



EUROPEAN COMMISSION

Brussels, 02.10.2013  
C(2013) 6250 final

PUBLIC VERSION

This document is made available for  
information purposes only.

**Subject: SA.32225 (2011/NN) – The Netherlands**  
**Expropriation compensation of Nedalco in Bergen op Zoom**

Sir,

#### **1. PROCEDURE**

- (1) By letter of 9 January 2011, the Dutch authorities notified under Article 108 of the Treaty on the Functioning of the European Union (“TFEU”) an agreement concluded on 9 April 2004 between the Dutch municipality of Bergen op Zoom (“the Municipality”) and Koninklijke Nedalco BV (“Nedalco”) with regard to the purchase by the Municipality of Nedalco’s industrial site in Bergen op Zoom.
- (2) On 12 January 2011, the Commission reclassified the case as a non-notified aid measure. By letters of 31 March 2011, 6 April 2011 and 11 January 2012, the Dutch authorities provided further information on their notification.
- (3) The Commission requested additional information by letter dated 25 April 2012, to which the Dutch authorities replied by letters of 7 June 2012 and 12 June 2012. The Dutch authorities provided additional information by letter of 14 February 2013 and 12 March 2013. On 19 June 2012, a meeting took place between the Dutch authorities and the Commission services.
- (4) Nedalco submitted its views by letters of 14 March 2011 and 29 March 2012. A meeting took place between Nedalco and the Commission services on 16 April 2012.

Zijne Excellentie de Heer Frans TIMMERMANS  
Minister van Buitenlandse Zaken  
Bezuidenhoutseweg 67  
Postbus 20061  
NL – 2500 EB Den Haag

## 2. DESCRIPTION OF THE MEASURE

### *Background*

- (5) In 2001, the Municipality approached Nedalco with the proposal of acquiring its industrial site in Bergen op Zoom, the Netherlands, as part of its plan to revitalise the Bergse Haven area, including the development of a large-scale housing project (“the Bergse Haven project”).
- (6) On 24 April 2001, the parties entered into an agreement (“*Overeenkomst toekomstige positionering Nedalco in Bergen op Zoom*”, hereinafter: “the 2001 agreement”) with the objective of exploring the possibilities and consequences of relocating Nedalco. To that end, the parties agreed that a study would be carried out by an expert, appointed by the Municipality and Nedalco, into the possible relocation of Nedalco. That study was premised on the assumption that Nedalco would relocate within the city limits of Bergen op Zoom, but Nedalco reserved the right not to relocate its company or establish premises in another part of the municipality until it had reached a complete agreement. On 10 April 2002, the parties concluded a follow-up agreement in which they confirmed their continued cooperation with respect to the relocation study.
- (7) On 5 April 2002, an expert designated by Nedalco estimated the compensation due to Nedalco for the loss of its industrial site and the relocation costs at EUR 86 153 000 (“Verhagen report”). On 17 May 2002, an independent expert designated by a steering committee representing both the Municipality and Nedalco estimated the compensation at EUR 67 785 945 (“Frisia report”). Both experts were requested to estimate the compensation on the basis of the Dutch Expropriation Act (*Onteigeningswet*, hereinafter: “the Expropriation Act”), which is based on the premise of full compensation for all losses which the expropriated party directly and necessarily suffers due to the loss of its property, in order to place that party in the same financial position as if the expropriation had not occurred. Both experts calculated, in accordance with the principles of Dutch expropriation law, (i) the capital loss (the economic value of real estate - land, factory and other buildings), (ii) the financial loss (costs related to relocation), and (iii) additional losses.
- (8) Both the Frisia report and the Verhagen report (“the 2002 reports”) noted that soil contamination had been identified at Nedalco’s industrial site and that the cost of the clean-up would be NLG 800 000 (EUR 363 025), according to a statement by Nedalco. While the Verhagen report deducted this amount from its valuation, the Frisia report did not because the precise scope of the decontamination works could not be established by the expert at that time.
- (9) On 29 October 2002, the parties agreed by way of a further agreement (“*Overeenkomst met betrekking tot voortzetting haalbaarheidsonderzoek naar bedrijfsverplaatsing en vervolgstappen met betrekking tot uitvoering*”, the “2002 agreement”) to further explore the relocation of Nedalco, confirming that the relocation of Nedalco would involve a loss that should not be borne by Nedalco and that Nedalco should be compensated in full. The parties agreed in principle, subject to final agreement on other terms and conditions, on the basic amount of compensation at EUR 77.1 million. This amount is the arithmetic mean of the estimates established by the two independent experts mentioned above. The 2002 agreement also stipulated that the Municipality would use its best efforts to acquire an alternative site for Nedalco if the latter decided to relocate within the

wider Bergen op Zoom area. Furthermore, the 2002 agreement stipulated that Nedalco would demolish the existing factory and installations, but that the costs associated with any soil decontamination would be for the Municipality's account and risk. The Municipality would be entitled to carry out a soil analysis and, if it came to the conclusion that the decontamination of the soil would incur unacceptably high costs, it was entitled to rescind the agreement.

#### *The notified agreement*

- (10) In a letter dated 22 December 2003, the Municipality informed Nedalco that it did not succeed in obtaining the necessary funds to pay the agreed compensation of EUR 77.1 million, since the revenue from the land exploitation would be much lower than the Municipality had initially forecast, leading to an unacceptable deficit for the Bergse Haven project. The Municipality therefore requested to renegotiate the terms of the arrangement with Nedalco. On 9 June 2004, the parties ultimately agreed, in a separate agreement ("*Koopovereenkomst*", "the 2004 agreement")<sup>1</sup>, on a lower amount of compensation at EUR 60 million as a compromise.
- (11) The 2004 agreement stipulated that the parties had accepted a consensus on a lower amount and that Nedalco could use the compensation amount entirely at its own discretion, without any expenditure obligation and/or accountability for expenditure towards the Municipality thereafter. The 2004 agreement, however, did not preclude relocation and explicitly referred to a possible relocation of Nedalco within the municipality of Bergen op Zoom. To facilitate such a relocation, the Municipality would endeavour to obtain (an option on) an alternative site in Bergen op Zoom and sell that site to Nedalco should Nedalco decide to relocate there.
- (12) The 2004 agreement also stated that Nedalco would demolish the factory and buildings on its industrial site, before the transfer, with the exception of the chimney and the remains of the foundations. Any costs in connection with possible soil decontamination would be at the account and risk of the Municipality.

#### *Events after the 2004 agreement*

- (13) Nedalco ultimately did not relocate but ended its production in Bergen op Zoom in 2010 and concentrated its alcohol production in Sas van Gent, in the Netherlands, and Manchester, in the United Kingdom. Both locations only started alcohol production after the 2004 agreement was entered into (respectively in 2005 and 2007).
- (14) In accordance with the terms of the 2004 agreement, the Municipality paid EUR 10.9 million to Nedalco on 12 February 2010, after the legal transfer of Nedalco's industrial site. However, when summoned to pay the remainder of the compensation by 1 April 2011, as required under the 2004 agreement, the

---

<sup>1</sup> While the estimates from the 2002 reports were not updated in 2004, according to the Dutch authorities the expected deficit of EUR 25 million was deducted from the previous compensation and a 5% interest was added to take account of the new envisaged target date for relocation, which was 1 January 2008.

Municipality only paid EUR 22.1 million, instead of the remaining EUR 49.1 million,<sup>2</sup> arguing that the compensation agreed in that agreement involved illegal aid and that full compensation would not be justified since Nedalco did not relocate. Hence, the Municipality felt bound to only pay the market value of the Nedalco site, which it considered it had done.

- (15) An expert commissioned by the Municipality estimated the market value of the land, buildings and installations at EUR 29.3 million in its property valuation report of 31 December 2010 (“the Zadelhoff report”). The expert did not visit the site and determined its value on the premise of continued use as an industrial site. It did not take into account any possible changes in its designated use. The report was based on an average bidder, rather than the highest bidder. The presence of possible soil contamination or asbestos was not taken into account in the absence of information.
- (16) On 30 August 2011, Nedalco served a summons on the Municipality to proceedings to receive the full compensation as agreed in the 2004 agreement. The Municipality refused to pay the outstanding amount, arguing that compensation in full amounted to State aid within the meaning of Article 107(1) TFEU. On 21 March 2012, the national court suspended the national proceedings on the basis of Article 108(3) TFEU, awaiting the decision of the Commission on the notification.

### **3. POSITION OF THE DUTCH AUTHORITIES**

- (17) The Dutch authorities confirmed in their notification that they had tried to acquire Nedalco’s industrial site by mutual consent within the meaning of the Expropriation Act, which ultimately resulted in the 2004 agreement. However, they contested that the Municipality had actually envisaged using its powers and procedures under the Expropriation Act, since the acquisition of that site would not have been essential for the Bergse haven project. Thus, by granting Nedalco full compensation under the Expropriation Act, the Municipality had granted it State aid. The Dutch authorities argued that in the absence of loss caused by State intervention, the Municipality should not have paid more than the market value of the property, as calculated in 2010 on the request of the Municipality in the Zadelhof report. In that regard, the Dutch authorities referred to the Commission’s Communication on State aid elements in sales of land and buildings by public authorities.<sup>3</sup>
- (18) The Dutch authorities also submit that Nedalco should not be entitled to full compensation since it did not relocate. Referring to the annual reports of Nedalco, the Dutch authorities considered that Nedalco might have already been planning to stop its production in Bergen op Zoom in 2002 and move it to Sas van Gent and/or to Manchester.
- (19) Furthermore, the Dutch authorities contend that the agreed compensation of EUR 60 million was not based on the market price of the property, since the 2002 reports were not updated when the 2004 agreement was signed, and it was not

---

<sup>2</sup> Instead of EUR 49.1 million.

<sup>3</sup> OJ 209, 10.7.1997, p. 3.

calculated on the basis of any expert report, but rather represented the amount the Municipality was able to pay at that time.

- (20) To substantiate their position, the Dutch authorities commissioned another *ex post* evaluation (“the Deloitte report”). That report, dated 13 February 2013, estimated the market value of the Nedalco site at EUR 22 million on the basis of the residual land value method (on the premise that Nedalco’s industrial site is sold with the objective of redeveloping it as part of the Bergse haven project). The value of the site was valued at EUR 5.9 million if redeveloped on its own (outside the Bergse Haven project). In addition, the report evaluated Nedalco’s business value in Bergen op Zoom as a going concern at EUR 11.5 million (on the premise that the site is sold as a factory in current use and the purchaser is assumed to continue the activities in the facility), in the event the Commission decides the residual market value cannot be applied in this case, based on forecasted future profitability. The report was based on a desktop/document study, that is, the experts did not visit Nedalco’s industrial site.
- (21) The Deloitte report also examined the 2002 reports and considered that both reports were flawed on a number of points. The experts did not have the underlying documentation on which the 2002 reports were based and therefore stated that no explicit and verifiable calculation of the 2002 reports could be made. In essence, the Deloitte report made the point that the 2002 reports varied substantially, were only valid for a limit period of time and that no new evaluation was drawn up at the time of the 2004 agreement. According to the Deloitte report, the 2004 agreement did not take into account all of the elements of the 2002 reports. The experts referred to a press release from which it deduced that Nedalco would dismantle the installations and re-use or sell many of its parts. Furthermore, the Deloitte report noted that the costs for asbestos removal and soil decontamination should have been quantified in more detail and accordingly taken into account in the appraised value. In that regard, the Deloitte report pointed out that the Municipality estimated those costs at EUR 1.4 million. The 2002 reports also started from the premise that Nedalco would relocate within Bergen op Zoom and no valuation was given for a possible move of production to the Sas van Gent facility, which was envisaged to start production in 2005. Finally, market circumstances had changed between the date on which the 2002 reports were issued and the 2004 agreement was concluded. The experts evaluated the additional arrangements in the purchase agreement, not taken into account in the 2002 reports, in the range of EUR 0.3 million to EUR 8.9 million, without further specification.
- (22) The Dutch authorities concluded that, on the basis of the Deloitte report, the Municipality should not pay more than EUR 22 million for Nedalco’s industrial site and that any compensation above that amount would constitute State aid within the meaning of Article 107(1) TFEU.

#### **4. POSITION OF THE BENEFICIARY**

- (23) Nedalco took the view that the compensation of EUR 60 million agreed in the 2004 agreement does not entail State aid, since it is significantly lower than the previous amount of EUR 77.1 million initially agreed in the 2002 agreement, which was based on two independent expert reports. Nedalco recalled that it was the Municipality that wished to acquire the Nedalco site and that approached

Nedalco to engage in negotiation for relocation. If no agreement had been found, the Municipality could have initiated the expropriation procedure under Dutch expropriation law.

- (24) Nedalco submitted that its ultimate decision that it not to relocate is irrelevant for the question whether Nedalco is entitled to full compensation. It was the common understanding of both parties at the time, both in 2002 and 2004, that Nedalco would relocate and thus to amicably agree on a compensation, which was guided by the provisions of the Dutch expropriation law. A party which has received compensation under Dutch expropriation law in order to relocate its company elsewhere is not obliged to use that compensation for that purpose. Such a company would also not have received a selective advantage since every party liable to expropriation in a similar situation would be entitled to compensation under Dutch expropriation law.
- (25) As a subsidiary argument, Nedalco argued that the purchase of the site was in line with the “Market Economy Investor Principle”. Nedalco explained that a public private partnership (“PPP”), set up for the Bergse Haven project between the Municipality and two private real estate constructors<sup>4</sup>, which together hold 50 % of the stakes in the PPP, also agreed to pay EUR 60 million to purchase the site from the Municipality after it was acquired from Nedalco. According to Nedalco, the fact that private undertakings agreed to pay that amount of compensation in 2004 is a clear indication that the notified agreement was in line with normal market conditions.

## 5. ASSESSMENT OF THE MEASURE

- (26) Under Article 107(1) TEFU, a measure constitutes State aid if it meets four conditions. Firstly, the measure must be granted by the State or through State resources. Secondly, the measure must confer an advantage on an undertaking or undertakings carrying out economic activities. Thirdly, the measure must be selective, i.e. granted only to certain undertakings. Fourthly, the measure must affect trade between Member States and distort or threaten to distort competition in the internal market.
- (27) In the present case, the Commission notes that:
- the Municipality has agreed to pay compensation to Nedalco for the acquisition of its industrial site, i.e. the measure is imputable to the State and is funded from State resources;
  - Nedalco is an undertaking carrying out economic activities, i.e. the production of industrial alcohol; and
  - Nedalco is internationally active, so that the measure, which strengthens the financial position of Nedalco as compared with other undertakings competing in intra-Union trade, is liable to distort competition and affect trade between Member States.

---

<sup>4</sup> Amvest Wonen-Nova BV and AM Wonen BV.

- (28) This leaves the question whether the compensation of EUR 60 million agreed between the Municipality and Nedalco in the 2004 agreement confers a selective advantage on the latter, which will be examined in the remainder of this section.

*Does the notified measure confer a selective advantage on Nedalco?*

- (29) As a preliminary matter, the Commission notes that the presence of an advantage should normally be excluded in the case of an award for compensation for an expropriation<sup>5</sup>. Indeed, as the payment is only intended to make up for a commensurate prejudice suffered by the recipient as a result of the expropriation and would be available to any undertaking on equal terms in similar circumstances, an expropriation carried out by law will normally not confer on the expropriated party a selective advantage within the meaning of Article 107(1) TFEU<sup>6</sup>. The same reasoning may apply in cases where the public authorities, without having recourse to the formal expropriation procedure, nevertheless wish to facilitate the relocation of an undertaking in the public interest and to that end grant the undertaking compensation calculated along the lines of the expropriation laws or other generally applicable rules on compensation for damages suffered as a result of acts by the public authorities<sup>7</sup>.
- (30) Under Dutch expropriation law, an expropriated party is entitled to receive full compensation for all damages directly or necessarily suffered as a result of the loss of its property<sup>8</sup>. The starting point for the calculation of compensation is that the expropriated party must be put in a position which is equivalent in financial terms to the situation in which no expropriation would have taken place. In the case in which the expropriated land was used for the operation of a business, compensation may also be claimed in principle by the expropriated party on the basis of relocation, unless the relocation of the expropriated business would not be a viable option, for example because the business was on the path to insolvency<sup>9</sup>. In that case, rather than a compensation for relocation, a compensation for liquidation of the business would be due.
- (31) However, before proceeding with expropriation, the Expropriation Act invites the authorities and the owner(s) of the property to make best endeavours to find an amicable agreement on the expropriation compensation<sup>10</sup>.
- (32) As regards the notified measure, the Commission notes that Nedalco did not sell its site to the Municipality of its own initiative or in the course of a normal commercial operation, but rather on the initiative of the Municipality, who wanted to redevelop the Bergse Haven area of Bergen op Zoom. As follows from the 2001 agreement, the presence of Nedalco's industrial site in that area was

---

<sup>5</sup> Case T-64/08, *Nuova Terni Industrie Chimiche SpA v Commission* [2010] ECR II-25, para 59 to 63 and 140-141.

<sup>6</sup> An award for damages as a result of an expropriation carried out by law will normally fall under the exception provided by *Joined Cases 106 to 120/87 Asteris AE and others v Hellenic Republic and European Economic Community*, 1988 ECR 5515.

<sup>7</sup> N 304/2003 *Steun ten behoeve van Akzo Nobel*, where the company was asked by the authorities to move production of a dangerous chemical product to another location; N 575/2005 *Bedrijfsverplaatsing van autodemontagebedrijf Steenberg*, where the company was indemnified as a result of amicably agreeing on relocation.

<sup>8</sup> Article 40 of the Expropriation Act.

<sup>9</sup> Article 40ff of the Expropriation Act.

<sup>10</sup> Article 17 of the Expropriation Act.

considered an obstacle to this planned redevelopment. It also follows from press releases issued by the Municipality after the conclusion of the 2004 agreement that the departure of Nedalco from its industrial site was of crucial importance for the implementation of the Bergse haven project.

- (33) It is in this context that the Municipality undertook, in 2001, to seek an amicable agreement with Nedalco on the relocation of the company, as provided by the Expropriation Act. Indeed, the 2002 reports explicitly state that the parties requested an amicable valuation in accordance with Article 40 of the Expropriation Act. Moreover, in later documents<sup>11</sup>, including the 2002 agreement of 29 October 2002<sup>12</sup> and the 2004 agreement of 9 June 2004, the level of compensation offered to Nedalco was never put into question by the Municipality. This implies that the Municipality intended to compensate Nedalco not only for the value of its industrial site, but also for expropriation damages, since, with regard to the latter, the company would suffer losses from ending its production in Bergen op Zoom.
- (34) The Commission notes further that the 2002 reports, which were both drawn up by independent experts, provide estimates for compensation to Nedalco for its industrial site, which were calculated in accordance with the principles laid down by the Expropriation Act on the basis of objective criteria and using generally accepted evaluation standards. In light of the different estimates produced by the two reports, the parties agreed on a compromise in the 2002 agreement by which the arithmetic mean, i.e. EUR 77.1 million, of the two estimates would represent the level of compensation owed to Nedalco for its industrial site.
- (35) While it is true that the expert reports were dated two years before the notified measure, the Commission notes that the compensation that was ultimately agreed upon in the 2004 agreement was more than EUR 17 million lower than the compensation established in the 2002 agreement on the basis of the experts' reports and was also lower than the EUR 67 785 945 arrived at in the Frisia report, the lowest of the two estimates. Furthermore, while the 2004 agreement does not specifically refer to the 2002 reports, it is clear from the context of the 2004 agreement that the expert reports were the starting point for the calculation of the new level of compensation for Nedalco's industrial site. Indeed, the 2004 agreement was drawn up precisely because the Municipality had indicated to Nedalco that it was not able to pay the compensation initially agreed under the 2002 agreement.
- (36) It is in light of these features of the 2004 agreement, and the context in which it was concluded<sup>13</sup>, that the Commission concludes that, in granting compensation to Nedalco for its industrial site in accordance with the principles of the Expropriation Law, the notified measure does not confer a selective advantage upon Nedalco, so that it does not constitute aid within the meaning of Article 107(1) TFEU.

---

<sup>11</sup> See, *inter alia*, letters from the Municipality to Nedalco of 6 June 2002 and 22 December 2003 and minutes of the meeting between the Municipality and Nedalco of 14 May 2004.

<sup>12</sup> In that agreement, reference is made to the 2002 reports which shall establish the amount of compensation; see recital (35) below.

<sup>13</sup> Case T-244/08 Konsum Nord v. Commission [2011] ECR II-00444\*, paragraph 57 and the case-law cited.



- (37) As regards the arguments advanced by the Dutch authorities to demonstrate that the notified measure entails State aid, the Commission notes the following.
- (38) In response to the argument that the Municipality did not envisage actually using its powers under the Expropriation Act, the Commission recalls that the 2002 agreement was concluded in accordance with Article 40 of that Act, which invites the parties to find an amicable agreement on the level of compensation before any expropriation proceedings are commenced. The notified agreement, which was concluded at the request of the Municipality since it was unable to secure sufficient funds to pay the initially agreed compensation, should be examined in that same context.
- (39) In response to the argument that Nedalco should not be entitled to full compensation since it did not relocate within Bergen op Zoom, the Commission observes that the Dutch authorities have not submitted any evidence that the relocation of Nedalco was not a viable option at the time that the 2004 agreement was concluded. On the contrary, in the 2004 agreement the Municipality committed to use its best efforts in acquiring an alternative location for Nedalco to relocate within Bergen op Zoom. The contention of the Dutch authorities that Nedalco had already planned to move production from Bergen op Zoom to its facilities in Sas van Gent and Manchester at the time that the 2004 agreement was concluded is also not backed up by any concrete evidence. In this regard, the Commission notes that the production capacity at Nedalco's industrial site in Bergen op Zoom was considerable (according to Nedalco about 760 000 hectolitres per year) and that the new alcohol production facility in Sas van Gent only started operating in 2005, while the alcohol facility in Manchester only started production in 2007. The 2004 agreement explicitly states that Nedalco had examined alternative investment options but that none had materialised.
- (40) As regards the alleged flaws in the 2002 expert reports reflected in the Deloitte report, the Commission agrees that both expert reports contained reservations on the need to update the estimates before a final agreement on compensation was concluded and that the 2004 agreement did not match the assumptions of the 2002 reports in all aspects. The Commission notes that both 2002 reports left open the costs of cleaning Nedalco's industrial site<sup>14</sup>, despite the fact that the Municipality was entitled to inspect the site<sup>15</sup> in order to estimate those costs in more detail<sup>16</sup>. In line with the polluter pays principle, these costs should have in principle been borne by Nedalco and they should have been deducted from the compensation. The Commission notes, however, that these costs were also not estimated by the Deloitte report.
- (41) In any event, it has not been established by the Dutch authorities that either the cleaning costs or any of the other costs associated with elements included in the 2002 reports but not agreed upon in the 2004 agreement exceeded EUR 17

---

<sup>14</sup> Both the Frisia and the Verhagen reports referred to Nedalco's own estimate of NLG 800 000 (EUR 363 025), while the Frisia report did not deduct this from the total compensation, the Verhagen report did.

<sup>15</sup> As included in the 2002 agreement. That agreement also contained the provision that in the event cleaning costs were unacceptably high, the Municipality would be able to terminate the agreement.

<sup>16</sup> The Frisia report referred to an estimate provided by Nedalco of NLG 800 000 (EUR 363 025). According to information from memoranda prepared by the Municipality, a rough estimate of those costs was calculated at EUR 1.4 million, but without reference to any details.

million (i.e. the difference between the basic compensation of EUR 77.1 agreed upon in 2002 on the basis of the 2002 reports and the compensation of EUR 60 million agreed upon in the 2004 agreement). On the contrary, the Deloitte report estimated the compensation associated with all missing elements to range between EUR 0.8 million and EUR 8.9 million. Thus, even if these estimates could be accepted, they would still be well below the EUR 17 million difference.

- (42) As regards the lower market values calculated by the Deloitte report for Nedalco's industrial site, the Commission notes, first, that the Deloitte report was carried out eight years after the transaction took place and that the experts did not visit the site in question. As a general rule, an evaluation made after a transaction is carried out is unlikely to set aside an *ex ante* evaluation by an independent expert based on objective criteria and using generally accepted evaluation methods<sup>17</sup>.
- (43) Second, the Commission notes that the Deloitte report bases its valuation on assumptions which are different from a relocation scenario, namely on the value of the site as a "going concern", i.e. the price for which an interested buyer would purchase the site to continue alcohol production<sup>18</sup>. The fact that Nedalco ultimately moved its production from Bergen op Zoom partly to Sas van Gent and partly to Manchester in 2010 does not justify this alternative analysis, since the existence of an advantage must be established at the time that the notified measure is granted, that is 9 June 2004, on the basis of the facts and circumstances known at that time, which was that relocation was a viable option for Nedalco.
- (44) Third, the Commission notes that the private partners in the PPP which the Municipality set up to carry out the Bergse Haven project apparently agreed to the compensation of EUR 60 million for Nedalco's industrial site and that the PPP was willing to pay this price to acquire that land from the Municipality. Indeed, various documents suggest that the private partners were involved in the negotiations<sup>19</sup>, including of the envisaged purchase price of EUR 60 million<sup>20</sup>, as from an early stage. This seems to suggest that the private partners were willing to pay EUR 60 million for the site in 2004 and that this price could therefore be considered as representing a market price for the site at the time, even abstracting from a compensation for relocation. The fact that the private project developers were not willing to pay that price at a later stage, for reasons of their own, does not change the fact that in 2004 they apparently consented to that price.
- (45) Finally, the Dutch authorities have not explained in which way market conditions changed between 2002 and 2004 and how these changes would have affected the amount of the compensation owed to Nedalco. Given that until 2008 prices on the Dutch real estate market, including prices for land, were generally appreciating, it

---

<sup>17</sup> Case C-124/10P Commission v EDF [2012], para 85.

<sup>18</sup> In neither of the agreements was such an option considered nor has the Municipality envisaged entering into alcohol production after acquiring of the Nedalco site or reselling the site to another producer.

<sup>19</sup> Report of a meeting of the Plenary Consultation Bergse Haven, 17 March 2004.

<sup>20</sup> Report of a meeting of the Plenary Consultation Bergse Haven, 14 May 2004; press release on the acquisition of the Nedalco site, 10 June 2004, See also, press release of 14 February 2006 informing about the long-term PPP between the Municipality and the private parties, stating that the Municipality and the private parties signed an agreement with Nedalco as regards the purchase of its industrial site.

would rather be expected that the price for Nedalco's industrial site would be higher in 2004 than estimated in 2002.

- (46) Consequently, the *ex-post* Deloitte report does not provide compelling arguments for setting aside the compensation agreed to in the 2004 agreement as based on the 2002 expert reports. In any event, the Commission cannot accept the argument that in the case in which the public authorities take the initiative to acquire property and pay compensation in accordance with the national expropriation rules any amount above the market value of the land (in the sense of the price that a private buyer would have paid for the property at the time) entails a selective advantage to the seller of that property.

## 6. CONCLUSION

- (47) Accordingly, the Commission concludes that the notified measure does not confer a selective advantage on Nedalco and thus does not constitute State aid within the meaning of Article 107(1) of the TFEU.

## 7. DECISION

- (48) The Commission has decided, on the basis of the foregoing assessment, that the notified measure does not constitute State aid pursuant to Article 107(1) of the TFEU.
- (49) If this letter contains confidential information, which should not be published, please inform the Commission services within 15 working days after receipt of this letter by providing reasons. If the Commission does not obtain a reasoned request within this delay, it will presume that you agree with the publication towards third parties and with the publication of the entire wording in the authentic language on the following internet website:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

European Commission  
Directorate-General for Competition  
State Aid Registry  
Place Madou 1 / Madouplein 1  
B-1049 Brussels  
Fax No: +32 2 29 61242

Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-President