'*CIS*'). As a consequence, De Beers would eliminate an alternative and independent source of supply for potential customers on the world market.

In the same vein, the Commission took the preliminary view that through its purchases under the 'willing-buyer-willing-seller' arrangement, De Beers hindered ALROSA from competing fully with it and from acting as an alternative and independent supplier on the rough diamond market outside the CIS states.

4. Commitment decision

The Commission decision rendered De Beers' commitments binding on the company and found that there are no longer grounds for action. The Commission considered that the commitments were sufficient to address its competition concerns as identified in the preliminary assessment and backed up by market observations.

The commitments contain provisions on De Beers' rough diamonds purchases from ALROSA, as well as rules on implementation and monitoring.

At the core of the commitments lies De Beers' obligation to discontinue all purchases from ALROSA. This prohibition also relates to indirect sales, where, for example, De Beers would knowingly buy ALROSA diamonds through third parties. However, complete termination will be preceded by a transitional period, during which De Beers can purchase no more than USD 600 m of rough diamonds from ALROSA in 2006, USD 500 m in 2007 and USD 400 m in the last year, 2008. The Commission viewed this transitional period necessary to allow sufficient time for distribution channels for sales of ALROSA produced rough diamonds previously controlled by De Beers to be put in place. As to the implementation of the commitments, De Beers undertook that any contract for the supply of rough diamonds, including a modified Trade Agreement, it concludes with ALROSA would comply with the commitments which are to be interpreted in the general framework of Community law, and in particular in the light of Articles 81 and 82 of the EC Treaty and Reg. 1/2003.

The task of monitoring compliance with the commitments will be assigned to a monitoring trustee whose appointment is subject to Commission approval.

Furthermore, DONG will implement a programme releasing significant volumes of gas, equivalent to 10% of Danish demand in 2005. The gas release programme will include 6 yearly auctions of 400 million cubic meters for a total duration of 7 years. The auction will have two stages, whereby the primary auction will involve swapping the auctioned lots between the Danish hub (GTF) and any of four northern European hubs in the UK (NBP), the Netherlands (TTF), Belgium (ZBT) and Germany (BEB-VP). If all lots are not disposed of in the course of the primary auction, any remaining volumes will be sold against cash settlement in a secondary auction.

On the basis of past experience in carrying out such remedies, as well as detailed comments by energy market operators, the Commission concluded that the divestiture will establish a second, independent player on the Danish storage market. In addition, the gas release will spur new entry onto the Danish natural gas market and increase the flexible liquidity of the wholesale market as well as free up contractually locked-in customers.

In parallel with the acquisitions by DONG, the Swedish state-owned electricity incumbent Vattenfall will acquire parts of Elsam and E2's assets, which contributes to boosting competition into both West and East Denmark.

C — Decisions taken under Article 9

M. 4174 — TCCC/CCHBC/TRAFICANTE

On 9 March the Commission received a notification of Coca-Cola's planned acquisition of the Italian mineral water producer Fonti del Vulture. The Coca-Cola Company ('TCCC') owns trademarks and supplies soft drink concentrates, which it sells to bottling and canning companies. Coca-Cola Hellenic Bottling Company ('CCHBC') is a licensed bottler jointly controlled by TCCC that produces and sells TCCC-branded soft drinks within the EEA, Eurasia and Africa. Fonti del Vulture ('Traficante') is an Italian family-owned company located in Rionero in Vulture that extracts, bottles and markets packaged waters principally in southern Italy. TCCC and CCHB proposed to acquire joint control over Traficante.

During its Phase I investigation of the transaction the Commission received some complaints from wholesale distributors of soft drinks and other producers of mineral water in Italy. A few days later the Autorità Garante della Concorrenza e del Mercato ('the Autorità') requested the Commission to refer to it the examination of the case.

In its referral request the Autorità explained that it intended to investigate whether, as a result of the merger, TCCC could broaden its portfolio of soft drinks in some regional markets in Italy and significantly strengthen its market position in the *on-premise* distribution channel (hotels, restaurants, bars). It also argued that the case is an adequate candidate for referral given that the effects of the proposed transaction in the markets of carbonated soft drinks and that of mineral water are limited to Italy with possible local implications; that the Autorità has already carried out investigations in the relevant markets and is better placed to handle the complaints.

The Commission concluded that the request was well-founded. In referring the case to Italy, the Commission recognised the inherently Italian character of the transaction and entrusted the national authorities to deal with the specificities of the case.

that the divestment business was a viable, stand-alone entity comprising the whole of VA Tech's activities in hydro power generation. Therefore, the commitment provided that the divestment business include all off VA Tech's subsidiary VA Tech Hydro GmbH & Co. ('VA Tech Hydro'), even though this company was also active in combined-cycle ('CC') equipment. The CC business concerns a separate product market from hydro power, but the two areas shared certain corporate functions that ensured the economic viability of the divested business. In addition, the commitment contained a 'catch-all' clause providing that Siemens had to sell VA Tech's entire hydro power business regardless of the corporate entity to which it belonged. This clause was necessary as the exact legal structure of VA Tech's hydro power business was not known in all details before completion of the public bid. The structure of the divestiture commitment, thus, ensured that VA Tech Hydro would operate as an effective competitor under a variety of conceivable purchasers.

The commitments also provided that VA Tech SAT GmbH & Co. ('VA Tech SAT'), a company owned 50% by VA Tech Hydro and 50% by VA Tech T&D, another VA Tech subsidiary, could be retained by Siemens. VA Tech SAT provided automation technology both to the hydro power and the transmission and distribution ('T&D') businesses of VA Tech. According to Siemens, this technology could be provided to the divested business through a cooperation and licensing agreement. After the decision clearing the Siemens/VA Tech transaction was adopted, it became however clear that in order to be able to submit competitive bids for new hydro power projects, VA Tech Hydro needed to have in-house access to the essential automation technology. After discussions with the management of VA Tech Hydro, the trustee in charge of monitoring the divestiture process and the Commission, Siemens agreed to transfer the staff and assets of VA Tech SAT essential for the hydro power business to the divestment business.

Towards the end of the divestiture process, it turned out that it was not necessary for VA Tech Hydro to retain the CC business because the proposed buyer, Andritz, would be able to ensure the viability also of a separate hydro business. This assessment was based on Andritz' diversified activities in a range of engineering and technology industries and its proven ability to manage large project risks in cyclical industries. Therefore, the Commission ultimately agreed that the CC business could be retained by Siemens.

Since Andritz, an Austrian engineering company, appeared to be a viable purchaser independent of Siemens and having the financial resources, proven expertise and incentive to maintain and develop the divestment business as an active competitive force in the market, the Commission was able to approve Andritz as purchaser of VA Tech Hydro.

With respect to *metal plant building,* Siemens' committed to complete the already initiated divestiture of Siemens' minority shareholding in SMS in order to remedy the competition concerns identified by the Commission. In view of the very specific circumstances of the case, a standard type divestiture remedy was not necessary as Siemens had already exercised its option to sell the shares in SMS. There was, in particular, no need for a deadline to find an appropriate buyer because the buyer had already been found. It also appeared disproportionate to interfere with litigation under national law by insisting on a divestiture deadline, because by exercising the put-option, Siemens had already sold its minority stake in a legally binding form and, hence, fully and irrevocably remedied the competitive harm. This being said, the Commission, in view of the competition concerns identified by the investigation, had to ensure that pending the resolution of the legal dispute between the majority shareholder of SMS and Siemens the latter would not continue to have access to information about SMS' strategic behaviour. Therefore, Siemens agreed to appoint trustees approved by the Commission, who would take Siemens' seats in SMS' supervisory board and the shareholders committee. All commercially sensitive information would only be passed to the trustees, who were obliged not to disclose it to Siemens ([9]).

In fact, the trustee solution needed to be in place only for a short period of time. At the beginning of 2006, Siemens and the majority shareholder of SMS reached a compromise on the valuation of the shares, and Siemens' stake in SMS was definitely transferred to the majority shareholder of SMS, thereby dissolving any link between these two competitors in the market for metallurgy plant building.

The remedies thus enabled the Commission to resolve convincingly the competition problems raised by this complex merger of two diversified companies with horizontal overlap in a range of different markets.

([9]) Exceptions were only made regarding information needed by Siemens to comply with its legal obligation to establish its group balance sheet and – in view of the ongoing litigation – information related to the past concerning the valuation of its SMS stake as of 31 December 2004 (such historic data would not allow Siemens to draw any reliable conclusions on SMS' current or future strategic behaviour). In addition, Siemens committed to implement a ring-fencing safeguard to ensure that the information mentioned would only be accessible to certain dedicated staff.

trian tax exemption, as the aid was still justified by the difference between the production cost and the market price of the biofuel in the meaning of the current rules.

Less common fuels, future policy

There are some less common biofuels like biogas and hydrogen. Often, for such fuels Member States grant tax exemptions to pilot projects on the basis of Article 15(1) (a) of the Energy Tax Directive rather than a general tax exemption on the basis of Article 16. The Swedish case provides further details on the Commission's assessment of such fuels.

As a final remark, the Commission may make proposals as regards the instruments to be used for encouraging biofuels in the context of its mid-term review of the Biofuel Directive, which is planned for 2006. Of course, consequences for the Commission's assessment of State aid for biofuels can, at this stage, not be excluded.