe and [20-30%] worldwide, [20-30%] in storage in Western Europe and [10-20%] worldwide, and less than [5-10%] in IT services both in Western Europe and worldwide.

¹⁹ See paragraph 41 above for competitors' market shares in IP/Ethernet switches.

²⁰ In IT services in Western Europe alternative players include IBM [5-10%], Accenture [0-5%], CapGemini [0-5%] and Fujitsu [0-5%] and at worldwide level IBM [5-10%], Accenture [0-5%] and Fujitsu [0-5%]. In servers in Western Europe alternative players include IBM [20-30%], Sun [10-20%], Dell [10-20%], and Fujitsu [5-10%] and at worldwide level IBM [30-40%], Dell [10-20%], Sun [10-20%], Nec [0-5%] and Fujitsu [0-5%]. Finally, in storage, in Western Europe, alternative players include IBM [10-20%], EMC [10-20%], Dell [5-10%], Sun [5-10%] and NetApp [0-5%] and at worldwide level IBM [10-20%], EMC [10-20%], Dell [10-20%], Hitachi [5-10%], and NetApp [0-5%].

VI. CONCLUSION

68. 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)
Joaquin ALMUNIA
Vice-President of the Commission