COMMISSION

COMMISSION DECISION

of 16 June 2004

concerning aid for the construction of a propylene pipeline between Rotterdam, Antwerp and the Ruhr area notified by Germany, the Netherlands and Belgium

C 67/03 (ex N 355/03) — C 68/03 (ex N 400/03) — C 69/03 (ex N 473/03)

(notified under document number C(2004) 2031)

(Only the Dutch, French and German texts are authentic)

(Text with EEA relevance)

(2005/170/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. **PROCEDURE**

(1) Starting in the autumn of 2002, the Commission had informal contacts with the German and Dutch authorities on State aid in favour of the German and Dutch sections of a propylene pipeline project. It sent a letter to Germany on 13 February 2002 and received a reply on 27 March 2003. It subsequently had informal contacts with the Belgian authorities. The Association of Petrochemical Producers in Europe (APPE) sent a position paper in support of the project by letter of 15 May 2003. By letters of 24 July, 4 September and 16 October 2003, the German, Dutch and Belgian authorities notified aid for their own sections of the project. The cases were registered under Nos N 355/03, N 400/03 and N 473/03 respectively.

(2) The Commission asked Germany for further information by letter of 27 August 2003. Germany obliged by letters of 6, 15 and 28 October 2003.

(3) By decision C(2003) 4080 of 11 November 2003, the Commission initiated the procedure under Article 88(2) of the Treaty in respect of the notified measures. The decision was sent to Germany, the Netherlands and Belgium the same day; the procedures were registered under Nos C 67/03, C 68/03 and C 69/03 respectively. Germany, the Netherlands and Belgium commented on the decision by letters of 12, 18 and 22 December 2003. The Commission asked for further information by letters of 23 January 2004, to which the Member States concerned replied by letters of 20 February, 27 February and 2 March 2004.

[1] OJ C 315, 24.12.2003, p. 7.

(4) The Commission decision was published in the *Official Journal of the European Union* of 24 December 2003 [2]. Comments were received from three third parties. They were forwarded to Germany, the Netherlands and Belgium, which reacted by letters of 5, 29 and 11 March 2004 respectively. Lastly, the three Member States provided further information by letters of 25 May and 4 June 2004.

2. DETAILED DESCRIPTION OF THE MEASURE CONCERNED

2.1. Background and beneficiary

2.1.1. *Propylene and propylene transport*

(5) Propylene is derived from petroleum and is used for the production of polymers, which are then used to produce plastics. In western Europe some 70 % of all propylene is a by-product of the production of ethylene. Consequently, the location of propylene plants is often determined by the marketing outlets for ethylene. The total size of the western European market was estimated at some 14,7 million tonnes in 2001, half of which is used in the area that would be served by the pipeline. Estimates for future growth of the propylene market range from 3,7 % to 4,0 % for the coming years. The ethylene market is characterised by much lower growth of around 2 %.

(6) At present, some 550 barges (1 500 tonnes each) and 4 800 rail tankers (50 tonnes each) carrying propylene arrive in the Rotterdam-Antwerp-Cologne triangle each year. The expectation is that there will be a shortage of approximately 1,7 million tonnes of propylene in the area in 2010. With changes in the structure of the chemical industry, the expectation is that by that time the pipeline will be transporting 2,5 million tonnes.

(7) Taking simply the transport from Rotterdam to South Limburg and the Ruhr area, the figures are somewhat different. In 1997 this propylene transport flow amounted to 93,4 million tonne-kilometres, of which about 4 million was by rail and about 89,4 million by barge. From 2010 a total of about 1,5 million tonnes per year is expected to be transported to the Ruhr area, equivalent to 750 barges per year. The total quantity transported from Rotterdam to South Limburg would be about 180 000 tonnes per year, equivalent to 900 rail tankers and 70 barges.

2.1.2. *The beneficiary*

(8) The beneficiary will be European Pipeline Company BV (EPC), a consortium of companies in the chemical industry. Its predecessor was European Pipeline Development Company (EPDC). The shareholders are BASF AG, Celanese Chemical Europe GmbH, Shell Nederland Chemie BV, DSM NV, Rütgers Chemicals AG, Sasol Germany GmbH, Veba Oil Refining & Petrochemicals GmbH, Westgas GmbH and SABIC Europe. The consortium owns the Dutch assets, 100 % of the Belgium asset management company, EPDC Flanders NV, and 49,9 % of the German asset management company, Propylenpipeline Ruhr GmbH (PRG) [3]. Landesentwicklungsgesellschaft Nordrhein-Westfalen (LEG) [4] owns the remaining 50,1 % but is not liable for any financial obligation beyond its participation in the company's capital. EPC and the Belgian and German asset management companies together established a joint venture, European Pipeline Administration Company (EPAC), that will be responsible for managing the entire pipeline.

2.1.3. *The pipeline project*

(9) The notifications concern a pipeline for the transportation of propylene from Rotterdam, via Antwerp, Tessenderloo, Geleen and Cologne to Oberhausen in the Ruhr area. The network will be approximately 520 km long. The pipeline consists of nine sections, following as far as possible existing ethylene pipelines. The German notification concerns only the section between Oberhausen, via Cologne, and the Dutch border (Pilot 2), where it connects to another section in the Northern Ruhr area (Pilot 1). In addition to the investment in the pipeline, new storage capacity will be built in the Dutch and Belgian ports and in Duisburg, Germany. In accordance with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [5], the beneficiary will carry out such an assessment on the pipeline project as a whole.

[2] See footnote 1.

[3] The assets belong to the limited companies EPDC NL CV, EPDC BE CV and PRG GmbH & CoKG, of which EPDC NL BV, EPDC BE BV and PRG GmbH are the respective shareholders.

[4] The Land of North Rhine-Westphalia has a 68,15 % share in LEG and WestLB a 22,25 % share, while the rest of the shares are privately owned.

[5] OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

(10) The total investment cost amounts to EUR 148 500 000 (see table below [6]):

Table 1

Total investment cost

(in EUR million)

Section	Investment cost
Germany 'Pilot 2'	67,134
Netherlands	26,0
Belgium	55,4
Total	148,5

(11) The pipeline is managed in accordance with the 'open access/common carrier principle' and the 'low-profit principle'. Any interested producer or user can have access to the pipeline without discrimination. The capacity of the pipeline should be sufficient for dealing with the growth expected over the next 20 years. Transport fees will be the same for any user, whether a shareholder or not. They will be determined on the basis of the number of sections passed through.

(12) The fees will be established in a transparent manner and will be fixed at a level comparable with the transport fees for rail and inland water transport. For the period 2006 to 2008, […] (*). There will be no quantity rebates. In order to keep the fees up to date, a study into these different modes of transport will be carried out every two years.

(13) As regards purchases of works and services, EPAC and PRG must comply with the procurement procedures laid down by the legislation on public procurement at Community and national level.

2.1.4. *The aid*

(14) Germany intends to grant a direct subsidy equal to 80 % of the calculated deficit for normal profitability (unrentierlichen investiven Kosten) for the German section of the pipeline (Pilot 2), with a ceiling of 50 % of the total investment cost. The eligible cost is the investment cost including planning, construction and the first fill, less the income surpluses over the first 15 years based on a discounted cash flow analysis. The aid would amount to EUR 18 682 000. According to a calculation submitted by the German authorities, this aid is equivalent to an internal rate of return (IRR) of 5,6 % when calculated over 25 years.

(15) The Netherlands intends to grant a subsidy of EUR 4 000 000, the amount needed to raise the profitability of the Dutch section of the project to an acceptable level for the industrial partners. The German aid and the Dutch aid are ad hoc measures that are not part of a particular scheme.

(16) Belgium intends to grant a direct subsidy of EUR 2 919 480 and a five-year exemption from property tax, the benefit of which is estimated at EUR 766 000. The total investment cost in Belgium would be EUR 55 400 000, of which the Belgian authorities have recognised EUR 40 885 000 as eligible costs, from which operating profits of EUR 16 556 000 have been deducted [7], leaving an eligible amount of EUR 24 329 000. The Belgian authorities take the view that the aid is covered by a State aid scheme approved by the Commission [8]. The scheme provides for aid of 12 % for this type of investment, corresponding to the amount of EUR 2 919 480 mentioned above. Costs not eligible for aid under the scheme include costs for general research, land acquisition and commissions.

(17) The Belgian aid has been notified with a view to obtaining legal certainty and providing the Commission with an overview of the investment project, together with the total amount of aid granted.

(18) The three Member States have made the aid conditional on compliance with the principles of open access and non-discrimination for 25 years, i.e. the economic lifetime of the project. Compliance with these principles is enshrined in the statutes of EPMC; after 25 years the statutes may be amended in this respect only by a unanimous vote of all the participants.

(19) A loan from the EIB of up to 30 % of the total project cost is under discussion. The shareholders would provide own capital totalling EUR 8 000 000, with the remainder to be financed by banks. At the same time, the shareholders must bear the losses in the initial years, amounting to some EUR 38 000 000 until 2008, equivalent to some EUR 18 000 000 after interest and tax.

(6) 'Pilot 1' will represent an investment cost of EUR 50,5 million for which it would receive an aid of around EUR 25 million.

(*) Confidential information.

(7) It should be noted that these operating profits are the net proceeds minus depreciation and interest on investments.

(8) Decree on economic expansion in the Flemish Region, N 40/99 (OJ C 284, 7.10.2000) and N 223/93 (OJ C 282, 20.10.1993).

2.1.5. *The broader European olefins pipelines network*

(20) The APPE informed the Commission of the broader olefins pipelines network of which the pipeline project at issue is part [9]. At present, there are five separate systems in Europe for ethylene. They are not interconnected to form a complete network and link only about 50 % of the total capacity. For propylene, there are a number of individual systems in and around the Benelux area. The olefins network should connect the individual systems and expand them. The position paper contains several maps indicating various ongoing or projected pipeline projects that should permit completion of the overall network.

2.2. **Justification for the aid put forward by the German, Dutch and Belgian authorities**

(21) The project would be justified by environmental, transport safety and industrial policy considerations.

2.2.1. *Environmental benefits*

(22) Propylene transport is expected to increase significantly, putting pressure on transport capacity by ship and truck. The pipeline is designed to ease that pressure and to prevent bottlenecks. It would reduce road congestion problems significantly.

(23) The differences in emissions between traditional logistics and transport by pipeline are given in Table 2:

Table 2

Emissions

	Units	Rail	Barge	Total	Pipeline	Delta
Shipments	t/km	7 100 000	158 200 000	165 300 000	165 300 000	
CO_2	kg per t/km	312	6 960	7 237	4 496	2 741
NO_x	kg per t/km	199	124	126	5,12	121
CO	kg per t/km	0,14	6,33	6,47	0,5	5,97
VOC	kg per t/km	0,07	6,33	6,4	0,17	6,23
SO_2	kg per t/km	0,14	9,49	9,63	2,15	7,48

(24) Further reductions of emissions would result from the fact that the pipeline would permit new investment projects at locations requiring less transport of olefins.

2.2.2. *Transport safety and congestion*

(25) The pipeline would contribute significantly to enhanced transport safety. Propylene is a Hazard Class 1 material. Without the pipeline, the growth of the market would lead to a substantial increase in other forms of transport for propylene and in the related safety and congestion concerns.

(26) In the Netherlands the concerns relate in particular to transport by barge and rail. The growth of rail transport would accentuate safety problems along the track and the problems posed by the transhipment of propylene. The pipeline would alleviate the risk, in particular by reducing the number of shunting operations at railway yards and the transhipment of propylene. One of the most serious problem areas on the rail link between Rotterdam and Geleen would be the railway yard at Venlo. Relocation would be the solution but would cost some EUR 134 000 000. The pipeline reduces the need for such relocation.

(27) The Netherlands has put the immediate social return (traffic safety, emissions and noise) on the subsidy at 12 %.

2.2.3. *Industrial policy and employment considerations*

(28) The pipeline would be of strategic importance for the viability of the chemical industry in the area. A 1998 study singled out the lack of appropriate infrastructure as the major factor hampering competitiveness. This contrasts with the extensive network in the United States. The pipeline would make transport much more flexible as it would serve as a 'storage place', with all users having direct and near access. It would also reduce the uncertainty of propylene supply to customers stemming from disruptions in propylene production in steam crackers.

[9] Position Paper: *The Development of a European Olefins Pipelines Network and Its Benefits*, May 2003. It can be found at the following website: http://www.petrochemistry.net/templates/shwPressroom.asp?TID=4&SNID=16

(29) In 1999 the chemical raw materials industry in the Emscher-Lippe region in Germany provided jobs for 5 233 people. Of these jobs, some 1 906 were reported as being heavily dependent on propylene-based products (1 506 in the raw materials industry and 400 in plastics processing). Without the propylene pipeline the potential in this region would be used to the extent of 50 % at most. An expert study estimated the number of jobs that there would be in the region with and without the pipeline. For the raw materials industry, the project would create 658 jobs by 2010, disregarding multiplier effects. For the integrated chemicals cluster, this figure would be 2 697. In absolute figures, employment would still decline, albeit at a slower rate due to the pipeline.

(30) In 2002 some 9 740 people were employed in the chemical industry in South Limburg with between 500 and 550 of them being employed in the production of propylene and in the production and processing of polypropylene-related products.

3. **REASONS FOR INITIATING THE PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY**

(31) In its decision to initiate the Article 88(2) procedure, the Commission explained why the measures were to be considered as State aid within the meaning of Article 87(1) of the Treaty and expressed certain doubts as to their compatibility with the Treaty. The aid would not be covered by the Community guidelines on State aid for environmental protection [10] (environmental aid guidelines), the guidelines on national regional aid [11] (regional aid guidelines) or by any other guidelines laid down by the Commission. Similarly, the case in hand differs from other aid measures for transport infrastructure projects previously approved by the Commission. As regards the general criteria for assessing State aid, the Commission noted that the need for the full amount and the proportionality of the aid had not been clearly demonstrated. Some existing pipelines have been financed in their entirety out of private resources. In addition, the aid intensities for the various sections of the project differ, the aid intensity for the German section being relatively high. There were some factual questions as regards the assumptions for the profitability calculations. Lastly, the Commission wondered whether there would not be undue distortion of competition, notably between chemical companies participating directly in the project and other companies in the chemical and related industries and between the chemical industry in the region concerned and that in other regions of the Community.

4. **COMMENTS FROM THIRD PARTIES**

(32) The Commission received comments from Deutsche Bahn and from two competitors in the chemical industry.

(33) Deutsche Bahn confirms the Commission's analysis and takes the view that the aid is detrimental to its interests as pipeline transport will replace rail transport, causing a loss in turnover of some EUR 13 000 000 per year. Turnover would fall further as propylene producers in southern Germany might find their supply contract with users in the Ruhr area being terminated. Deutsche Bahn provided several examples of turnover losses caused by the construction of pipelines.

(34) The first competitor is in favour of developing an olefins pipeline infrastructure in Europe but it is not convinced that the project under consideration justifies the aid granted. Firstly, only polymer-grade propylene will be transported, not chemical- or refinery-grade, the propylene content of which is lower. Polymer-grade propylene accounts for only 60 % of the market. To gain access to the new pipeline will require substantial investments on the part of chemical-grade producers in improving their product to polymer-grade. Secondly, the lack of pipeline networks for propylene transportation in Europe cannot be used as a justification for low competitiveness in the chemical industry as the fees will be similar to those for other modes of transport. The pipeline will compete with the latter and the aid will distort competition with those companies that invest heavily in site selection, jetty facilities and the like. Thirdly, transport by barges and by rail has proven to be environmentally sound. Fourthly, the pipeline may shift investments from coastal locations in the Benelux to, say, Germany.

(35) The second competitor agrees that the transport of light hydrocarbons by pipeline is attractive in terms of efficiency and safety and that a sound infrastructure promotes investment and employment in the areas linked by the pipeline. However, it points out that the current propylene flow from west to east is not a sufficient reason to invest in this pipeline project. Additional volumes would be needed at either end to justify the aid: consumption of propylene in Dutch Limburg and

[10] OJ C 37, 3.2.2001, p. 3.
[11] OJ C 74, 10.3.1998, p. 9.

the German section of the pipeline, and production of propylene in the coastal region. In contrast, Sabic has announced the development of a cracker in Dutch Limburg. This would reduce the flow of propylene from the Antwerp-Rotterdam-Amsterdam (ARA) area to the eastern part of the pipeline. Without investment in propylene production in the ARA area, the pipeline would remain underutilised.

5. COMMENTS FROM GERMANY, THE NETHERLANDS AND BELGIUM

5.1. Comments made by all three Member States

(36) All three Member States confirm the importance of the project from an environmental, transport safety and industrial point of view. They stress that the pipeline will be operated in line with the 'open access', 'non-discrimination' and 'common carrier' principles.

(37) A tender procedure for selecting the beneficiaries was not possible as some petrochemical companies were directly involved in the project as owners of sections of existing pipelines. This would not, in any case, have been economically efficient. Distortions of competition are ruled out in this case since any company can join the consortium.

5.2. Comments from Germany

(38) Germany insists that the public support does not constitute State aid as it does not confer a selective advantage. The pipeline must be viewed as a transport infrastructure like other traffic infrastructure project. This would be in line with earlier decisions by the Commission ([12]). The project was undertaken for environmental and industrial policy reasons and the aid is not simply a reaction to a private initiative. Similarly, the fact that the alternative transport modes of inland waterway and rail are financed by the public authorities was taken into account in the decision to grant aid to the project.

(39) Germany also considers that the project seeks to organise propylene transport on the basis of different transport modalities. Hence the measure would fall within the scope of Article 73 of the Treaty.

(40) The aid would give the project an internal rate of return of 5,6 % in Germany. A higher return would not be possible: in case of higher-than-expected proceeds over the first 15 years, a corresponding amount would be recovered from the beneficiary. Germany stresses that there is no disproportionate advantage for the companies participating directly in the project since any potential user will have access to the installation on non-discriminatory terms. Furthermore, even companies involved in other branches of economic activity may join the consortium. The pipeline will still belong to the company after 15 years, but the company will derive no advantage.

(41) As the pipeline forms part of a Europe-wide network, there will be no distortion of competition for the chemical industry in other regions of the Community.

5.3. Comments from the Netherlands

(42) The Netherlands points out that in the 1990s the ethylene- and propylene-producing industry in north-west Europe, which had been a net exporter, became a net importer on account of the strong competition from Asian countries in particular. The ethylene and propylene market in north-west Europe is currently a closed market given the absence of independent transport, storage and transhipment facilities. The project receiving the aid could force the industry to open up the market. The Netherlands submitted a map giving examples of coastal sites throughout Europe which could supply propylene to the pipeline structurally or on a temporary basis.

(43) The Netherlands recalls its calculation of the societal rate of return on the subsidy (12 %). In addition to the calculation of the project's internal rate of return (6,19 %), it notes that the rates of return in competing modes of transport are similarly low, in the range of 1 to 8 %. It also takes the view that the aid could be considered compatible on the basis of Article 87(3)(b) of the Treaty as it concerns an important project of common European interest.

5.4. Comments from Belgium

(44) In addition to the general comments, Belgium points out that the aid notified by it falls within the scope of an aid scheme approved by the Commission and that the Commission's opinion that it would not be covered by the environmental aid guidelines is not consistent with the previous assessment given by it on the application of the Belgian aid scheme.

([12]) Including N 517/98 UK, South Wales European Rail Freight Terminal (OJ C 81, 24.3.1999, p. 8), N 121/99 AT, Aid for combined transport (OJ C 245, 28.8.1999, p. 2), N 208/00 NL, Subsidy scheme for public inland terminals (OJ C 315, 4.11.2000, p. 22) and N 649/2001 UK, Freight Facilities Grant, Port of Rosyth Project (OJ C 45, 19.2.2002, p. 2).

5.5. **Comments from interested parties**

(45) With respect to the comments from Deutsche Bahn, the three Member States stress that the subsidy will be used only for the pipeline infrastructure and not for actual transport and that the fees will be set by reference to those for competing modes of transport. The fees will be transparent and non-discriminatory. Propylene users that had already invested in infrastructure for transport by inland waterway or by rail are not disadvantaged since the pipeline users are themselves responsible for the connection to the pipeline. Moreover, most of the necessary investments in transport by inland waterway or by rail are not intended specifically for propylene but can be used for other liquefied gases. Lastly, Deutsche Bahn can join EPDC. Success of the pipeline project may be important for Deutsche Bahn as the pipeline creates opportunities for transporting propylene further inland.

(46) With respect to the comments from the first competitor, the three Member States point out that polymer-grade propylene is the only all-purpose grade. Refinery-grade propylene is very rarely used in chemical processes because of the high percentage of propane that has to be treated as an off-gas; for the rest, there are only a few producers of chemical- and refinery-grade propylene. There is a trend towards greater use of polymer-grade propylene in new chemical production processes. The issue of grade has been extensively discussed with the encouragement of a Task Force set up by the Ministry for Economic Affairs of North Rhine-Westphalia. The pipeline, in fact, opens up the prospect of a European single market for propylene.

(47) With respect to the comments from the second competitor, the three Member States point out that all the expected values given by both the participants and independent experts point to a disproportionately high increase in propylene demand in the next few decades. Accordingly, the problem is to avoid a capacity bottleneck with existing modes of transport. The propylene produced by the cracker investment announced by Sabic has been included in the profitability calculations for the pipeline. This investment is currently under consideration, but the pipeline economics will not be affected should it go ahead. In fact, if SABIC does go ahead with the investment, the Geleen site will have an even greater need for the pipeline in order to provide operational flexibility in the event of an unexpected failure in either the production or consumption process. In addition, cracker capacity is being expanded at Terneuzen, which came on stream in 2002 providing 300 kt for consumers in the Antwerp-Rotterdam area. The pipeline opens up completely new investment perspectives for the propylene users, irrespective of where suppliers are located. Moreover, current pipelines are owned by just a few large enterprises.

6. **ASSESSMENT**

6.1. **Existence of State aid within the meaning of Article 87(1) of the Treaty**

(48) State funding for the construction or management of transport infrastructure is not always to be regarded as aid within the meaning of Article 87(1) of the Treaty. However, if the body managing the infrastructure is pursuing an economic activity, the grant may confer a potential competitive advantage on the beneficiary. Both EPC and its shareholders pursue economic activities. In this respect, the case is very similar to the case involving the aviation fuel pipeline in Athens ([13]). The grant allows the consortium to construct and exploit a facility for 25 years, without paying the entire cost. The following should be noted:

(a) The Member States in question have not followed open tender procedures for the construction and operation of the pipeline. The authorities concerned have simply responded to a private initiative.

(b) The pipeline is being depreciated over 25 years and the conditions for granting the aid apply for 15 or 25 years, but the pipeline remains the property of the asset management companies.

(c) Participation in the pipeline company is, in principle, open to any company but, in practice, only propylene and ethylene producers are directly involved.

([13]) Case N 527/2002. The case concerns investment aid of 35 % for a kerosene pipeline from the sea to Athens International Airport. The pipeline is publicly owned but exploited by a consortium in which the airport, Olympic Airways and three oil companies participate. The Commission found the aid to be compatible on the basis of the regional aid guidelines (OJ C 148, 25.6.2003).

(d) The company is to operate on the basis of the 'low-profit principle'. The aid effectively allows an internal rate of return of 5,6 % for the German section. However, the tariff structure has to follow the developments in fees for competing modes of transport. Consequently, a higher rate of return cannot be ruled out.

(49) For these reasons, there is a selective advantage for EPC, as compared with the other enterprises that could have undertaken the project and with competitors providing alternative transport services. The case thus involves a private initiative which is subsidised by the State. There is no doubt that the aid will affect trade between Member States. The beneficiaries are all large chemical companies active on the world market. Moreover, the project relates to a transport activity between the three Member States concerned.

(50) Germany, the Netherlands and Belgium have complied with the requirement to notify the aid pursuant to Article 88(3) of the Treaty. The Commission notes that the total investment cost exceeds EUR 25 000 000 and that the total aid exceeds the gross grant equivalent of EUR 5 000 000. Therefore, even if the Belgian aid were covered by an approved aid scheme, the notification requirement pursuant to point 76 of the environmental aid guidelines is applicable.

6.2. **Compatibility of the aid in question**

(51) The aid is granted to facilitate a transport activity. Transporting propylene by means of a pipeline cannot be seen as an adaptation of the propylene production process; it constitutes a separate service. This is illustrated by the fact that the pipeline will be built by new legal entities created for the sole purpose of providing transport services for propylene. Although EPC's shareholders are active in propylene production and processing, the new activity competes in the first place on the transport market.

(52) The rules on the compatibility of State aid in the Title of the Treaty dealing with transport are, however, not applicable. Article 73 of the Treaty states that aid is compatible with the Treaty if it meets the needs of coordination of transport. However, Article 80 of the Treaty limits the provisions of the Title dealing with transport by stating that *'[t]he provisions of this Title shall apply to transport by rail, road and inland waterway.'* Accordingly, Article 73 does not apply to the investment project in question.

(53) Despite the various positive effects of the aid, none of the rules on the compatibility of State aid that the Commission has developed on the basis of Article 87(2) and (3) are applicable. Only a small part of the investment is located in assisted regions, and the authorities concerned have not sought approval on the basis of the regional and aid guidelines. The environmental aid guidelines are not applicable either. Transport by pipeline causes less pollution than other modes of transport operated by competitors, including even transport by rail or inland waterway. Consequently, there will be a net reduction in pollution. In principle, however, the Commission does not allow State aid for investment that leads to a reduction in pollution by *competitors* of aid beneficiaries. Instead, it considers State aid to be compatible in certain circumstances where the beneficiary reduces its *own* pollution.

(54) The Commission has therefore assessed the measure directly on the basis of Article 87(3)(c), which states that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The use of a pipeline that shifts some traffic away from rail, road or inland waterway transport constitutes an economic activity.

(55) In the field of transport infrastructure, the Commission has previously acknowledged that aid could be granted if the market did not provide society with the public transport infrastructure necessary to achieve sustainable mobility ([14]). For facilities that are accessible on non-discriminatory terms for all existing and potential operators, an aid intensity of up to 50 % of the total project cost has been allowed. Pipeline transport, like the transport infrastructure projects referred to in paragraph 38, reduces emissions and is safer compared with other modes of transport. It will also contribute to the reduction of congestion. Furthermore, the Commission agrees with the Dutch, Belgian and German authorities that, apart from its environmental and industrial benefits, the project has strategic importance for the chemical industry in the region concerned. Propylene producers in other parts of the EU where there is excess supply of propylene would benefit as well since the project facilitates the sale of their propylene. As part of the procedure, no competitor in other regions of the common market has denied the existence of such beneficial effects.

([14]) N 649/01 UK, Freight Facilities Grant scheme, see footnote 12.

(56) Distortions of competition on the propylene market are limited on account of the open access to the pipeline for all competitors. Compliance with this principle is guaranteed for a period of 25 years, which is the depreciation period for the pipeline, and it is expected that the capacity of the pipeline will, in the normal course of events, be sufficient to avoid bottlenecks for the next 20 years.

(57) The notified aid can be considered to be necessary and proportional to the objectives in mind. Without it, the return on the investments would be too low and the project would not be carried out. For the rest, it should be pointed out that the subsidy is limited to a level that allows not more than a normal internal rate of return (IRR) on the investments for the companies involved. In the case at issue, the IRR should be calculated with respect to the total project (including Pilot 1) and to its individual sections because these are inextricably linked to each other and it would not make sense to invest in one section and not in others. If the pipeline were only partly built, the expected propylene flows would be lower, resulting in a lower IRR and lower environmental, safety and industrial benefits. The calculation for the entire project gives an IRR of 6,19 % over 25 years, but one of only 2,75 % when calculated over 15 years. Without subsidies these rates would be 3,80 % and − 0,24 %. The assumptions underpinning the calculations are realistic and reasonable, even when taking into account the relevant comments from the third parties. Even the figure of 6,19 % can be considered as being equal to or below a normal rate of return for this type of project. The post-tax IRR on other chemical and oil pipeline systems in Europe has been between 9 and 13 % over 25 years. IRRs on equivalent systems in the United States have a slightly higher IRR (in the range of 11 to 15 %). Returns on power stations and similar installations are in the range of 10 to 13 % over shorter periods, e.g. 15 years. The expectations of the chemical industry for new chemical plants are above 15 %, with actual returns tending to be lower (9 to 15 %), depending on the type of plant and the tax regime. Furthermore, the IRR calculated is higher than average returns in rail transport (1 to 3 %) and bulk road transport (3 to 4 %), but comparable to those for the transport of chemicals by inland waterway (7 to 8 %).

(58) Distortions of competition between the companies participating directly in the project and other companies in the chemical and related industries are limited. In the first place, the pipeline will be used by a substantial number of companies, not only those participating in the consortium. Much of the propylene will be used at integrated chemical sites, where the derivatives are immediately fed into other production processes operated by other companies, including SMEs. Secondly, any company may join the consortium on non-discriminatory conditions. The fact that the participating companies all participate on equal terms also indicates that there is no major benefit for one or more of the companies in the industry. Given the low-profit principle and the principle whereby fees are set at a level making it just possible to compete with other modes of transport, the benefit to the industry consists in an increased flexibility and immediate availability of propylene supply, rather than a pecuniary benefit.

(59) It is true that producers of propylene with a lower purity level than polymer-grade propylene may not derive much benefit from the pipeline. Any standard, however, limits the use of the pipeline to a certain extent, and the chosen standard ensures the widest use. To some extent, the pipeline may reduce competition between producers on the quality of propylene, but this effect is likely to be limited since, for technical reasons, most chemical companies will need polymer-grade not lower-grade propylene. In any case, the pipeline does not hamper the transport of propylene of other grades by rail and inland waterway. The apparently most important positive effect on competition will derive from the increased flexibility of supply and from standardisation based on polymer-grade propylene, and this will make it easier for propylene consumers to switch supplier.

(60) In accordance with point 29 of the environmental aid guidelines, the Commission may authorise investment aid enabling firms to improve on the Community standards applicable up to no more than 30 % gross of the eligible investment costs. Although the investments in question do not fall within the scope of these guidelines, the Commission notes that there is no Community standard requiring the participating companies to undertake the investment. The overall aid level, taking into account also the aid for Pilot 1, is below 30 %. Conversely, a number of elements distinguish the present project from the transport infrastructures referred to in paragraph 38 and explain why higher intensities would not be admissible in the present case. Those earlier decisions concerned, for example, projects

for rail and inland waterway infrastructures designed to replace transport by truck, and not pipeline transport designed to replace transport by rail and inland waterway. In addition, the pipeline constitutes a long-distance transport infrastructure, and not only facilities at a certain point or along a limited part of the pipeline. It should also be noted that the infrastructure can be used only for propylene and not for the transportation of other products. Furthermore, the operators will, at the same time, be major users of the pipeline. In addition, if the benefit results not, in the first place, from the lower cost of transport but from improved flexibility of supply, they will, in any event, be major beneficiaries. For all these reasons, the overall aid level seems appropriate.

(61) The pipeline will distort competition as regards inland waterway and rail transport, as Deutsche Bahn maintains. The Commission notes that such a distortion seems to be inherent in the very nature of the project in question but has accepted distortions of this kind in other cases involving transport infrastructures because, in its view, the benefits of such projects outweighed those distortions. Taking all the above arguments into account, the Commission finds that the level of distortion of competition is acceptable in view of the project's benefits and concludes therefore that the distortion resulting from the notified aid is not undue either.

7. **CONCLUSION**

(62) The aid amounting to EUR 3 685 480, EUR 18 682 000 and EUR 4 000 000 notified by Belgium, Germany and the Netherlands respectively in favour of the construction of a propylene pipeline from Rotterdam via Antwerp to the Ruhr area constitutes State aid within the meaning of Article 87(1) of the Treaty.

(63) The aid is compatible with the common market, taking into account the following elements: the reduction of emissions and transport congestion and the increase in safety resulting from the project; the project's importance for the chemical industry in the regions concerned; the limitation of the distortions of competition by virtue of compliance with the principles of low profit, open access/common carrier and non-discrimination; the fact that the aid is limited to a level that does not allow a higher-than-normal rate of return,

HAS ADOPTED THIS DECISION:

Article 1

The aid of EUR 3 685 480, EUR 18 682 000 and EUR 4 000 000 notified by Belgium, Germany and the Netherlands respectively in favour of the construction of a propylene pipeline between Rotterdam, Antwerp and the Ruhr area is compatible with the common market.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands.

Done at Brussels, 16 June 2004.

For the Commission

Mario MONTI

Member of the Commission