COMMISSION DECISION

of 7 June 2006

on State Aid No C 8/2005 (ex N 451/2004) which Germany is planning to implement for Nordbrandenburger UmesterungsWerke

(notified under document number C(2006) 2088)

(Only the German version is authentic)

(Text with EEA relevance)

(2006/904/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 provision(s) cited above [1],

Whereas:

1. PROCEDURE

(1) By letter dated 11 October 2004, registered as received on 12 October 2004, Germany informed the Commission of its intention to implement a regional aid measure for NUW Nordbrandenburger UmesterungsWerke. The aid was registered as notified aid number N 451/2004. In response to a Commisison request for information sent on 6 November 2004, Germany submitted further information on 16 December 2004.

(2) By letter dated 16 February 2005 the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.

(3) The Commission's decision to initiate the procedure was published in the Official Journal of the European Union [2]. Interested parties were invited to submit their comments on the aid measure.

(4) By letter dated 22 March 2005, registered as received on 23 March 2005, Germany replied to the initiation of proceedings and submitted comprehensive additional information to the Commission.

(5) The Commission received no comments from interested parties.

(6) As a result of its own investigations the Commission established that the information provided by Germany was not complete and by letter dated 8 November 2005 it sent further questions to Germany. Germany replied on 13 January 2006 and submitted further information.

2. DESCRIPTION OF THE AID

2.1 The recipient and the project

(7) The recipient of the aid is NUW Nordbrandenburger UmesterungsWerke GmbH & Co. KG ('NUW'), located in Schwedt, in the *Land* of Brandenburg, Germany, an assisted area pursuant to Article 87(3)(a) of the Treaty. NUW was established on 4 May 2004. Before the implementation of the planned investment it will not carry out any operational activities. Consequently, in October 2004 NUW did not yet have any full-time or part-time employees.

(8) NUW intends to build and operate in Schwedt a manufacturing plant for biodiesel with an expected annual capacity of 130 000 tonnes and eligible investment costs of EUR 41,84 million. It will mainly deliver to PCK Raffinerie GmbH Schwedt ('PCK'), whose equipment is currently being prepared for the further processing of biofuels.

2.2 The financial measures

(9) The *Land* of Brandenburg wants to grant NUW state aid, under schemes approved by the Commission, of 50 % of the eligible cost with a total aid amount of up to EUR 20,92 million.

(10) The aid will be provided in the form of a direct investment grant of EUR 14,204 million and in the form of an investment premium of EUR 6,716 million on the basis of the joint Federal Government/Länder scheme for improving regional economic structures (in original language: *'Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur'*) [3] (hereinafter referred to as the GA scheme) and under the aid scheme entitled 'Investment premium for

[1] OJ C 27, 27.1.2001, p. 44.
[2] OJ C 86, 8.4.2005, p. 2.
[3] 'Gesetz über die Gemeinschaftsaufgabe (GA) 'Verbesserung der regionalen Wirtschaftsstruktur' vom 6. Oktober 1969 in Verbindung mit den einschlägigen Bestimmungen von Teil II des 31. Rahmenplans zur GA', the latest prolongation approved by Commission decision under the number N 642/02 on 1.10.2003, OJ C 284, 27.11.2003, p. 2.

investment at operational level in the year 2004' (in original language: *'Investitionszulage für betriebliche Investitionen im Jahr 2004'*) ([4]). Germany will ensure that the 50 % ceiling for aid intensity will not be exceeded.

2.3 Reasons for initiating the formal investigation procedure

(11) Since the aid is based on approved schemes the Commission limits its assessment to the question whether the recipient qualifies as an SME and is thus eligible for an additional SME bonus of 15 % as included in the envisaged aid amount.

(12) According to Article 2 of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (SME Recommendation) ([5]), small and medium-sized enterprises are defined as enterprises which have fewer than 250 employees and have an annual turnover not exceeding EUR 50 million and/*or* an annual balance sheet total not exceeding EUR 43 million.

(13) The concept of undertaking does not require that the recipient be limited to one distinct legal entity; it may encompass an economic group of companies which is larger than an individual SME. Enterprises may be considered to be linked enterprises if they are linked through a natural person and operate in the same relevant market or in adjacent markets.

(14) The link between NUW and other enterprises through natural persons, in particular through members of the Sauter family, may result in joint activities in the same or adjacent markets. Linked enterprises are taken into account jointly when staff headcounts and financial amounts are calculated in establishing the SME status of an enterprise.

(15) With regard to the relations between the above mentioned enterprises, the Commission doubted whether the recipient of the investment aid, NUW, really needs to benefit from the advantages accruing to SMEs from the different rules or measures in their favour and that NUW would be eligible for the notified SME bonus. The Commission also doubted that the recipient complies with the definition of an SME under the SME Recommendation.

3. COMMENTS FROM INTERESTED PART IES

(16) The Commission did not receive any comments from interested parties.

4. COMMENTS FROM GERMANY

Criterion of independence

(17) Germany explains that NUW Verwaltung GmbH is financially not involved in the recipient NUW. Its operational objective is exclusively to take over the management and to assume the liabilities of NUW. All other complementary enterprises ('Verwaltung GmbH') exclusively take over the liabilities of their relevant enterprises and do not carry out further operations.

(18) Whereas Daniela Sauter has a 74 % stake in NUW, her holdings in NBE Nordbrandenburger BioEnergie GmbH & Co. KG, MBE Mitteldeutsche BioEnergie GmbH & Co. KG and SBE Swiss BioEnergy AG do not exceed 50 %. According to Germany there are no other enterprises linked to NUW.

(19) With regard to the partner enterprises Germany states that Daniela Sauter has holdings of 50 % in NBE, 38 % in MBE and 20 % in SBE. Consequently, only the holdings in NBE and MBE would be relevant for the assessment of the recipient's size.

(20) With regard to possible joint behaviour by a group of natural persons, Germany informs the Commission that Daniela Sauter and Georg Pollert as the main partners of NUW appear jointly only with regard to NUW, but not with regard to other undertakings. Their joint interests exclusively concern NUW; apart from the deed of partnership, no other agreements exist.

(21) Germany underlines that regarding the involvement of brothers, parents and the sister-in-law no uniform structure of holdings exists that may involve equal interests. Apart from the fact that they are relatives there are no legal or economic relations between these persons. Apart from the deed of partnership, no other agreements exist.

Relevant markets

(22) According to Germany, NUW and MUW Mitteldeutsche UmesterungsWerke GmbH & Co. KG operate on the same market although their customers are different. The enterprises have a relationship via Mr Pollert, but this is low-key and not significant.

(23) Whereas NUW will produce biodiesel, NBE and MBE are active in the bioethanol market. Although the customers of all three companies are the large oil companies, the input of raw materials and the production processes are substantially different.

The undertakings' management, financial and employment criteria

(24) Since end of 2004 Mr Heidenreich is no longer the manager of NBE Verwaltung GmbH. According to Germany, all the other enterprises involved are managed

([4]) 'Investitionszulage für betriebliche Investitionen im Jahr 2004', approved under the number N 336/2003 on 10.12.2003, based on 'Investitionszulagengesetz 1999 in der Fassung der Bekanntmachung vom 11. Oktober 2002 unter Berücksichtigung des Entwurfs des Steueränderungsgesetzes 2003'; OJ C 67, 17.3.2004, p. 12.

([5]) OJ L 124, 20.5.2003, p. 36.

by different persons and no links between the management of the enterprises exist.

(25) Based on the assumption that NUW, MBE and NBE are partner enterprises and that no linked enterprises exist, Germany calculates the financial and employment figures. With reference to the SME definition, it concludes that this group remains below the critical thresholds for all the SME criteria.

The general contractor SBE Swiss BioEnergy AG

(26) NUW engaged SBE, whose business purpose is the construction and operation of biodiesel plants and the trade in biofuels in Europe, to carry out the construction of the biodiesel plant. Although SBE will finance a part of the investments, Germany states that there are no further dependencies between the two undertakings. In order to ensure that NUW does not become dependent on SBE, only NUW can determine the date of the repayment of the loan.

(27) Further, SBE will pre-finance the direct investment grant from 2004. Germany stresses that the contract between SBE and NUW was drafted in such a way that SBE could not influence NUW's management decisions.

Sauter Verpachtung GmbH

(28) According to Germany, the sale of fuel is of only minor importance and accounts for only 1 % of the turnover of the enterprise. Sauter Verpachtung GmbH has no significant business in the processing of or trade in biodiesel or bioethanol.

(29) However, this enterprise was the main contractor in the construction of the bioethanol production plant of NBE.

(30) Sauter Verpachtung has neither direct legal nor economic relations with NUW.

Conclusions by Germany

(31) Since relations between NBE and MBE only exist via the person of Mrs Daniela Sauter and since there are no further relevant relations to other enterprises, Germany concludes that NUW qualifies as an SME. The participants in NUW are not a jointly acting group of natural persons. According to the *Land* of Brandenburg, family links are insufficient to conclude that there is a joint interest within the meaning of the SME definition.

5. ADDITIONAL INFORMATION PROVIDED BY GERMANY

(32) As part of its own investigations, the Commission found evidence that other undertakings, about which Germany had not informed the Commission, were owned by members of the Sauter family. Replying to the Commission's questions sent in this context to Germany on 8 November 2005, Germany provided additional information on 13 January 2006.

Shareholdings and ownership

(33) In addition to various real estate and wind energy undertakings (Germany did not provide further details) the members of the Sauter family have majority shareholdings in 16 enterprises. Daniele Sauter holds the majority (74 %) of the shares in NUW, for which the SME bonus was notified; she is the sister of Bernd and Claus Sauter. Alois and Albertina Sauter are the parents of Daniele, Bernd and Claus Sauter. Marion Sauter is married to Claus Sauter. Finally, Georg Pollert, who has no family link to the Sauter family, holds 24 % of the shares in NUW.

(34) With the exception of NUW Nordbrandenburger Umesterungswerke *Verwaltung* GmbH ([6]) (Daniela Sauter: 50 %), the Sauter family controls all the Sauter family enterprises via majority shareholdings:

SBE Swiss BioEnergy AG (100 %), Sauter Verpachtung GmbH (100 %), Alois Sauter Landesprodukten-Großhandlung GmbH & Co. KG (100 %), Sauter GmbH (100 %), Compos Entsorgung GmbH (100 %), MUW Mitteldeutsche UmesterungsWerke GmbH & Co. KG (66 %), MUW Mitteldeutsche UmesterungsWerke Verwaltungs GmbH (66 %), AIIEN GmbH (100 %), Autokontor Bayern GmbH (66 %), Autokontor Vertriebs GmbH (60 %), MBE Mitteldeutsche BioEnergie GmbH & Co. KG (100 %), MBE Mitteldeutsche BioEnergie Verwaltung GmbH (100 %), NBE Nordbrandenburger BioEnergie GmbH & Co. KG (100 %), NBE Nordbrandenburger BioEnergie Verwaltung GmbH (100 %) and NUW (74 %).

(35) The business purposes of NUW Nordbrandenburger Umesterungswerke *Verwaltung* GmbH, MUW Mitteldeutsche UmesterungsWerke Verwaltungs GmbH, Mitteldeutsche BioEnergie Verwaltung GmbH and NBE Nordbrandenburger BioEnergie Verwaltung GmbH are to manage and represent other enterprises.

Business relations

(36) According to Germany the term 'Sauter Group' is publicly used only for Alois Sauter Landesproduktengroßhandlung, Sauter Verpachtung and Compos Entsorgung, which closely cooperate in the area of transport and waste treatment. The transport fleet of Sauter Verpachtung and Alois Sauter Landesproduktengroßhandlung carries advertising for biodiesel. Germany cannot explain why credit institutions as NordLB use the term 'group' for some enterprises of the Sauter family.

(37) The enterprises have numerous business relations, which according to Germany cannot be 'fully listed':

([6]) NUW Nordbrandenburger Umesterungswerke *Verwaltung* GmbH is NUW's associate company.

(a) As a general contractor SBE Swiss BioEnergy AG will install the biodiesel plant for the proposed recipient NUW. Further, it will partially finance the investment and pre-finance the investment grant. Sauter Verpachtung GmbH has been the general contractor for setting up the bioethanol plants of MBE GmbH and NBE GmbH and the biodiesel plant of MUW. Furthermore, it constructed several wind energy stations for MUW and MBE. Its gas stations are used by MBE and Autokontor Bayern.

(b) For waste water management, Compos Entsorgung Gmbh uses mainly the transport fleet of Alois Sauter Landesproduktengrosshandlung GmbH and Sauter Verpachtung GmbH. Sauter Verpachtung shares an office building with Compos Ensorgung GmbH and Autokontor Bayern GmbH.

(c) Customers of MUW are Alois Sauter Landesproduktengroßhandlung, Autokontor Bayern, Sauter Verpachtung and MBE. SBE delivers crude oil and refined products to MUW for further processing into biodiesel.

(d) Alois Sauter Landesproduktengroßhandlung lets buildings and ground to Autokontor Bayern and repairs and maintains the transport fleet of Sauter Verpachtung, Autokontor Bayern, MBE and MUW. It operates a gas station for MUW, MBE, Sauter Verpachtung and Autokontor Bayern.

(e) For some time MBE and Sauter Verpachtung were sharing an office building. MBE carries out transport services for Sauter Verpachtung and Autokontor Bayern.

(f) SBE cooperates with MUW, NUW, MBE NBE and Autokontor Bayern.

Relations concerning management and staffing

(38) Formerly, the managing director of NUW, Mr Niesmann, was the operational manager of MUW. Until 2004 the managing director of MBE, Mr Klotz, had power of procuration at Sauter Verpachtung.

(39) The recipient's majority owner, Mrs Daniela Sauter, is the managing director of NBE.

(40) Mr Johne has power of procuration at SBE and worked for MUW until December 2004. Mr Heidenreich was managing director at NBE and took over the same function at NUW.

(41) In specific cases staff may have changed posts between the different enterprises of the Sauter family.

Suppliers and customers of the enterprises of the Sauter family

(42) The enterprises Bunge Deutschland GmbH and Cargill supply both MUW and NUW with vegetable oil. SBE is the common customer of NUW, MUW, MBE and NBE.

6. ASSESSMENT OF SME STATUS

Criteria to qualify for the SME bonus

(43) According to the Annex to the Commission Recommendation of 6 May 2003, an SME is defined as an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

(44) Article 87 (1) of the EC Treaty refers to the concept of undertakings to define the recipients of aid. As the Court of Justice of the European Communities has confirmed, the concept of undertaking is not limited to one distinct legal entity, but may encompass a group of companies ([7]).

(45) According to the case law the Commission is entitled to determine, first, whether an undertaking is part of a group which should be regarded as a simple economic entity and only then ascertain whether that group satisfies the test of the SME Recommendation. Where legally distinct natural or legal persons constitute a simple economic entity, they should be treated as a single undertaking for the purposes of Community competition law. Further, it is necessary to eliminate legal arrangements in which SMEs form an economic group which is much stronger than a normal SME and to ensure that the definition of SMEs is not circumvented for purely formal reasons. The Court of First Instance of the European Communities expressly noted that the Commission has a broad discretion in determining whether companies which form part of a group should be regarded as an economic unit ([8]).

(46) The SME Recommendation concerning the definition of small and medium-sized enterprises adopts this approach. In Article 3(3) of the Annex, it stipulates that enterprises which have a dominant influence over one another through a natural person or a group of natural persons acting jointly are to be considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets. Adjacent markets are considered to be markets for a product or services situated directly upstream or downstream of the relevant market.

(47) The judgment of the Court of Justice in Case C-91/01 ([9]) further clarifies how the Commission may decide when assessing the compatibility of an SME bonus : 'If an

([7]) Judgement of the ECJ of 14.11.1984, Case 323/82 *Intermills* v *Commission* [1984] ECR 3808.

([8]) Judgement of the CFI of 14.10.2004, Case T-137/02 *Pollmeier Malchow* v *Commission* [2005] ECR II-3541.

([9]) Judgement of the European Court of Justice of 29.4.2004, Case C-91/01 *Italian Republic* v *Commission* [2004] ECR I-4355, paragraph 54.

enterprise concerned does not in reality suffer from the handicaps typical of an SME, the Commission is entitled to refuse such increased aid. Approving increased aid for enterprises which, although meeting the formal criteria defining an SME, do not suffer from the handicaps typical of an SME would be contrary to Article 87 EC, since such an increase in aid is likely to produce more severe distortions of competition and thus adversely affect trading conditions to an extent contrary to the common interest within the meaning of Article 87(3)(c).'

(48) In order to determine the necessity of the increased aid intensity for the recipient company, the Commission considers that it is necessary to examine various factors such as the shareholding structure, the identity of the managing directors, the degree of economic integration and any other links of the companies involved. By taking into account the above-mentioned principles, the Commission determines whether NUW falls within the scope of the definition of SMEs and whether it could qualify for the increase in the aid intensity.

Relations between the enterprises of the Sauter family

(49) The ownership structure is a primary criterion in analysing the controlling powers in enterprises. It allows proof to be established on links between individual enterprises and conclusions to be reached on economic entities.

(50) With the exception of NUW Nordbrandenburger Umesterungswerke *Verwaltung* GmbH (no turnover, no staff, balance sheet EUR 32 000), in which Daniela Sauter has a shareholding of 50 %, the Sauter family controls 15 enterprises via majority shareholdings (see paragraph 34 and the Annex).

(51) Regarding links between natural persons who control individual enterprises, family relationships appear to be particular close as only six persons are involved.

(52) Daniela Sauter holds the majority (74 %) of the shares in NUW, for which the SME bonus was notified; she is the sister of Bernd and Claus Sauter. Alois and Albertina Sauter are the parents of Daniela, Bernd and Claus Sauter. Marion Sauter is married to Claus Sauter. It follows from this that Daniela, Bernd, Claus, Alois and Albertina belong to the traditional 'core family' and that Marion Sauter is a sister-in-law. Both the quality and the intensity of family relationships limited to only six natural persons appear particularly strong.

(53) Business relationships such as links between the management, overlapping relations to suppliers and clients, common use of logistics (e.g. means of transport, buildings and offices) are considered as further check-points in this case indicating a link between enterprises. These indicators may serve to double-check whether a link via natural persons not only informally but also formally translates into links between the enterprises' business and specific operations.

(54) According to Germany, the enterprises have so many business relationships that they could not be fully listed. First of all, SBE Swiss BioEnergy AG and Sauter Verpachtung serve as general contractors for setting up bioethanol and biodiesel plants operated by entities held by the family. The cooperation between enterprises controlled by the Sauter family particularly in the area of transport, management, staffing and customers demonstrates that the enterprises' activities are coordinated and that joint behaviour is actively sought.

(55) As provided by Germany, three simple examples out of numerous joint activities and instances of cooperation illustrate the link between the different enterprises of the Sauter family. The transport fleet of both Sauter Verpachtung GmbH and Alois Sauter Landesprodukten-großhandlung GmbH & Co. KG carries advertising for biodiesel. Furthermore, Alois Sauter Landesprodukten-großhandlung GmbH & Co. KG owns a helicopter which the members of the family jointly use for their various business activities. The same enterprise maintains and repairs the transport fleet of Sauter Verpachtung GmbH, Autokontor Bayern GmbH, MBE and MUW.

(56) In addition to these business relations, the close relationship between the members of the Sauter family are also evident in numerous real estate and wind energy undertakings.

(57) The Commission considers that, from an economic perspective too, the group of enterprises has to be regarded as one entity. Particularly as a result of the link via natural persons — the Sauter family — but also because of their business relationships and organisational links, the Sauter family can easily coordinate not only their daily operational activities, but also their strategic development as a group. The links between the companies have not been established recently, but appear based on a common history and a planned joint development.

(58) At the Internet site http://www.sauter-logistik.de/Sauter_-Gruppe.htm the enterprises Landesprodukten-Grosshandlung GmbH, Sauter GmbH, Compos Ensorgung GmbH, MUW GmbH, AIIEN GmbH, Autokontor Bayern GmbH and Biodiesel Production S.A present themselves as the Sauter Group, again indicating joint economic behaviour.

(59) Furthermore, banks such as NordLB refer to several enterprises controlled by the Sauter family as the 'Sauter Group'. The appearance of the Sauter enterprises as a group seems to be supported by the bank's analysis. Germany could not explain why the banks refer to the undertakings in this way.

(60) The specific business relations between NUW and SBE Swiss BioEnergy AG underline the profound integration of NUW in the network of enterprises owned by the Sauter family. As mentioned above, SBE Swiss BioEnergy AG will as a general contractor install the biodiesel plant for the proposed recipient NUW. Further, it will partially finance the investment and pre-finance the investment grant.

(61) From the information submitted by Germany (see sections 4 and 5 above), the Commission concludes that undertakings, in which members of the Sauter family individually or jointly have a majority shareholding, belong to a simple economic entity. It appears evident that the members of the family are a group of natural persons acting jointly within the meaning of Article 3(3) of the Annex to the SME Recommendation and act jointly in their business activities.

(62) The different enterprises are largely active in the same or adjacent markets. In this context it should be emphasised that NUW, MUW, MBE and NBE all supply their products to SBE Swiss BioEnergy AG and that three companies of the group (NUW NBE and MBE) sell their production to the large oil companies. On the other hand, NUW and MUW both purchase their vegetable oil, which is their primary pre-product, from Bunge Deutschland GmbH and Cargill GmbH. It also appears important that SBE Swiss BioEnergy AG installs and operates chemical plants for the production of biofuels (such production plants are operated by many enterprises owned by the Sauter family) and that it also trades in biofuels. Apparently Sauter Verpachtung GmbH, Alois Sauter Landesproduktenhandlung and Autokontor Bayern are engaged in transport services, which all the enterprises of the group require to a large extent and may use when necessary. Finally, both biodiesel and bioethanol serve as fuels for vehicles. With regard to the analysis of adjacent markets it is irrelevant that biodiesel is directly used by trucks, while bioethanol is mixed with mineral oil and used by cars. Both products are distributed via similar or indeed the same trading and marketing channels and are ultimately used for transportation services by vehicles. Therefore, the staff numbers and financial data of the enterprises have to be aggregated in order to decide on NUW's status as an SME.

The reference year

(63) According to the Commission Recommendation, the reference year to be considered in order to determine whether the recipient of aid is an SME is that of the last approved accounting period. If an enterprise exceeds either the employee thresholds or financial ceilings, it loses the status of an SME only if the phenomenon is repeated over two consecutive financial years. In the case of newly established enterprises whose accounts have not yet been approved, the data to apply are to be derived from a bona fide estimate made in the course of the financial year.

(64) Quite apart from the years which are taken into account (2002, 2003, 2004 and 2005), the Sauter group consistently exceeded the thresholds for annual turnover and the annual balance sheet total. In 2004 and 2005 it exceeded all the thresholds, including the one concerning staff.

The Sauter Group's staff and financial data

(65) According to the information provided by Germany, the staff and financial data of the enterprises in which the Sauter family has a majority holding (excluding NUW Verwaltung GmbH) for the years 2002, 2003, 2004 and 2005 were as follows:

	2002	2003	2004	2005
Staff	122	164	332	412
Annual turnover in EUR	79 819 124	107 082 928	296 332 725	421 855 238
Annual balance sheet total in EUR	135 966 984	327 657 218	331 071 069	404 652 910

Details of the employment and financial data for each enterprise are set out in the Annex.

(66) According to the Annex to the Commission Recommendation, an SME is defined as an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Whereas the Sauter group exceeded the thresholds of annual turnover and annual balance sheet total in 2002 and 2003, it actually exceeded all three criteria in 2004 and 2005. Consequently, NUW as a member of this group cannot be considered to be an SME and is therefore not eligible for the SME bonus.

(67) Taking into account the structure of the Sauter group, the links between the shareholders of the different companies and the economic links between the different entities of the group, it further appears that neither the group as a whole nor NUW as a member of the group suffers from the typical handicaps of an SME: in view of the turnover and the annual balance sheet total of the group, it must be assumed that NUW has full access to the financial markets and can finance the envisaged investment on terms similar to those of any large enterprise.

(68) At least NUW, NBE and MBE have large oil companies as customers. Therefore the members of the Sauter group are able to supply beyond the regional or German market. Particularly through SBE Swiss BioEnergy AG they also have access to the necessary technology. As the different members of the group are active on different levels of the production and marketing chain, the Sauter group will be

able to act on the market as an integrated group and not as a typical SME. The Commission concludes that NUW and the Sauter group do not form an SME within the meaning of the definition of the Recommendation and that therefore they do not suffer from the typical handicaps of an SME. Consequently, they are not eligible for the SME bonus.

7. CONCLUSION

(69) In the light of all facts brought to the Commission's attention, the Commission concludes that the state aid which Germany intends to grant to NUW in the form of the SME bonus should be deemed incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany is planning to implement for NUW Nordbrandenburger UmesterungsWerke GmbH & Co. KG in the form of an SME bonus is incompatible with the common market. The aid may accordingly not be implemented.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 7 June 2006.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Enterprises of the Sauter family according to information provided by Germany

Shareholdings															
Bernd Sauter:	33 %	Bernd Sauter:	33 %	Mario Biele:	1 %			Bernd Sauter:	12 %	Bernd Sauter:	12 %				
Claus Sauter:	33 %	Claus Sauter:	33 %	Karl-Heinz Reipert:	1 %			Claus Sauter:	12 %	Claus Sauter:	12 %				
Dr. Georg Pollert	34 %	Dr. Georg Pollert:	34 %	Daniela Sauter :	74 %	Daniela Sauter:	50 %	Daniela Sauter:	38 %	Daniela Sauter:	38 %	Daniela Sauter:	50 %	Daniela Sauter:	50 %
				Dr. Georg Pollert:	24 %	Dr. Georg Pollert:	50 %	Marion Sauter:	38 %	Marion Sauter:	38 %	Marion Sauter:	50 %	Marion Sauter:	50 %
Managing Directors															
Dr. Georg Pollert		Dr. Georg Pollert		Theodor Niesmann		Theodor Niesmann		Dr. Bernd Klotz		Dr. Bernd Klotz		Daniela Sauter and Klaus-Dieter Bettin		Daniela Sauter and Klaus-Dieter Bettin	
MUW Mitteldeutsche UmesterungsWerke GmbH & Co. KG		MUW Mitteldeutsche UmesterungsWerke Verwaltungs GmbH		NUW Nordbrandenburger UmesterungsWerke GmbH & Co. KG		NUW Nordbrandenburger UmesterungsWerke Verwaltung GmbH		MBE Mitteldeutsche BioEnergie Verwaltung GmbH		MBE Mitteldeutsche BioEnergie GmbH & Co. KG		NBE Nordbrandenburger BioEnergie Verwaltung GmbH		NBE Nordbrandenburger BioEnergie GmbH & Co. KG	
represented by MUW Mitteldeutsche UmesterungsWerke GmbH				represented by NUW Nordbrandenburger Umesterungswerke Verwaltung GmbH						represented by MBE Mitteldeutsche BioEnergie Verwaltung GmbH				represented by Nordbrandenburger BioEnergie Verwaltung GmbH	
Product: biodiesel		Product: biodiesel		Product: biodiesel		Product: biodiesel		Product: bioethanol		Product: bioethanol		Product: bioethanol		Product: bioethanol	
2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR
Turnover:	110 358 000	Turnover:	0	Turnover:	0	Turnover:	0	Turnover:	0	Turnover:	4 104 087	Turnover:	0	Turnover:	12 531 681
Balance sheet:	73 788 863	Balance sheet:	48 084	Balance sheet:	25 085 041	Balance sheet:	28 000	Balance sheet:	48 084	Balance sheet:	60 894 944	Balance sheet:	36 147	Balance sheet:	67 919 722
Employees:	44	Employees:	0	Employees:	2	Employees:	0	Employees:	0	Employees:	76	Employees:	0	Employees:	65
2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR	2005 (estimated)	EUR
Turnover:	120 000 000	Turnover:	0	Turnover:	10 200 000	Turnover:	0	Turnover:	0	Turnover:	26 135 000	Turnover:	0	Turnover:	35 300 000
Balance sheet:	60 000 000	Balance sheet:	50 000	Balance sheet:	48 000 000	Balance sheet:	32 000	Balance sheet:	50 000	Balance sheet:	60 900 000	Balance sheet:	40.000	Balance sheet:	70 000 000
Employees:	44	Employees:	0	Employees:	45	Employees:	0	Employees:	95	Employees:	95	Employees:	0	Employees:	70

Shareholdings

Bernd Sauter:	40 %	Albertina Sauter:	25 %	Bernd Sauter:	50 %	Bernd Sauter:	50 %								
Claus Sauter:	40 %	Alois Sauter:	25 %	Claus Sauter:	50 %	Claus Sauter:	50 %	Claus Sauter:	100 %	Bernd. Sauter:	50 %	Bernd Sauter:	33,33 %	Bernd Sauter:	40 %
Daniela Sauter:	20 %	Bernd Sauter:	25 %	Sauter GmbH:	0 %					Claus Sauter:	50 %	Claus Sauter:	33,33 %	Claus Sauter:	20 %
		Claus Sauter:	25 %									Roland Koch:	33,33 %	Roland Koch:	40 %

Managing Directors

Claus Sauter		Bernd Sauter and Alois Sauter		Bernd Sauter		Bernd Sauter		Alois Sauter		Bernd Sauter		Bernd Sauter		Roland Koch	
SBE Swiss BioEnergie AG		Sauter Verpachtung GmbH		Alois Sauter Landesprodukten-Großhandlung GmbH & Co. KG		Sauter GmbH		Compos Entsorgungs GmbH		ALLEN GmbH		Autokontor Bayern GmbH		Autokontor Vertriebs GmbH	
trade in bioenergy		renting and l, easing, trade, processing and marketing of renewables		*Represented by Sauter GmbH* trade in agricultural products		trade in agricultural products		disposal in agricultural products		energy generation plants		trade in vehicles, transport		trade in vehicles, transport	
2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR	2004	EUR
Turnover:	41 923 832	Turnover:	99 610 485	Turnover:	5 078 988	Turnover:	0	Turnover:	1 120 786	Turnover:	0	Turnover:	18 203 975	Turnover:	3 400 000
Balance sheet:	33 947 576	Balance sheet:	54 695 450	Balance sheet:	5 938 678	Balance sheet:	41 790	Balance sheet:	1 787 142	Balance sheet:	1 442 219	Balance sheet:	4 006 114	Balance sheet:	1 400 000
Employees:	4	Employees:	61	Employees:	37	Employees:	0	Employees:	4	Employees:	0	Employees:	32	Employees:	7
2005	EUR	2005	EUR	2005	EUR	2005	EUR	2005	EUR	2005	EUR	2005	EUR	2005	EUR
(estimated)		(estimated)		(estimated)		(estimated)		(estimated)		(estimated)		(estimated)		(estimated)	
Turnover:	172 220 238	Turnover:	25 000 000	Turnover:	4 800 000	Turnover:	0	Turnover:	1 200 000	Turnover:	0	Turnover:	27 000 000	Turnover:	0
Balance sheet:	95 677 910	Balance sheet:	55 000 000	Balance sheet:	5 900 000	Balance sheet:	43 000	Balance sheet:	1 800 000	Balance sheet:	1 100 000	Balance sheet:	6 000 000	Balance sheet:	100 000
Employees:	7	Employees:	50	Employees:	37	Employees:	0	Employees:	4	Employees:	0	Employees:	60	Employees:	0