EUROPEAN
COMMISSION

Brussels, 4.10.2018
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COMMISSION DECISION

of 4.10.2018

ON THE STATE AID
SA.45359 - 2017/C (ex 2016/N)
which Slovakia is planning to implement
for Jaguar Land Rover Slovakia s.r.o.

(Text with EEA relevance)

(Only the English version is authentic)

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In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […]	PUBLIC VERSION This document is made available for information purposes only.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(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 cited[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 12 May 2016, Slovakia notified to the Commission a EUR 125 046 543 regional investment aid in form of a direct grant in favour of Jaguar Land Rover Slovakia s.r.o. ('the beneficiary') subject to Commission approval. Jaguar Land Rover Slovakia s.r.o. is part of the Jaguar Land Rover Group[2] ('JLR').

(2) By letter dated 24 May 2017 (the 'Opening decision') the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the

[1] OJ C 422, 8.12.2017, p. 21.
[2] As further defined in section 2.3 of this Decision.

notified State aid and in respect of possible additional non-notified State aid, and invited Slovakia to submit its comments within one month.

(3) The Slovak authorities submitted their comments on the Commission decision to initiate the procedure laid down in Article 108(2) TFEU by letter of 20 July 2017.

(4) The Opening decision was published in the *Official Journal of the European Union*[3] on 8 December 2017. The Commission called upon other interested parties to submit their comments within one month.

(5) The only comment the Commission received from other interested parties was submitted by JLR on 19 December 2017. The Commission forwarded the comment to Slovakia on 17 January 2018. Slovakia's comments on the JLR submission were registered on 5 February 2018.

(6) The Commission sent information requests on 9 and 23 February 2018 to which Slovakia replied on 9 March and on 12 and 18 April 2018. The Commission sent a further information request to Slovakia on 11 June 2018 to which Slovakia replied on 3 July 2018.

(7) Meetings took place between the Commission services and the Slovak authorities on 10 October 2017, 27 November 2017 and 1 March 2018.

(8) The Commission received a letter from JLR dated 14 May 2018 to which it replied by letter of 22 May 2018. The Commission received further information from JLR on 2 July 2018.

(9) By letter of 3 July 2018, Slovakia agreed that this Decision will be adopted and notified to Slovakia in the English language.

(10) In the Opening decision, the Commission expressed doubts both on the compatibility of the notified aid and on possible additional non-notified aid. In view that the possible additional non-notified aid could have had an impact on the compatibility of the notified aid, and in particular on proportionality and regarding a manifest negative effect, the Commission, in this Decision, assesses first whether there was additional non-notified aid. That assessment is crucial in defining the scope of the compatibility assessment.

2. DETAILED DESCRIPTION OF THE AID

2.1. Objective of the aid

(11) The Slovak authorities intend to promote regional development by providing regional aid for an investment by the large undertaking JLR for building and tooling a premium aluminium vehicle manufacturing facility in Nitra, which is situated in the Nitra region of Slovakia, an area eligible for regional aid under Article 107(3)(a) TFEU, with a standard regional aid ceiling of 25% under the Slovak regional aid map for the time period from 1 July 2014 to 31 December 2020[4].

[3] Cf. footnote 1.
[4] SA.37447 (N/2013), OJ C 210, 4.7.2014, p. 4.

2.2. The notified project

(12) The investment project with proposed eligible investment costs of EUR 1 406 621 000 in nominal value (EUR 1 369 295 298 in current value[5]) aims at establishing a new car manufacturing plant with an annual capacity of 150 000 'Premium D SUV segment' vehicles[6]. The investment started in December 2015 and is to be completed in 2020. The investment takes place in an industrial park under construction, the Nitra Strategic Park ('NSP'), on land which, at the time of the creation of the NSP on 8 July 2015, was still predominantly privately owned agricultural land. The project is expected to create 2 834 new direct jobs.

(13) The scope of the notified investment project, as proposed to the Slovak authorities in the formal aid application of 24 November 2015, refers to a production capacity of 150 000 vehicles per annum. The scope of the investment project, as originally proposed in JLR's draft aid application submitted to the Slovak authorities on 25 June 2015, referred to an investment with an annual production capacity of 300 000 vehicles to be implemented in two phases and including the production of two further models which had yet to be decided. Slovakia explained that in the autumn of 2015 JLR decided to reduce the initial scope of the project to a plant with the notified production capacity of 150 000 vehicles per annum. The product to be manufactured in Phase 2 at the site was not yet known at that time, and there was no commitment yet on the envisaged expansion of the investment into Phase 2.

2.3. The beneficiary

(14) The recipient of the State aid is Jaguar Land Rover Slovakia s.r.o. As described in the Opening decision, Jaguar Land Rover Slovakia s.r.o. is 85% owned by Jaguar Land Rover Limited and 15% owned by Jaguar Land Rover Holdings Limited. Jaguar Land Rover Limited is 100% owned by Jaguar Land Rover Holdings Limited which in turn is 100% owned by Jaguar Land Rover Automotive plc. The immediate parent of Jaguar Land Rover Automotive plc is Tata Motors Limited India ('Tata Motors'). The main business activities of Tata Motors are the manufacture and sale of passenger vehicles, commercial vehicles, buses and coaches. The term JLR in this Decision does not include Tata Motors.

(15) The Slovak authorities confirmed and provided information on the basis of which the Commission verified that JLR and its parent company Tata Motors do not constitute companies in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[7].

2.4. Aid amount and aid intensity

2.4.1. The notified aid

(16) The notified direct grant of EUR 129 812 750 in nominal value or EUR 125 046 543 in current value[8] refers to the eligible expenditure of EUR 1 369 295 298 in current

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[5] The current values in this Decision are calculated on the basis of a discounting rate of 1.17%, applicable at the time of submitting the definite aid application, that is to say 24 November 2015. Current values are discounted to the United Kingdom financial year 2015/2016, which is the planned date of award. JLR uses the United Kingdom financial year running from 1 April to 31 March.

[6] Planned production of All-new Land Rover Discovery, known as […]*, and […], known as […].

* *Business secret*

[7] OJ C 249, 31.7.2014, p. 1-28.

[8] Based on a discounting rate of 1.17%, as referred to in footnote 5.

value referred to in Recital (12), and thus corresponds to an aid intensity of 9.13%. The notified regional investment aid is to be granted from the national State budget.

2.4.2. The possible additional non-notified aid

(17) In section 3.1.2 of the Opening decision, the Commission considered that Slovakia may have granted, in addition to the notified aid, unlawful aid in the form of infrastructural development, including the sale of land below market price, in the NSP and exemption from the obligation to pay an Agricultural Land Transformation fee ('ALF fee'). The entity made responsible by the Slovak authorities for the implementation of the NSP is MH Invest ('MHI'), a 100% State owned company that is controlled, governed and financed by the Ministry of Transport, Construction and Regional Development of Slovakia. MHI is the initial owner of the sites of the NSP. The Slovak authorities, through MHI's commissioning of third parties, are carrying out works on the NSP, namely preparatory land remediation works, utilities works, rail and road connections, flood defence and ground water management works. Železnice sloveskej republiky ('Slovak Railways'), also a 100% State owned company, is constructing a multimodal transport terminal within the NSP. The total cost of those works and that terminal is estimated at about EUR 500 million.

(18) As stated in section 3.1.3 of the Opening decision, one of the changes to Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land[9] introduced the so-called Exemption H from the ALF fee which applies to land purchased by 100% State owned companies that construct strategic industrial parks that are recognised as 'significant investments' within the meaning of Act No. 175/1999[10] on significant investments ('Significant Investment Act'). Exemption H entered into force on 31 October 2015. The NSP was recognised as 'significant investment' on 8 July 2015.

(19) The possible additional non-notified aid measures are to be granted from the national State budget.

2.5. Duration

(20) The notified measure is to be paid out between 2017 and 2021. The beneficiary is expected to benefit from the other measures which may qualify as non-notified aid as from the moment of the purchase agreement for what concerns the land purchased by JLR and possible exemption from the ALF fee and as from the moment of infrastructural development for infrastructure outside the boundaries of the 185 hectares purchased by JLR from the Slovak authorities ('JLR Site').

3. GROUND FOR INITIATING THE PROCEDURE

(21) The Commission opened the formal investigation on 24 May 2017. It was unable to exclude that JLR was receiving, in addition to the notified aid, non-notified aid in the form of infrastructural development, including the sale of land below market price, in the NSP and an exemption from the obligation to pay an ALF fee. The underlying assessment took account both of the notified and the possible additional non-notified aid measures.

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9 http://www.zakonypreludi.sk/zz/2013-58.

10 Act No. 175/1999 of 29 June 1999 on Certain Measures Relating to the Preparation of Significant Investments and on Amendment to Certain Laws.

3.1. The possible additional non-notified aid

3.1.1. Possible aid in the form of infrastructural development, including the transfer of NSP land below market value

(22) The Commission considered that there was a possibility that the sale to JLR of land in the NSP may have involved certain advantages that could qualify as additional State aid.

(23) MHI, becoming the initial owner of the future site of the NSP, had, by 31 December 2016, already incurred an expenditure of EUR 75 million for the acquisition of NSP land on which the notified JLR project would be located. It was also incurring a significant amount of additional expenditure for the development of the site itself. At the same time, JLR's contribution in relation to the purchase of the JLR site appeared to be only a fraction of the corresponding acquisition and development costs. The difference between the cost incurred by Slovakia to acquire the land and to develop the NSP on it, and the price to be paid by JLR for the NSP land raised the question whether the sale of NSP land to JLR involved State aid.

(24) Slovakia argued that the development of the NSP could not involve State aid as it falls within the public remit for the reasons referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU[11]. Therefore Slovakia argued that the development of the NSP is not an economic activity, and its public financing does not constitute State aid. In addition, according to Slovakia, JLR would pay a market price for the land it purchases in the NSP which is established on the basis of valuations carried out by independent experts.

(25) The Commission, however, had doubts that the development of the NSP was analogous to the situation referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, which is only applicable to measures that do not involve dedicated infrastructure.

(26) The Commission understood that contractual agreements between Slovakia and the beneficiary were to give JLR outright ownership, or option rights for later purchase, of almost all the commercially exploitable land of the NSP.

(27) The Commission considers infrastructure to be dedicated if it is built for a pre-identified undertaking and is tailored to this undertaking's specific needs[12]. In its preliminary view, the Commission considered that the NSP could be regarded as infrastructure dedicated to JLR for the following reasons: (a) a large surface area was reserved to the company under contractual terms; (b) the beneficiary might have been a pre-identified undertaking; and (c) the NSP appeared to have been tailored to the beneficiary's specific needs.

(28) The Commission therefore considered that if the NSP constitutes infrastructure dedicated to JLR, the company would under normal market conditions have had to pay for the costs for developing the site, with the exception of costs relating to truly general infrastructure items and which should be identified in this Decision.

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[11] OJ C 262, 19.7.2016, p. 1

[12] This understanding is in accordance with Article 2(33) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (GBER) (OJ L 187, 26.6.2014, p. 1).

(29) Even assuming that the NSP was not a dedicated infrastructure, the method used to establish the market price to be paid by JLR raised doubts. In particular, the Commission questioned whether the value of specific development works carried out and financed by Slovakia and directly benefitting JLR was properly reflected in the valuations prepared by the independent experts, and whether JLR was to pay a proportionate share of the NSP development cost commensurate with its ownership interest in the park.

3.1.2. Possible aid in the form of the exemption from a fee, the ALF fee, that is payable when agricultural land is transformed into industrial land

(30) The Commission considered that JLR may have benefitted from an advantage in form of an exemption ('exemption H') from a fee which is payable under Slovak law when agricultural land is converted into industrial land. In fact, the Commission could not exclude that despite the interjection of a State owned company in the transaction which scope is to buy the agricultural land from third parties, prepare it for industrial use, including, amongst others, land remediation and access to public utilities, and sell it to the investor, there could have been imputability of the aid to the Slovak State and selective advantage to the beneficiary. Thus, the Commission considered that the exemption from the fee may have constituted State aid within the meaning of Article 107(1) TFEU in favour of JLR.

3.2. Compatibility of the notified aid

3.2.1. Introduction

(31) The Commission could not, on the basis of the preliminary investigation, establish the conformity of the notified regional aid with the provisions of the Guidelines on Regional State Aid for 2014-2020[13] ('RAG').

(32) In particular, it could not conclude that the notified regional aid measure satisfies the minimum requirements of the RAG, and therefore expressed doubts on (a) the eligibility of certain elements that apparently form part of the eligible investment costs; (b) the incentive effect of the aid; (c) the proportionality of the aid; (d) the occurrence of a manifest negative effect on Union cohesion; and (e) the occurrence of a manifest negative effect on trade within the meaning of paragraph 119 of the RAG in that the aid intensity ceiling might be exceeded. In addition it considered that the possible additional aid elements in the infrastructural development and the exemption from the ALF fee could in particular affect the proportionality of the notified aid and conformity with the maximum aid intensity ceiling.

3.2.2. Eligibility of 'provision costs' as investment cost

(33) The Commission noted that the notified eligible costs include an item 'provision' (described as 'unexpected overspend') amounting to at least GBP [60-85] million (EUR [72-102] million[14]). It expressed doubts as to whether 'provision costs' are eligible for the purpose of regional investment aid.

3.2.3. Lack of incentive effect of the notified regional aid grant

(34) The Commission had doubts that the notified regional aid had incentive effect, that is to say whether it was necessary to attract JLR's investment to Nitra. It was not

13 OJ C 209, 23.07.2013, p. 1.

14 Throughout this Decision an exchange rate of GBP:EUR of 1:1.2 was applied as this was the long term business planning rate used by JLR.

convinced that the submitted documentation of the process preparing JLR's location decision proved that Mexico had been a credible alternative scenario when that decision was taken. In particular, the Commission noted references to plans by JLR to build two plants at different locations in documents relating to the January 2015 offsite meeting of members of the Executive Board, and differences in the level of detailed assessment for European sites, compared to Mexico. The Mexico alternative also appeared to have a significant delay. The Commission considered that the real counterfactual location with which Nitra was competing for the location of the new JLR plant may have been Jawor, Poland, and not the Mexican location. The existence of a large gap in Net Present Value ('NPV') between Mexico and Nitra, which is only partially compensated by the notified regional aid, was a further element putting into question the incentive effect of the aid. Therefore, the Commission could not exclude that JLR's strategic considerations for the choice of Nitra over Mexico were decisive for the choice of Nitra, that is to say the investment would have been carried out in Nitra even without the EUR 125 million, in current value, of notified aid, or at least with a lower amount. JLR's strategic considerations were (a) distance to JLR headquarters; (b) delays in timing; (c) natural disaster risks in Mexico due to volcanic activity; (c) political instability, government effectiveness and corruption risks; (d) brand equity considerations; and (e) investment in the Union as hedge against the possibility of the United Kingdom's withdrawal from the Union.

3.2.4. Lack of proportionality

(35) Since the notified aid is just below the maximum amount of aid that can be granted for an investment of the given size in Nitra, under Slovakia's current regional aid map ('adjusted aid amount'), the Commission had doubts about whether the total aid amount would still be proportionate if JLR actually benefitted from the possible additional aid elements. In addition, the Commission doubted whether the proportionality threshold of EUR 413 million, namely the viability gap between Mexico and Slovakia calculated by JLR and amounting to one of the two proportionality thresholds laid down in the RAG[15], could not "*be reached already at a much lower level*".

3.2.5. Manifest negative effects – anti-cohesion effect

(36) The Commission expressed doubts as to whether the Mexico alternative was credible and whether in reality the alternative location was not Jawor in Poland. Internal company calculations showed that the investment would have been more profitable in Jawor, which is in a region with the same regional State aid intensity ceiling as Nitra, that is to say 25%. Therefore, the Commission was of the preliminary view that, if the Mexico alternative would prove to be non-credible, and if the real counterfactual to Nitra was Jawor, then it cannot be excluded that the aid package provided to JLR by Slovakia has a manifest negative effect pursuant to paragraph 121 of the RAG.

3.2.6. Manifest negative effect on trade – maximum aid intensity ceiling exceeded

(37) The notified regional aid grant in current value results in an aid intensity prima facie below the maximum allowable aid intensity for an investment of the given size in the region of Nitra. However, any additional aid element in the form of infrastructural development, including the transfer of land below market value or the exemption

[15] The other one is the adjusted regional aid ceiling.

from the ALF fee, or both, would raise the total aid amount above that allowable aid intensity level, and thus constitute a manifest negative effect on trade pursuant to paragraph 119 of the RAG. As the Commission could not exclude additional aid elements, it expressed doubts about whether the overall aid measure did not lead to a manifest negative effect on trade.

4. COMMENTS FROM SLOVAKIA

4.1. Comments from Slovakia on the possible additional non-notified aid

4.1.1. Possible aid in the form of infrastructural development, including the transfer of NSP land below market value

(38) The Slovak authorities consider that the NSP does not constitute dedicated infrastructure to JLR for several reasons. They argue that the land which constitutes the NSP had been identified for industrial use long before JLR started its location search and that the Slovak authorities had offered the greenfield land of the NSP previously to other investors. Moreover the Slovak authorities argue that JLR does not own the NSP and neither does it have an exclusive license or concession over the NSP and that JLR does not have a de facto exclusive control over the NSP. They argue further that the existence of the NSP as an industrially zoned area with existing industrial development was actually a factor in JLR's choice of locating in Nitra, not the other way around, and that the approach of the Slovak authorities to the development of the NSP is standard practice used by Slovakia and other Member States to avoid wasteful public spending while maximising regional development.

(39) The Slovak authorities clarified the historical evolution leading to the NSP. The term 'strategic park', and in turn the 'Nitra Strategic Park', is a term first introduced in the Significant Investment Act in 1999. The NSP comprises an area of 704 hectares over which the Slovak authorities have compulsory purchase powers in order to implement the strategic park which is adjacent to the existing Nitra North industrial park[16]. The two parks together form the integrated industrial zone known as Nitra North. The NSP is situated across five municipalities, namely Nitra and Luzianky with small parts of it also on the territory of Cakajovce, Zbehy and Jelsovce.

(40) The need for development of industrial land in the region of Nitra was first identified in the 1998 Zoning Plan of the Nitra region[17]. The municipalities of Nitra and Luzianky were identified as prospective industrial centres.

(41) In order to foster industrial development, the Slovak government recognised that it needed to find a way to address the issue of the fragmented land ownership which was an obstacle for the attraction of large investment projects. Land in Slovakia is highly fragmented due to historic inheritance laws where siblings inherited an equal share of their parents' land. That has resulted in a high number of co-owners of small fragmented plots of land. Therefore in 1999, Slovakia enacted the Significant Investment Act to govern the procedure of issuing certificates of significant

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16 The Opening decision mentioned in paragraph 13 that the NSP is located next to an already existing industrial park of 29.7 hectares. This information appears to be not correct as the Nitra North industrial park is considerably larger. In the annotated map in Schedule 7 of the Investment Agreement an area of 27 hectares inside the NSP is coloured as 'Industrial Park'. This does not coincide with the Nitra North industrial park.

17 1998 Nitra Region Zoning Plan no. 188, of 28 April 1998.

investments in order to facilitate the acquisition of land for the implementation of large investment projects.

(42) The need for the development of industrial land was further confirmed in 2003 when the municipality of Nitra figured on a list of sites recommended by the "Study for the Location of Industrial Parks in Selected Areas of the Slovak Republic", acknowledged by Governmental resolution no. 690 of 16 July 2003. It concerned an area of 231 hectares. In 2004, the Nitra region earmarked the area in which it planned to rezone agricultural land for industrial use. Geographically, that area included the Nitra North industrial park in the south and stretched out over the South Land and most of the JLR Site. Further in 2004, Governmental Resolution 88/2004 implemented financial measures for the regional development of Nitra and various other cities across Slovakia to enable the construction of the necessary technical infrastructure required to attract investment. In 2006, the municipality of Luzianky established its 2006 Zoning Plan that reserved a territory of 106 hectares for inclusion in the industrial zone Nitra North.

(43) In 2007, the first companies were established in the Nitra North industrial park. Sony, which later was known as Foxconn, became one of its anchor investors. In 2011, a zoning decision was issued in order to connect the R1 highway to the area of the industrial zone.

(44) The 2012 Zoning Plan of the Nitra region confirmed that the industrial zone Nitra North is "*designated as an area suitable for the location of an industrial park, or industrial production units*. *This area* [was] *not fully built up and* [had] *development potential*." The Slovak government recognised that more had to be done to address the investment obstacle created by fragmented land ownership. Therefore, in 2013, the Significant Investment Act was amended with provisions allowing the speeding up of the process of executing a significant investment by establishing a more flexible process of issuing a significant investment certificate and reducing the bureaucratic demands of the process.

(45) In 2014, the municipality of Luzianky amended its 2006 Zoning Plan to facilitate a detailed planned development of its section of the industrial zone, measuring 158 hectares, as a result of potential interest by an industrial investor who eventually decided to invest elsewhere. The 2014 Luzianky Zoning Plan laid down the detailed plans for infrastructural developments to prepare the area for industrial use. One of the basic principles of the proposed urban development concept of the site was the functional and spatial linkage of the proposed development areas to the territory of the Nitra North industrial park. The Zoning Plan explicitly identified the site development limits and needs such as need for transport connections, railway track protection zone, river Nitra bio-corridor, solution for the high level of groundwater, necessity to build retention reservoirs and pumping stations, necessity to secure drinking water supply, public sewerage system, protection from precipitation water, presence of high-pressure pipeline, connection to telecom network.

(46) On 27 May 2015, the Slovak government launched a new legislative initiative to arrange the prerequisites for the creation of so-called strategic industrial and technology parks by an undertaking that is 100% owned by the State and responsible for the preparation of the site, including the construction of necessary infrastructure. That initiative resulted in Amendment 154/2015 of 30 June 2015 to the Significant

Investment Act. At the same time a change to Regulation 58[18] was proposed as referred to in paragraph 10 of the Opening decision. On 8 July 2015[19], the Slovak government issued a certificate of significant investment to build the NSP.

(47) Since the Slovak authorities had established industrial zoning arrangements, had an industrial development strategy which had already been partly implemented via the Nitra North industrial park, had developed detailed physical plans for developing the remainder of the area and had offered greenfield opportunities to other investors, they consider that it cannot be argued that the NSP is developed for JLR as *ex-ante* identified undertaking. Moreover, the Slovak authorities stressed that every single step of the historical evolution leading to the development of the NSP had been taken before JLR decided to locate its plant, and long before JLR committed contractually to locate in Nitra.

(48) The Slovak authorities referred to several JLR documents which demonstrate that the pre-existing plans for the development of the NSP together with the fact of a pre-existing industrial park with an adjacent industrially zoned area for expansion was factored positively into JLR's localisation assessment. On 27 April 2015 for example, Nitra was in third place but one of the positive factors was that it concerned a "[s]*ite on established industrial estate*".

(49) Furthermore, the Slovak authorities explained that the JLR site and the related works were not tailored to the specific needs of JLR.

(50) The reference to the supervisory rights in the Investment Agreement signed between Slovakia and JLR on 11 December 2015 ('Investment Agreement') only refers to the completion of the land remediation works. MHI has to complete certain works to ensure that the land meets the standard agreed between MHI and JLR and on which the sale price had been based. According to the Slovak authorities, those supervisory rights were driven by standard project management concerns rather than business-specific development specifications. MHI is not bound to take the possible feedback of JLR into account. MHI is only required to ask for feedback on design drawings and specifications concerning the site remediation works for the JLR Site. It does not include ex post control on the execution of the works.

(51) The Slovak authorities further clarified the nature of the infrastructure works related to the NSP. As in earlier projects involving the public development of industrial parks, those works meant to provide all companies located in the park with infrastructure services, including access to public utilities and road/rail connections. The infrastructure works include the following elements:

(a) the preparatory land remediation works, of a value of EUR 221 million, do not go beyond standard development works needed to make the public terrain buildable. All works that go beyond standard development are paid for by JLR and are listed in the Investment Agreement. They contain elements such as internal roads or extra foundations necessary to accept JLR specific loads of building structure;

(b) the infrastructure works related to public utilities, of a value of EUR 11.28 million are to ensure that the industrial site or sites within the park

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[18] Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land.

[19] Governmental Resolution 401/2015 of 8 July 2015.

are connected to utilities. The public utilities stop at the access points to the site or sites. Utility-related infrastructures within the boundaries of the JLR Site are paid for by JLR. In addition JLR pays a market price to access utility services. There are no specific rules that apply to the NSP that are different from those that apply in the wider municipal areas. JLR is to pay all connection fees and distribution fees relating to the JLR site that would normally be due, in compliance with fees regulated by the Regulatory Office for Network Industries[20]. JLR has not received any exemptions;

(c) road infrastructure of a value of EUR 185.9 million, including highway connection, local public roads, road system and public parking across the entire park, fire station, police station, and road maintenance facility. The road infrastructure serves all the undertakings in the Nitra North industrial zone, consisting of the NSP and Nitra North industrial park, as well as the wider region. None of the roads is for the exclusive use of JLR or built to its specifications. The road works do not go beyond standard development;

(d) the geographical characteristics of the zone required a flood defence system and ground water management of a value of EUR 25 million;

(e) the Multimodal Transport Terminal Luzianky of a value of EUR 51.85 million that is being built, operated and financed by Slovak Railways from resources generated from its commercial activities which are accounted for separately from its publicly funded non-economic activities. The Multimodal Transport Terminal Luzianky has three functional parts: (a) the finished vehicle storage area that will be connected to the JLR production plant on one side and directly with the outbound rail distribution site on the other side. The leasing of storage area is to constitute the core service provided. JLR is seeking contractual exclusivity with respect to the storage area; (b) the outbound rail distribution facility is intended to load finished products onto railcars. That part of the terminal will not be contractually exclusive to JLR; and (c) the container transhipment hub. The works on the container transhipment hub have not started yet as Slovak Railways is still analysing potential demand and profitability of the investment. It would be open for any user under market conditions. Slovak Railways is negotiating access charge, also referred to as user fees, with JLR that will allow Slovak Railways to generate a return on capital employed as well as cover variable costs. The user fees are calculated over a period of 30 years on a commercial basis, using the NPV method, and cover all related investment costs, operating costs and costs for renewal investments. The fees are market oriented and should ensure an appropriate return on investment, namely […] Internal Rate of Return and an NPV of EUR […] million.

(52) The Slovak authorities further clarified what proportion of the NSP will be occupied by JLR:

(a) the Slovak authorities first explained that after the Opening decision, JLR has waived some of its rights. Under clause 4.10 of the investment agreement, MHI was bound to grant an option to JLR to buy all or part of the South Land within 12 months from the execution of the JLR Site Purchase Agreement. On 29 June 2017, JLR waived that option over the South Land, before the signature of the

[20] Úrad pre reguláciu sieťových odvetví.

JLR Site Purchase Agreement on 12 December 2017. The Slovak authorities informed the Commission that the entire South Land will be owned by other undertakings, for example Gestamp and Prologis.

(b) Article 4.9 of the Investment Agreement gave JLR a right of first refusal to buy all or part of the North Land, valid for 20 years from the date of execution of the JLR Site Purchase Agreement. On 25 August 2017, JLR waived that right over 40.1 hectares of the total North Land 69 hectares. Any land is to be acquired at the market price on the date of purchase of the land, to be defined by independent experts.

(c) with regard to the clause contained in Article 4.2(b)(ii) of the Investment Agreement, according to which Slovakia undertakes, upon JLR's written request within 10 years after the signature of the JLR Site Purchase Agreement, to "*procure that the Strategic Park is extended so that it includes the Expansion Land*", the Slovak authorities explained that that clause reflects only a political promise by Slovakia to acquire the land, and to grant to JLR an option to buy that piece of land at some time in the future, and on terms, including price, which have yet to be negotiated.

(53) The Slovak authorities consider that none of the rights created by the Investment Agreement regarding the South Land, the North Land or the Expansion Land confer any control over the land to JLR. Thus, the JLR Site has only a surface of 185 hectares, which constitutes 26% of the total surface of the NSP, or 55% of the commercially exploitable surface, in view that 366 hectares of the NSP are technical land.

(54) As explained by the Slovak authorities, the price to be paid by JLR for the acquisition of the JLR Site was established on the basis of independent valuations carried out by three experts, namely […], […], and CB Richard Ellis. Those experts estimated the market price in accordance with the Commission Communication on State aid elements in sales of land and buildings by public authorities[21], which constituted the relevant Commission guidance applicable at the time of the valuations. The Slovak authorities further clarified that the CB Richard Ellis report that was submitted to the Commission during the notification procedure was submitted erroneously because it does not constitute a site valuation report, but a separate market intelligence report.

(55) All valuations were carried out on the basis that the land will be sold 'ready for construction', that is to say remediated and zoned for industrial use. The Slovak authorities therefore conclude that the market price estimates include the value of the remediation works. The final purchase price of EUR 15.83 per square meter was set as the average of the three independent valuations of EUR 15, EUR 15.5 and EUR 17 per square meter respectively. The Investment Agreement requires JLR to pay separately for any bespoke works going beyond standard specifications for land 'ready for construction'.

4.1.2. Possible aid in the form of the exemption from a fee, the ALF fee, that is payable when agricultural land is transformed into industrial land

(56) The Slovak authorities explained that Exemption H is an exemption from the ALF fee which applies to land purchased by fully state owned companies, in this case

[21] OJ C 209, 10.7.1997, p. 3.

MHI, for the purpose of developing an industrial park that is recognised as a 'significant investment'. Therefore Exemption H applies exclusively to the development of public land by public authorities. Its purpose is to remove the administrative burden of making intra-state financial transfers. Without the exemption, the ALF fee would have been payable by MHI as the owner and developer of land in the NSP as soon as the site is transformed into industrial land. As owner and developer of the site, MHI's function was to install infrastructure and to rezone the land in order to make it 'ready for construction', and then to sell it on to investors, including to JLR. No fee was payable by JLR who, as agreed under the Investment Agreement, would acquire the land only after its conversion to industrial land. The Slovak authorities explained that the reference in an internal JLR document suggesting that JLR would benefit from an exemption of the ALF fee was based on the mistaken interpretation by the author of that document that the fee was payable by JLR. They also informed the Commission that the total amount of fees for converting all agricultural land located in the area of the future NSP into land for industrial use that would have become due in the absence of exemption H, would have amounted to about EUR 30 million of which only about EUR 8 million would relate to the JLR Site.

4.2. Comments from Slovakia on the compatibility of the notified aid

4.2.1. Eligibility of "provision costs" as investment cost

(57) The Slovak authorities confirmed the eligible cost items as listed in Table 1 of the Opening decision. The proposed eligible investment costs indicated amounted to EUR 1 406 620 591 in nominal value, equivalent to EUR 1 369 295 298 in current value. The presentation in the JLR documentation dated 18 November 2015 that referred to provision costs was made for financial analysis purposes, and did not include provision costs outside the eligible costs items as listed in Table 1 of the Opening decision. Those eligible cost items reflected the costs anticipated at the time of the aid application and include an amount for provisioning for each of the eligible cost items, as part of a prudent cost estimation approach. The Slovak authorities therefore consider the full amount of EUR 1 406 620 591 in nominal value to be eligible.

4.2.2. Lack of incentive effect of the notified regional aid grant

(58) Slovakia considers that it carried out an appropriate check of the credibility of the counterfactual and that the Commission's doubts are unfounded because Mexico was a credible alternative location to the plant in the Union. According to Slovakia, in spring 2015 Mexico was still a possible location for the planned investment and it was not considered as a site for an additional, parallel investment. Therefore, the State aid offered by Slovakia was necessary to bring the JLR investment to Slovakia.

(59) Slovakia emphasizes that Mexico was a credible alternative location for three reasons:

(a) when JLR prepared its location decision, many car producers, including premium OEMs, were already operating in Mexico, or were implementing investments there. Several car manufacturers started works on investments in Mexico after JLR took its location decision. In particular, both VW and Audi have plants in Puebla, and can therefore be expected to have been confronted with the same qualitative risks as identified by JLR. Those risks had not affected the location decisions of VW/Audi in favour of Puebla;

(b) JLR made available many recent documents from a variety of sources that demonstrate that Mexico was considered in depth, and that a full financial analysis comparing Mexico against Slovakia had been made. Mexico had already been identified as the most promising location in North America at the end of January 2015 in the context of the Oak feasibility study. After an extensive research comparing different sites in Mexico, Puebla was chosen at the Strategy Council of 27 April 2015 as the preferred non-Union alternative due to its proximity to ports, favourable tariffs, established supplier base and labour market advantages. As the European selection process, the Darwin feasibility study, was lagging behind, some meetings and documents focused on the outcome of Project Darwin, and therefore contain less detail about Mexico. Regarding the presentation of 10 July 2015, Slovakia commented that the fact that less slides were devoted to the Oak alternative can be explained by the context of the meeting and the extent to which those present had already seen information on Mexico and Puebla. To prepare the July location recommendation of the Globalisation Forum meeting, JLR calculated detailed financial models comparing the costs at the competing sites. Those financial calculations were performed on an identical basis for both sites and were accompanied by a qualitative assessment of their pros and cons.

(c) Mexico was the alternative to Slovakia that was presented at the subsequent JLR management and board meetings where the location decision was made.

(60) Slovakia provided further evidence such as the presentations to the Board, the feasibility study carried out for Mexico, the information exchanged with the Mexican authorities, the findings of the senior management site visit of June 2015 to the shortlisted sites in Puebla, during which the qualitative strategic factors were further explored and the *Counterfactual cost differential to CEE*, dated 10 June 2015.

(61) The Slovak authorities suggest that the Commission's doubts rely on inaccurate press reports which are clearly contradicted by recent internal JLR documents dated between March and July 2015. The Slovak authorities produced copious evidence to prove that in spring 2015 Mexico was still under consideration and had not been abandoned in favour of a location in the Union. That evidence originates from a variety of sources and different levels of the JLR organisation, namely the JLR senior management, JLR working teams, external consultants and Mexican government officials. Documents elaborated in preparation and follow-up to the visit to Puebla in June 2015 by a JLR delegation at senior executive level, are of particular relevance. Mexico was only put on hold when JLR decided to progress with Nitra in summer 2015.

(62) The Ernst & Young study entitled "Project Oak – Golden Site Report Out" is dated 20 March 2015. It was used by JLR in the review of the viability of the sites it shortlisted in Mexico. The minutes of the International Development Council meeting of 30 March 2015 state that "[i]*t was agreed that current work to evaluate alternative options in Turkey and Mexico should continue*". The action log and minutes of the Strategy Council meeting of 27 April 2015 note "*Puebla*, *Mexico approved as the non-EU alternative*". The overview of the Mexico filtering process, as presented to the Globalisation Forum of 10 July 2015, confirms this decision with the following status reported on 11 May 2015: "[the Mexican states of] *H[…] and G[…] on hold*; *Puebla taken forward for continued investigations (based on H[…], A[…] and S[…] sites*)". H[…] became "*the preferred option due to its port proximity, established supply base and labour market*." At the Globalisation Strategy

Forum meeting of 15 May 2015, Slovakia and Poland were shortlisted under Project Darwin alongside Mexico under Project Oak. On 22 May 2015, JLR received the formal response from the State of Puebla relating to available incentives, seismic risk, VW restriction covenants and timeline. The minutes and action log of the International Development Council of 1 June 2015 note in the *Darwin update* section that "*the key discussion items were*: […] *The progress in Mexico discussions and plans for another field trip to evaluate Puebla further were explained*". The cash flow assessment included in the presentation of 10 June 2015 entitled "*Project Darwin – counter-factual cost differential to CEE*", shows that JLR's analysis was to benchmark "*MX vs PL*" and "*MX vs SK*". The Strategy Council meeting of 15 June 2015 that focused on project Darwin nonetheless featured an action point "*Conduct Mexico field trip to discuss RFP on Puebla site*." In the week of 15 June 2015, a team led by JLR's Director of Global Business Expansion carried out a field trip to the State of Puebla, visiting the H[…] and A[…] sites. On 25 June 2015, JLR confirmed in writing to the Governor of the State of Puebla that H[…] was shortlisted. The notes prepared for the meeting of the Globalisation Forum of 10 July 2015 provide a summary of the findings resulting from the visit to the H[…] and A[…] sites. As it results from the minutes of this Globalisation Forum meeting, its objective "*was to decide on a preferred site from the Darwin and Oak projects and to concur the process through to a contractually binding Investment Agreement targeted for 30 September. Sites under consideration were in Nitra (Slovakia), Jawor (Poland) and Puebla (Mexico).*" Its minutes further note: "*Nitra (preferred site from the Darwin process) when compared to Puebla (preferred site from the Oak process) was illustrated as being at a significant cost disadvantage*". The presentation prepared for that meeting states: "*After taking into account the non-quantifiable risk factors and the other quantifiable considerations, assuming that the level of EU State aid under consideration is delivered, we believe this is sufficient to offset Mexico cost advantage and recommend to put Puebla (MX) on hold*". The minutes of the meeting of the JLR Board of 3 August 2015 state that "[f]*ollowing a rigorous site evaluation process, at the 10th July Globalisation Forum, it was agreed that Nitra in Slovakia should be progressed as the recommended site, subject to Board approval*". The underlying presentation to the JLR Board meeting described the "[p]*rocess to shortlist to one site from Darwin and Oak projects*".

(63) The Slovak authorities explained that JLR did not submit an official aid application to the Mexican authorities because there is no State aid regime in Mexico. However, JLR received detailed information from the Puebla government on what could be offered if JLR decided to invest there.

(64) The Slovak authorities affirm that the investment in Mexico was not considered as a second investment in addition to the plant in the Union. They suggest that the Commission doubts are based on a single, admittedly somewhat misleading JLR document and argue that that document misrepresents the discussions of the offsite meeting of the Executive Committee Members of 21 January 2015, that is to say six months before the decision about the location. That JLR document was at any rate superseded by a considerable amount of evidence, produced at a later stage, discussing the two locations as alternatives. They explain furthermore that the additional capacity resulting from the new plant (300 000 vehicles per year) amounts already to 50% of JLR's capacity. It would be unrealistic to assume that JLR would consider investing in a second project of the same scale at the same time, or even in the short/medium term.

(65) The Slovak authorities explained why the meeting report and presentation of the 21 January 2015 offsite meeting of the Executive Committee Members refer to the building of two plants. According to Slovakia, JLR always planned to initially start operations in the new plant with 150 000 vehicles per year, that is to say phase 1 of plant 1, and ramp up to 300 000 vehicles in [2020-2025] that is to say phase 2 of plant 1. At the time of the January 2015 meeting, demand for JLR vehicles was however growing so strongly that the Executive Committee Members also briefly considered building a second plant at another location within five to ten years after the completion of works on the first site, if there was sufficient demand. That future site was not discussed in any detail in the meeting as that decision was a long way off. The Slovak authorities noted that the statement in the minutes of the offsite meeting suggesting that JLR will need two plants to satisfy projected demand was the result of either the confusion of the two phases of Plant 1 or those minutes emphasized excessively the limited discussion about having a potential second plant at some point in the more distant future.

(66) The Slovak authorities emphasize that JLR's internal documents consistently demonstrate its intention to invest in a single location. The minutes of the Globalisation Forum of 10 July 2015 record that the Nitra site was chosen over Mexico as the preferred location, and that the two sites were compared to each other as alternatives. JLR only considered manufacturing on one site: "[w]*e are ready to short-list to one country from Darwin and Oak projects*".

(67) Strategic reasons played an important role in the decision but the aid was still necessary to tilt the location decision to Slovakia. The Slovak authorities argue that it is incorrect to maintain that the State aid offered covers only an 'insignificant' proportion of the NPV gap following the Commission's view in the Opening decision that the nominal aid amounted to 47% of the NVP gap[22]. JLR's internal documents explicitly mention that the location decision was finely balanced and critically depended on the granting of the State aid. To that effect, the minutes of the Tata Board meeting of 18 September 2015 state that "*factoring elements of qualitative and risk, the total revised State aid of GBP [150-200] million[23] in cash was sufficient to continue to progress Nitra over Mexico.*" Similarly, JLR's decision of November 2015 to confirm Nitra as the location of the plant was based on the "*condition that the full amount of State aid is received"*. As a consequence, JLR insisted on recording in the Investment Agreement that its investment obligations were conditional upon receiving 100% of the regional aid grant.

(68) Further, Slovakia pointed out that as regards the risk of implementation delay in Mexico, that element was explicitly taken into account in the financial comparison and was therefore duly considered. Slovakia referred to the presentation to the Globalisation Forum of 10 July 2015 stating "*longer timeline to Job #1 anticipated in Mexico* […] *6-9 month range illustrated above*".

4.2.3. Lack of proportionality

(69) The Slovak authorities argue that no additional aid elements were granted to JLR, and therefore consider the aid to be proportionate.

[22] Using the figures as the Commission did in footnote 55 of the Opening decision.
[23] Corresponding to an eligible investment cost of GBP [1 700 – 2 100] million.

4.2.4. Manifest negative effects – anti-cohesion effect

(70) The Slovak authorities emphasized that the Slovak aid has no anti-cohesion effect to the detriment of Poland and reminded that "[o]*n 10 July the Globalisation Forum determined that Jawor (Poland) was not a viable location due to serious concerns regarding site fundamentals and deliverability. The company therefore had to choose between Nitra (Slovakia) and Puebla (Mexico). The company selected Slovakia as the preferred location and authorised an in-depth feasibility study. Mexico was put on hold*." Jawor was dismissed as an alternative to Nitra when a decision was taken on 10 July 2015 on the final location recommendation to be ratified by the Board in early August 2015. The JLR and Tata Motors Boards, at their meetings of 3 and 7 August 2015 respectively, did not consider Jawor to be an alternative to Nitra.

4.2.5. Manifest negative effect on trade – maximum aid intensity ceiling exceeded

(71) As the Slovak authorities take the view that no aid in addition to the notified aid was granted, they reject the doubt raised by the Commission that the allowable aid intensity ceiling is exceeded and that therefore the aid could have a manifest negative effect on trade.

5. COMMENTS FROM JLR

5.1. Introduction

(72) JLR supports the comments of the Slovak authorities of 20 July 2017 and elaborated on some particular elements.

5.2. Comments from JLR on the possible additional non-notified aid

(73) JLR considers that the Slovak effort to develop the NSP was necessary to render the site viable and attractive for investment. JLR was well aware of the fact that it should not benefit from infrastructure exclusively, that it should pay normal access charges or taxes that normally fell due, pay a market price for the land that it would acquire and pay the costs for any features of the site which were not standard and tailored to the specific needs of the company.

(74) JLR insists that the NSP and the infrastructure development are not dedicated to JLR. The fact that the zoning plans and legislative acts date as from the 1990s is proof that the plans were not developed solely in response to JLR's interest. To the contrary, the existence of the Nitra North industrial park zone and the availability of long established plans to further develop the industrial area were factors that influenced JLR's decisional process in Nitra's favour. That influence is documented in internal decision documents of JLR that include references such as "*situated on a professionally developed industrial park*[24]", "*best insurance policy due to site readiness and infrastructure*[25]" and "[s]*ite in established industrial park with adjacent factories*[26]".

(75) In addition, JLR points out that it acquired only 55%, that is to say 185 hectares out of 338 hectares, of the NSP surface that can be commercially exploited, and that rights of first refusal or options to buy do not give JLR the ability to occupy or

[24] IDC report, dated 30 March 2015.
[25] IDC presentation, dated 1 June 2015.
[26] Strategy Council Presentation, dated 15 June 2015.

control the land. JLR also reminds that it partially waived its right of first refusal for the North Land on 25 August 2017. It kept it for a surface area of 28.5 hectares.

(76) JLR holds that it paid the full market price for the land which it bought 'ready for construction' because its price was independently determined by three expert valuations, and those valuations explicitly refer to land that is made 'ready for construction', that is to say the land benefitted from the corresponding general land preparation works necessary to reach that standard. JLR further outlines that it paid the full costs of all works that were carried out to JLR's specification to go beyond that standard. The cost of such works is almost double the amount of EUR 16.9 million initially laid down in the Investment Agreement for that purpose.

(77) JLR further clarifies that the amount of EUR 75 million, referred to in paragraph 16 of the Opening decision, is not the price for which MHI bought the land of the JLR Site from third parties, but the total MHI expenditure for land purchases in the entire NSP.

(78) JLR also submits that it did not benefit from any exemption from the ALF fee. JLR did not buy agricultural land, but industrial land, and all three land valuations used to determine the market price referred explicitly to land with the characteristic of land ready for construction in industrial zones. JLR admits that one of its internal documents indeed indicated an ALF fee exemption up to EUR [50-110] million but explains that that was an incorrect understanding by a consultant and was not based upon information provided by the Slovak authorities.

5.3. Comments on the compatibility of the notified aid

(79) JLR insists that the regional State aid was a necessary component in bringing the investment to Nitra. JLR affirms that it took 'strategic considerations' into account together with the possibility to receive State aid to compensate for additional costs, but emphasizes that those strategic considerations alone, or with a lower amount of aid, would have been insufficient to trigger the location decision in favour of Nitra.

(80) JLR underlines that other vehicle manufacturers decided to invest in Mexico, both before and after it took its location decision. The investments by other vehicle manufacturers in Mexico confirm the credibility of Mexico as potential location for JLR's investment project. In fact, JLR spent over 18 months assessing the Mexican option. That assessment included setting up a project team, procuring external consultants, engaging with Mexican government officials, as well as carrying out fieldtrips, even by the most senior executive in the JLR Global Business Expansion team.

(81) JLR stresses that it had considered Mexico as a feasible alternative all along the decisional process, as is proven by many contemporary internal documents submitted to the Commission. JLR considers that views to the contrary presented in certain press reports referred to in the Opening decision are purely speculative, and do not reflect JLR's decision making process.

(82) Furthermore, JLR states that the intention was to invest in a single location. To invest at the same time, or in the near future, into a second plant in a different location was never considered. JLR admits that the minutes of the 21 January 2015 offsite meeting of the Executive Committee Members refer indeed to a Plant 2 since at that meeting it was speculated, and therefore recorded in the minutes, that if there was sufficient demand, JLR could consider building another plant at another location within five to ten years after completion of the initial investment. JLR insists however that this

long-term possibility was not discussed in any detail neither in the meeting materials, nor at the meeting itself. The meeting materials rather refer to Phase 1 and Phase 2 of the investment project at the same location, that is to say to JLR's strategy to start operations with 150 000 vehicles per annum in 2018 for the first phase (Phase 1 for Plant 1) and increase capacity to 300 000 vehicles per annum in [2020-2025] (Phase 2 for Plant 1). JLR furthermore suggests that building in parallel two additional plants, one in the Union and one in North America, each with a capacity of 300 000 vehicles per annum, would be inconceivable, given that JLR had sold only 462 209 vehicles in the financial year 2014/2015. In view of those figures, there is no commercially rational basis to believe that JLR could have intended to expand its annual capacity in the short-to-medium term by 600 000 vehicles.

(83) JLR underlines that the Jawor site in Poland was not a feasible alternative to Nitra or Mexico as it suffered from fundamental problems, in particular a road dissecting the site. Jawor was for that reason not considered by the Board as a potential alternative to Nitra, as documented by the Board meeting presentation of 18 November 2015.

6. ASSESSMENT OF THE AID

6.1. Introduction

(84) In this section, the Commission will first focus on the question of whether the total aid to JLR is limited to the notified aid, or whether JLR benefits from additional aid elements, in particular market conformity of sale price, publicly financed dedicated/bespoke infrastructure works and exemption from the ALF fee. After considering the legality of the aid, the Commission will elaborate a definite view on the compatibility of the aid received.

6.2. Existence of aid

6.2.1. The notified direct grant

(85) For the reasons set out in the Opening decision the Commission considers that the notified direct grant constitutes State aid within the meaning of Article 107(1) TFEU and this in view that the grant is awarded through State resources, is selective, constitutes an economic advantage to JLR, is likely to affect trade between Member States and distorts or threatens to distort competition.

6.2.2. The possible additional non-notified aid

(86) As mentioned in section 3.1, the Commission considered in the Opening decision that there was a possibility that JLR may have benefited from a certain amount of additional State aid in the context of the development of the NSP and the purchase of the JLR site. It considered three ways in which the transaction could have resulted in additional State aid to JLR:

(a) paragraph 118 of the Opening decision stated that if the NSP qualified as infrastructure dedicated to JLR, JLR's consideration for ownership interest and other rights relating to the NSP would under normal market conditions have to cover the infrastructural development costs incurred by the Slovak State in the construction of the NSP, with the exception of the costs relating to the development of infrastructures that are of truly general nature, which were still to be defined;

(b) even if it is concluded that the NSP as a whole does not qualify as an infrastructure dedicated to JLR, the Opening decision questioned whether some of the works carried out by Slovakia to develop and connect the JLR site were not designed specifically to serve the specific needs of JLR and whether the value of those works was properly reflected in the valuations prepared by the independent experts and the price eventually paid by JLR for the land and the relevant infrastructures;

(c) finally, the Opening decision also mentioned that the exemption from the ALF fee could be regarded as an additional aid measure in favour of JLR.

6.2.2.1. The question of whether the NSP can be regarded as an infrastructure dedicated to JLR.

(87) To conclude that JLR should bear the full infrastructural development costs incurred by the Slovak State, the following two conditions have to be simultaneously fulfilled: (a) the NSP constitutes dedicated infrastructure that is to say, JLR qualifies as a pre-identified undertaking and the NSP is tailored to JLR's needs; and (b) the costs exclude costs of truly general nature.

(88) The Commission considers that the two conditions referred to in Recital (87) are not met simultaneously therefore the 704 hectares of the NSP do not qualify as an infrastructure that is dedicated to JLR. The historical evolution of its creation, as outlined by the Slovak authorities and summarized in section 4.1.1 of this Decision, clarifies that the NSP was legally established on 8 July 2015 by the underlying Certificate of Significant Investment which conferred compulsory purchase powers to the Slovak authorities. The industrial zoning of the NSP however started well before JLR showed interest in the area, and there already were concrete plans to further develop the industrial area Nitra North at that time. For example, in 2014, detailed infrastructural plans were already available as part of the Luzianky Zoning Plan. Furthermore, part of the industrial zone had already been implemented, amongst others via the Nitra North industrial park. In essence, the NSP constitutes an extension of the Nitra North industrial park. The Commission therefore decides that JLR does not qualify as an ex ante identified undertaking for the NSP development as such.

(89) Moreover, only part of the NSP is purchased by JLR. The NSP consists of commercially exploitable land for sale to investors such as JLR and of so-called 'technical land'. The technical land covers over half of the NSP and is needed for infrastructural measures serving the entire Nitra North industrial zone, including the Nitra North industrial park, and to some extent also areas outside its limits. The technical land accommodates for example the highway bypass or the main entry road into Drazovce, as well as numerous protection zones required by the geographical characteristics which include for example flood defences, where construction activities are limited. In addition, Slovakia provided information confirming that the land purchased by JLR represents only 26% of the total NSP, 55% of the NSP if the technical land is excluded, and that a number of other companies are already established on the NSP.

(90) The Commission therefore concludes that the 704 hectares NSP as such cannot be considered as infrastructure dedicated to JLR.

6.2.2.2. The question of whether JLR paid the market price for the NSP land and infrastructure

(91) As stated in paragraph 119 of the Opening decision, even where all the 704 hectares of the NSP cannot be considered as infrastructure dedicated to JLR, the transaction

may still involve State aid in favour of JLR, either because of certain infrastructural development measures which may have been designed to satisfy the specific needs of JLR or because the land may have been sold below the market price. The Commission therefore needs to evaluate the infrastructural measures and the land sale transaction individually.

Infrastructural measures

(92) The infrastructure costs borne by the Slovak State referred to in paragraph (51) relate to land remediation, road infrastructure, utilities, flood defence and water management and the Multimodal Transport Terminal Luzianky.

(93) In Commission decision SA.36346 – Germany – GRW land development scheme for industrial and commercial use[27], the Commission analysed whether the public financing of land development works for future sale to industrial undertakings under market conditions constituted aid for the initial owner or investor for carrying out land development. The Commission found that making a public terrain ready to build upon and ensuring that it is connected to utilities, like water, gas, sewage and electricity and to transport networks like rail and roads, does not constitute an economic activity, but was part of the public tasks of the State, namely the provision and supervision of land in line with local urban and spatial development plans. Bespoke development for pre-identified buyers of land was excluded from the scope of the measure, and buyers had to acquire the land under market conditions.

(94) The Commission considers that the costs incurred by Slovakia for the preparatory land remediation works on the commercially exploitable part of the NSP do not go beyond standard development costs to make the public terrain ready to build upon and those works form part of the public task of the Slovak State, namely the provision and supervision of land in line with local urban and spatial development plans. Since those works fall within the public remit, their public financing does not constitute State aid for the land owner or investor for the carrying out of the development works. In this case the owner or investor is MHI. However, the question of whether the ultimate buyer of the land, in this case JLR, benefits from advantages that qualify as State aid is separate from that of whether there was State aid in favour of the land owner or developer. As MHI acts on behalf of the State, and is financed by the State, its actions are imputable to the State. State aid to JLR via the land remediation works and sale price can be excluded if MHI does not carry out, without appropriate remuneration, land remediation works on the JLR site that go beyond the works necessary to make the land 'ready for construction' and if the land transfer takes place under market conditions.

(95) The Investment Agreement includes an exhaustive list of the scope of the site remediation works and refers to a preparation for standard manufacturing use. All additional land remediation works that are required by the specific needs of JLR are identified in the Investment Agreement under the heading "Investor Specific Preparatory Works"[28], and are separately paid for by JLR. The Commission also takes note of the confirmation by the Slovak authorities that the supervisory rights of JLR over the construction phase were limited to verifying that the land would meet

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27 SA.36346 (2013/N), OJ C 141, 9.5.2014, p. 1.

28 The Slovak authorities noted that while the Opening decision mentions certain Investor Specific Works amounting to EUR 16.9 million which should be paid for by JLR, the costs for those works had already risen to EUR 30.1 million.

the standard of 'industrial land ready for construction', a standard that was agreed upon in the context of the purchase by JLR from MHI and which determined the sale price. The Commission concludes that the site remediation works to make the land ready to be built upon, and the additional works to the specifications of JLR, do not involve state aid to JLR, on the condition that they are covered by a land purchase agreement which conforms the market standards, or covered by an appropriate remuneration corresponding to market terms agreed in the Investment Agreement and additional payments. The assessment about whether that condition is met is set out in Recitals (105) to (108) of this Decision.

(96) The Opening decision notes that the development of the NSP did not only involve public investment in site remediation works to make the land ready to be built upon, but also the development of a wide range of infrastructures. Those infrastructure works aimed at making public utilities and road and rail access available to JLR are situated outside the JLR Site and outside the sites of other undertakings and are not tailor-made for a pre-identified user as set out in Recitals (97) to (104).

(97) The Slovak authorities confirmed that all utility infrastructure works within the borders of the JLR Site are paid for by JLR, and that JLR will pay a market price to access and use services of public utilities. The Slovak authorities provided an overview of the legislation applying to the calculation of user fees for public utilities. The applicable rules are set out at Member State level and Slovakia confirmed that no specific rules apply to users in the NSP that are different from those that apply nation-wide. The connection and distribution fees paid by JLR are based on standard price lists applicable in similar situations. Thus JLR will pay all connection fees and distribution fees, in compliance with the applicable provisions that apply nation-wide and that are regulated by the Regulatory Office for Network Industries. That is to say JLR will not benefit from any exemptions. The Commission considers the works on utilities infrastructure entirely within the public remit of the Slovak state and concludes that the utilities infrastructure works are not dedicated to JLR.

(98) The investment in road infrastructure referred to in Recital (51) serves all the undertakings in the industrial zone consisting of NSP and Nitra North industrial park as well as in the wider region. None of the roads is for the exclusive use of JLR or built to its specific needs. The roads are available for free public use. The Slovak authorities have confirmed that the road works do not go beyond standard road development and they provided evidence that the rules applicable to the project concerned were the same as for other projects. The internal roads within the boundaries of the JLR Site are paid for by JLR. The Commission therefore considers the works on the roads infrastructure entirely within the public remit of the Slovak State and concludes that the road infrastructure works are not dedicated to JLR.

(99) The Commission has considered previously[29] that when a parking lot is not built specifically for one undertaking but is part of the economic development plan for the industrial park, it can be considered as not dedicated and involving no State aid. The Commission notes that the construction of publicly accessible parking facilities featured already in the 2014 zoning plan of the municipality of Luzianky. The Commission therefore concludes that the parking development is within the public remit of the Slovak State and the works are not dedicated to JLR.

[29] SA.36147 (C 30/2010), OJ L 89 of 1.4.2015, p.72.

(100) The Commission considers that the investments relating to the fire station, police station, road maintenance facility, flood defence system and ground water management are typical public tasks within the public remit of the State and hence do not concern an economic activity. Their public financing does not constitute state aid.

(101) In view that the Multimodal Transport Terminal Luzianky is funded by Slovak Railways, which is a State owned railway infrastructure company, the investment could potentially be imputable to the Slovak State. The Commission first examined whether there could be an advantage for JLR.

(102) The Slovak authorities explained that the Multimodal Transport Terminal is financed by Slovak Railways from resources generated from its commercial activities which are accounted for separately from its publicly funded non-economic activities. For part of the infrastructure relative to the finished vehicle storage area, JLR is seeking contractual exclusivity. The other two functional parts of the Multimodal Transport Terminal will be open to any user on market conditions. Therefore, it appears that at least part of the infrastructure is built to the specific needs of JLR as a pre-identified undertaking.

(103) The Slovak authorities further confirmed that user fees for all parts of the Terminal will be calculated on a commercial basis and will cover all related investment costs, operating costs and costs for renewal or replacement investments. The fees will be market oriented and target an Internal Rate of Return for the project of […]. The user fees over a period of 30 years should ensure a return on investment for the project, as evaluated by an ex ante NPV calculation of EUR […] million.

(104) Therefore, the Commission considers that Slovak Railways acts just like a market economy operator would do in a similar situation. When economic transactions carried out by public bodies are carried out in line with normal market conditions, they do not confer an advantage on its counterpart[30]. The Commission therefore concludes that JLR receives no State aid in the use of the Multimodal Transport Terminal Luzianky.

<u>The land transaction</u>

(105) Slovakia, through MHI, sold 185 hectares of construction-ready commercially exploitable land, referred to as the JLR Site, to JLR at a price of 15.83 EUR per square meter or almost EUR 30 million in total. Recitals (40) and (41) of Commission Decision SA.36346 lay down that the final buyer of redeveloped land is not to be considered as a beneficiary in the meaning of Article 107(1) TFEU for the land development measure if that final buyer pays a market price for the redeveloped land. In that regard, the Commission notes that the final purchase price for the JLR Site was established as an average of three independent valuation reports established by internationally recognised experts, who apply the professional valuation standards and methods of the Royal Institution of Chartered Surveyors. All three evaluation reports include a declaration of independence, were made available to the Commission, and apply to a site which is zoned for industrial use, for which utilities connection points are available at the border of the site, which has been remediated and levelled, and for which no further costs resulting from the conversion of

[30] Judgment of the Court of Justice of 10 July 1996, *SFEI and Others*, C-39-94, ECLI:EU:C:1996:285, paragraphs 60-61.

agricultural land use to industrial land use are due. The reports also assume that all existing utilities and a railway line across the industrial site are relocated, and that road systems and public parking are developed throughout the park. The three reports use a comparable methodology to evaluate the price, comparing the land with other plots sold or on sale in Slovakia[31] and adjusting those sale or asking prices based upon factors such as size of the plot, location, available infrastructure, date, shape, visibility. In addition, the […] report used a discounted cash flow method[32]. The three reports estimated that the value per square meter of the JLR Site is EUR 15.5, EUR15.0 and EUR 17.0 respectively.

(106) The assumptions about the characteristics of the land are identical in the three reports and correspond to the situation of the JLR Site after the execution of the public infrastructure works.

(107) In addition, the Commission notes that the CB Richard Ellis report that was erroneously submitted by the Slovak authorities was a general market intelligence report of CB Richard Ellis. It only contained a general description of the Slovak real estate market with an average price indication of other plots sold or on sale in Slovakia, which is consistent with the prices of the benchmark sites used as a basis in the JLR site valuation reports. The market intelligence report did not contain any specific adjustments to valuate the market price of the JLR Site.

(108) Therefore, the Commission concludes that the purchase price of EUR 15.83 per square meter complies with market conditions and that the sale of the land in the state described by the market valuation reports was carried out in conformity with market conditions.

Conclusion

(109) The Commission concludes that JLR receives no selective advantage related to the sale of the JLR Site or related to the infrastructure works in connection with the NSP and financed through the Slovak State.

6.2.2.3. Exemption from the ALF fee

(110) The Commission raised doubts in the Opening decision as to whether the exemption from the ALF fee constituted State aid to JLR.

(111) As stated in Recital (105), all three independent valuation reports inherently assumed that the site was rezoned for industrial use and that no additional costs resulted from its conversion from agricultural use. The purchase price of EUR 15.83 per square meter is to be considered as a market price where the buyer is not confronted with additional costs related to land conversion. Since the market conformity of the sale of the JLR Site to JLR could be established based upon the independent expert reports, MHI's exemption from paying the ALF fee reduces the costs which this public special purpose vehicle incurs in carrying out its public task, but is not channelled through as a selective advantage to JLR.

[31] The […] report started from other plots with prices in the range of EUR 10 to 40 per square meter. The […] report started from other plots with prices in the range of EUR 3 to 55 per square meter. The CB Richard Ellis report started from other plots with prices in the range of EUR 14 to EUR 38 per square meter.

[32] The methodology started from a sale price of EUR 35 per square meter and a proportionate selling of the land within the next 20 years.

(112) Therefore, the Commission concludes that the exemption from the ALF fee does not constitute State aid within the meaning of Article 107(1) TFEU in favour of JLR.

6.2.2.4. Conclusion

(113) The Commission finds that the conditions of the sale of the JLR Site to JLR and the conditions under which land remediation, public utility and other infrastructure works are carried out, do not confer selective advantages to JLR. It is therefore not necessary to further assess the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU for the assessment of aid in relation to the sale of the NSP land to JLR. The State aid to JLR is thus limited to the notified direct grant.

6.3. Legality of the State aid

(114) The Commission has established in the Opening decision that by notifying the planned direct grant of EUR 129 812 750 in nominal value, subject to Commission approval, the Slovak authorities have respected their obligations under Article 108(3) TFEU with regards to that part of the aid.

6.4. Compatibility of the aid

6.4.1. Legal basis for the assessment of the compatibility of the aid

(115) The measure notified on 12 May 2016 aims at fostering regional development in the Nitra region of Slovakia. It has therefore to be assessed in application of the provisions applicable to regional aid laid down in Articles 107(3)(a) and (c) TFEU, as interpreted by the RAG 2014-2020, and the regional aid map 2014-2020 for Slovakia. The assessment based on the common assessment principles of the RAG takes place in three steps, namely an assessment of the minimum requirements, the manifest negative effects and the carrying out of a balancing test. The Commission concluded in the Opening decision that, on the basis of the common assessment principles, part of the general compatibility criteria were met and the formal investigation did not reveal any elements that question the underlying preliminary assessment on those compatibility criteria.

(116) However, the Commission raised doubts in the Opening decision with regard to the eligibility of expenditure and with regard to the incentive effect and the proportionality of the aid. Therefore, the Commission was also unable to form a definitive view about whether the project satisfies all the minimum requirements of the RAG. In the Opening decision, the Commission could also not exclude the presence of manifest negative effects on trade and cohesion between Member States. In the light of those considerations, the Commission was unable to establish whether the positive effects of the aid, if any, in the possible absence of an incentive effect, could outweigh their negative effects.

6.4.2. Eligibility of the investment project

(117) As established in section 3.3.2 of the Opening decision, the Commission considers that the investment project is eligible for regional aid and State aid can be found compatible with the internal market provided that all compatibility criteria of the RAG are met.

6.4.3. Eligibility of expenditure

(118) The Opening decision raised doubts related to the eligibility of 'provision costs'. According to paragraph 20(e) of the RAG, "*'eligible costs' means, for the purpose of*

investment aid, tangible and intangible assets related to an initial investment or wage costs". The Slovak authorities provided a detailed breakdown of the eligible cost items. Those eligible cost items reflected the costs anticipated at the time of the aid application submission and include an amount for provisioning for each of the eligible cost items, as part of a prudent cost estimation. In the Investment Agreement, the full nominal amount of EUR 1 406 620 590 is considered as 'Planned Project Investment' for which JLR has committed the expenditure[33].

(119) Based on the explanations of the Slovak authorities, the Commission notes that the reference to 'provision costs' in the internal JLR presentation of 18 November 2015 was made for internal financial presentation purposes of the investment commitment JLR would enter into with Slovakia. Those provision costs did not refer to an additional cost item on top of a prudent cost estimation of the eligible costs items. Since JLR committed in the Investment Agreement to spend the entire investment nominal amount of EUR 1 406 620 590, and the payment of the regional investment aid will only relate to actually incurred eligible costs, the Commission accepts EUR 1 406 620 590 as the maximum nominal amount of eligible costs for which aid can be granted. The Commission notes in this context that Slovakia committed not to exceed the notified maximum aid amount, nor the notified aid intensity ceiling. The Commission concludes that the eligible costs are in conformity with paragraph 20 (e) of the RAG.

6.4.4. Minimum requirements

6.4.4.1. Contribution to regional objective and need for State intervention

(120) As established in section 3.3.4.1 (a) of the Opening decision, the aid contributes to the regional development objective and is considered justified as Nitra is included in the regional aid map as a region eligible for regional aid pursuant to Article 107(3)(a) TFEU, with a standard aid intensity ceiling for investment aid to large undertakings of 25%.

6.4.4.2. Appropriateness of regional aid and of the aid instrument

(121) The Commission already concluded in section 3.3.4.1 (b) of the Opening decision that the notified direct grant constitutes in principle an appropriate aid instrument to bridge viability gaps by reducing investment costs. Tax incentives were not preferred due to their administrative complexity.

6.4.4.3. Incentive effect

(122) According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has incentive effect. There is an incentive effect where the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.

33 The investment agreement states that if the actual investment costs calculated for the investment period are lower than 85% of the Planned Project Investment, Slovakia will be entitled to terminate the agreement and JLR would have the obligation to return the entire amount of investment aid.

(123) Paragraphs 64 and 65 of the RAG set out the formal incentive effect requirements, which stipulate that works on an individual investment can start only after the application form for aid was formally submitted. The Commission has already established, in paragraph 166 of the Opening decision, that the formal incentive effect requirement for the grant has been respected, as the aid had been formally applied for before works on the investment project started. The Commission confirms that view for the purposes of this Decision.

(124) In addition to the formal incentive effect requirement, paragraph 61 of the RAG requires the presence of a substantive incentive effect that can be proven in two possible manners, that is to say that without the aid the investment would not be sufficiently profitable (scenario 1) or the investment would take place in another location (scenario 2).

(125) In a scenario 2 situation, the Member State must prove that the aid gives an incentive to the aid beneficiary to locate the planned investment in the selected region rather than in another region where the investment would have been more profitable and could have been implemented in the absence of aid, because the notified aid compensates the beneficiary for the net disadvantages of the implementation of the project in the region to be supported by the aid, compared to the alternative, more viable, "counterfactual" region.

(126) As set out in Section 3.5.2 of the RAG, the Member State must provide clear evidence that the aid has a real impact on the investment choice or on the choice about the location. To that end, the Member State must provide a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary.

(127) Slovakia presented as the counterfactual scenario a scenario 2 situation, under which the alternative for locating the investment in Nitra, Slovakia, would have been to locate it in H[…] in the State of Puebla, Mexico. According to the notification, the NPV that could be achieved by locating the approved investment project with a capacity of 150 000 vehicles per annum in H[…] exceeds the NPV calculated for Nitra by EUR 413 million, in the absence of aid and over the 20-year planned lifetime of the project.

(128) Paragraph 71 of the RAG indicates that for scenario 2, the Member State could provide the required proof of the incentive effect of the aid by providing contemporary company documents that show that a comparison has been made between the costs and benefits of locating the investment in the selected assisted region with alternative locations. For that purpose, pursuant to paragraph 72 of the RAG, the Member State is invited to rely on official board documents, risk assessments, financial reports, internal business plans, expert opinions, other studies and documents that elaborate on various investment scenarios.

(129) As already stated in the Opening decision, the Slovak authorities submitted such information in the form of an explanation of the location selection process based on contemporary documents which the Slovak authorities also submitted. Those documents describe the decision-making process of the beneficiary concerning the investment and location decision. During the formal investigation procedure, the Slovak authorities provided further explanations and supplementary contemporary documents.

(130) At the Globalisation Forum meeting of 10 July 2015, it was agreed that Nitra should be pushed forward as the recommended site, subject to Board approval. The JLR Board of 3 August 2015 approved Nitra as the recommended site, approved to sign a non-binding letter of intent to confirm progression of exclusive discussions with Slovakia and approved the establishment of a new JLR entity in Slovakia, subject to passing the Business Approval gateway[34] and a detailed review of JLR's business plan in the third week of September 2015. The minutes of the Tata Motors Limited Board of 7 August 2015 also make reference to a detailed presentation that would be made by the JLR CFO on the project financials at the next meeting. In July/August 2015, the project scope still referred to a plant with a capacity of 300 000 vehicles per annum. The project passed the Business Approval gateway at the JLR Executive Committee level meeting of 3 September 2015. At the Tata Motors Board meeting of 18 September 2015, JLR updated the Board on Project Darwin including key financials and business case. The total revised State Aid of GBP [150-200] million[35] was sufficient to continue to progress Nitra over Mexico and the project would be spread out in two phases. At the Globalisation Forum of 21 October 2015, it was agreed to redefine the initial investment project for aid application purposes to phase 1 only as no sufficient details were available concerning the exact product mix of phase 2, and therefore there was no solid and committed business plan, to enter into a commitment with the Slovak authorities for the full investment. At the JLR Board meeting of 18 November 2015 the updated business plan was approved and Slovakia was confirmed as the preferred location on condition that the full amount of State aid was received for the re-defined project. The NPV for both Slovakia and Mexico were based on the latest product strategy and updated assumptions had been recalculated, removing phase 2. The NPV difference amounted to EUR 413 million and the State aid was recalculated to the nominal amount of EUR 129 812 750.

(131) To have incentive effect, the aid has to constitute a decisive factor in the decision to locate the investment in Nitra instead of H[…]. As the final investment decision was only taken in October/November 2015, when the initial investment project was redefined and reduced to phase 1 only, and when Slovakia was explicitly reconfirmed as the preferred location by the JLR Board, the Commission considers October/November 2015 as the relevant point in time to test the presence of incentive effect. However, since the location recommendation of 10 July 2015 had already been ratified by the JLR Board and the Tata Motors Board in early August 2015, a non-binding Letter of Intent had been signed with Slovakia on 10 August 2015 and a public announcement was made on 11 August 2015, the Commission considers also the period July/August 2015 of particular relevance to evaluate the presence of incentive effect.

<u>Credibility of the Mexico alternative</u>

(132) As a preliminary remark the Commission notes that Slovakia's argumentation that Mexico constituted a credible alternative for JLR as it was a realistic investment location for other car manufacturers cannot be considered as sufficient, as it does not offer authentic proof that without the aid, JLR would have located the investment in Mexico. According to paragraph 68 of RAG, a counterfactual is credible if it is

[34] At the Business Approval gateway the business strategies are agreed, the project is added to the business plan and cycle plan and the full project investment is approved.

[35] Corresponding to an eligible cost of GBP [1 700 – 2 100] million, which was lower than the amount of GBP [2 100 – 2 500] million as referred to in the draft aid application form of 25 June 2015.

genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

(133) The Slovak authorities provided further company documents during the formal investigation procedure showing that a comparison has been made between the costs and the benefits of locating in Nitra and those of locating in H[…], Mexico. Paragraph 71 of the RAG requires the Commission to verify whether that comparison has a realistic basis.

(134) In paragraph 181 of the Opening decision, the Commission raised three main reasons to express doubts on the credibility of the Mexico alternative.

(135) Firstly, the Commission could not exclude that the submitted information related to two separate projects. The Commission considers the argumentation of the Slovak authorities as outlined in Recitals (61) to (66) of this Decision as sufficient to conclude that Project Oak and Project Darwin were meant as feasibility studies for one single project, as also explicitly mentioned in the presentation to the Tata Motors Board of 7 August 2015, and that the Mexican alternative was not abandoned until the final decision was taken by the JLR Board on 18 November 2015 to sign an Investment Agreement with Slovakia.

(136) Even before Project Darwin was formally launched, there were indications that Eastern Europe and NAFTA would be benchmarked against each other. One of the action points in the minutes of the Strategy Council of 10 November 2014 for example was to "[u]*ndertake desktop global manufacturing competitiveness study including Eastern European to NAFTA benchmarking*".

(137) Both Project Oak and Project Darwin studied the feasibility of a 300 000 vehicle manufacturing plant with a production start date planned for June 2018 and a plot of land of 400 to 600 hectares. The figures on required additional capacity confirm the statements of Slovakia and JLR in their reply to the Opening decision that there was no need to build two separate plants with a capacity of 300 000 vehicles each. This is also illustrated for example in the document "*Global Manufacturing Footprint Expansion*" of 15 December 2014.

(138) At the meeting of the Executive Committee Members of 21 January 2015, there was a reference to a second plant. The Slovak authorities explained that the Executive Committee Members briefly considered that after the first site, with a capacity of 300 000 vehicles, was built the building of a future site five to ten years after completion of works on the first investment, would be considered if there was demand. For the second plant, the United States and Mexico would be considered which could explain why JLR, in December 2015, confirmed to the governor of the Mexican state of Puebla that it was looking forward to further developing its relationship as it continues to realise its global expansion plans and that Puebla and Mexico remain very much at the front of JLR's mind.

(139) Evidence submitted by Slovakia suggests that both the feasibility studies Project Oak and Project Darwin were conducted with one single plant in mind. The Strategy Council of 27 April approved Puebla as the non-Union alternative within the agenda topic of Project Darwin, and decided to discontinue the evaluation of Turkey and other countries not selected. The letter to the governor of the State of Puebla of 25 June 2015 that followed the JLR Global Business Expansion Team visit of the same month to the Puebla sites, announced that H[…] had "*been selected along with a shortlist of sites that remain in consideration for the investment, including Central*

and Eastern European locations". The minutes of the Globalisation Forum meeting of 10 July 2015 record that "[t]*he objective of the meeting was to decide on a preferred site from the Darwin and Oak projects*[…]". They further stated that "*Nitra (preferred site from the Darwin process) when compared to Puebla (preferred site from the Oak process) was illustrated as being at a significant cost disadvantage"*. The minutes of the JLR Board meeting of 18 November 2015 record that "[t]*he NPV for each of Slovakia and Mexico based on the latest product strategy and updated assumptions had been recalculated, removing Phase 2"*.

(140) The Commission therefore considers credible that the information the Slovak authorities submitted on Project Oak and Project Darwin all relates to one single project.

(141) Secondly, the Commission justified, in the Opening decision, its doubts as to the credibility of the Mexico counterfactual, by highlighting the different levels of detailed assessment for Mexico and the European locations. To counter that argument, Slovakia submitted additional evidence and explanations which are summarized in Recital (59)(b) of this Decision. The Slovak authorities have also documented their point of view by submitting further correspondence between the Puebla authorities and JLR, the briefing pack for the sites visits and the minutes of the sites visits. On the basis of that additional information the Commission accepts that the analysis within Project Oak and Project Darwin were performed with a comparable level of scrutiny. For the final comparison of the preferred alternative of Project Oak (H[…]) with the preferred alternative of Project Darwin (Nitra), the same level of detail was available for both options and both sites were included in the financial modelling exercise on an identical basis.

(142) In that context, the Commission notes that at the end of 2014, Ernst & Young was brought in to support JLR in advancing Project Oak. JLR developed, in conjunction with Ernst & Young, a detailed set of golden site criteria which were later used in the site selection process of both Project Oak and Project Darwin. As JLR furthered its assessment of the Eastern European sites, it engaged, on 16 February 2015, PriceWaterhouseCoopers ('PwC') to help, amongst others, to refine the golden site criteria. The resulting model was based upon JLR's experience as well as PwC's experience in filtering and site selection in Eastern Europe with other OEM's. The Slovak authorities indicated this criteria refinement as a reason for a difference in analysis and golden site criteria within Project Oak and Project Darwin. However, at the time of the final comparison between the Project Oak preferred alternative and the Project Darwin preferred alternative, the information on both sites was available at a comparable level of detail.

(143) Although the Slovak authorities confirmed that the same level of detail was available for the Oak and the Darwin alternatives at the time of the location recommendation on 10 July 2015, the presentation to the Globalisation Forum contains fewer details on the Oak alternative than on the Darwin alternative, as set out in paragraph 181 of the Opening decision. The Slovak authorities explained that the Globalisation Forum had already seen information on Mexico and Puebla. The selections of Mexico as most promising North American State and of Puebla as most promising Mexican state were already finalised at an earlier stage. For the selection of European sites, the analysis was carried out in a shorter period of time since it only started in February 2015. Therefore, the country and site selection processes were not sequential. At the Globalisation Forum of 10 July 2015, there were still two Darwin countries, Poland and Slovakia, to be presented, but only Nitra in Slovakia was kept.

(144) Thirdly, as the Commission mentions in Paragraph 181 of the Opening decision the fact that the Mexico alternative appeared to have a significant delay contributed to the doubts on the credibility of Mexico as a genuine alternative. The Commission accepts the view of the Slovak authorities, as set out in Recital (68) of this Decision, that the longer timeline to start of production was taken into account when Puebla and Slovakia were qualitatively and quantitatively compared to each other at the Globalisation Forum of 10 July. The longer timeline was separately quantified with an NPV impact of between GBP [80-130] million or EUR [96-156] million and a six-month delay and GBP [110-180] million or EUR [132-216] million and a nine-month delay. That risk and the related financial impact was also explicitly considered in the updated business plan figures in October/November 2015.

(145) The Commission therefore concludes that when the final confirmation of the location decision was made, H[…] was a genuine and credible alternative to Nitra and can therefore be considered as a credible counterfactual scenario within the meaning of paragraph 68 of the RAG.

Strategic considerations

(146) Nitra, when compared to H[…] at the time of the final decision in November 2015, was at a significant NPV disadvantage. The NPV difference was calculated by JLR at GBP 344 million or EUR 413 million. The specific risk resulting from an expected six to nine months delay in implementing the investment in Puebla was not included in the NPV analysis; it was estimated to range between GBP [80-130] million or EUR [96-156] million and GBP [110-180] million or EUR [132-216] million, expressed in current value. The remaining NPV difference amounting to between GBP [164-234] million or EUR [197-281] million and GBP [214-264] million or EUR [257-317] million is bridged only partially, between 33% and 43%, by the notified State aid. The notified State aid of GBP 108 million or EUR 130 million was discounted by JLR using a cost of capital discount rate of […]%, which was the rate JLR used in its business planning. With a Project lifetime of 20 years, the State aid was therefore valued at GBP 76 million or EUR 91 million by JLR. However, as results from the presentation to the Board of 18 November 2015, numerous other qualitative factors played a role in the decision making process. The presence and importance of those factors, which had already been discussed and analysed at the time of the Puebla site visit of June 2015 and the Globalisation Forum meeting of 10 July 2015, were reconfirmed.

(147) The fact that despite the aid, Nitra was still at a significant NPV disadvantage when compared to H[…], raised several questions that are relevant for the assessment of the incentive effect and proportionality of the aid: (a) could the strategic factors alone not tilt the balance from Mexico to Slovakia?; (b) why was the aid sufficient to tilt the location decision from Mexico to Slovakia?; and (c) was the full aid amount necessary to tilt the balance from Mexico to Slovakia? Questions (a) and (b) are part of the incentive effect assessment while question (c) is assessed under the proportionality analysis of this Decision.

(148) The Commission first assesses whether the strategic factors alone could tilt the balance from Mexico to Slovakia. The key evaluation considerations, as mentioned in the minutes of the Globalisation Forum of 10 July 2015 included proximity to an automotive cluster, site fundamentals, labour availability, timing, operating costs, upfront cash requirement and deliverability. The Executive Committee Members present during the Globalisation Forum meeting attached particular importance to

timing impacts, distance from JLR headquarters and the relatively higher risk of reputational damage associated with Mexico. Other factors included natural disaster risk, political stability, government effectiveness and corruption risks and investment in the Union as a Brexit hedge. The impact of the implementation delay in Mexico was separately quantified. With the exception of some currency hedging effects, the qualitative factors tended to favour investment in Slovakia over Mexico.

(149) The Slovak authorities provided evidence to prove and argued in favour that the Slovak State aid was necessary to tilt the location choice from Mexico to Slovakia and that the qualitative advantages alone were not sufficient to choose Nitra over H[…].

(150) The site visit to Puebla of 16 June 2015 provided further insight in a number of strategic factors that would play an important role in the location recommendation to be made by the Globalisation Forum on 10 July 2015. The briefing pack for that site visit demonstrates that the timely delivery represented a risk for both Central and Eastern Europe and Mexico. There were additional strategic factors and risks associated with Mexico which needed to be explored further as part of the site visit. The minutes of the visit identify a list of remaining concerns, relating to OEM saturation, namely whether there is room for a third OEM and if so, how would JLR fit into a country that has been dominated by Volkswagen for decades, port proximity, safety, security, corruption, cultural differences, distance from operational base and natural disaster risk. However, the minutes also show that the site visit gave assurance on some of the factors that were initially perceived as serious concerns. Assurance had been given that the selected site in Puebla was in a low risk area for natural disasters. The Puebla team also made positive impressions on the JLR representatives.

(151) The Slovak authorities also pointed in particular to the minutes of the Globalisation Forum meeting held on 10 July 2015. The NPV difference between Slovakia and Mexico was accepted by the Globalisation Forum, in a "*very finely balanced*" assessment, to be covered by the qualitative concerns, however only after consideration of State aid. The minutes explicitly warn that "*the decision was very finely balanced with particular concern that the NPV of the Slovakian location was substantially lower than the Mexican location and moreover the NPV of the Slovakian site depended on a grant offer that was at the maximum level permitted under EU rules"*. At the same time "[i]*t was noted that the judgment of the project was that the Government of Slovakia has the capacity and was prepared to defend its decision before the European Commission. It was also noted that Slovakia has coherent arguments as to why approval should be forthcoming*". In the light of the identified risks related to the Mexican location, and only after consideration of the Slovak aid, Nitra was accepted as recommended location in July 2015. The Commission notes that the need for State aid was already identified earlier in the feasibility analysis process. It was for example mentioned in the JLR board presentation of 21 May 2015 that "[m]*anagement will explore the full opportunities to secure government incentives in Central and Eastern Europe to offset the financial advantage in Mexico"*.

(152) The Tata Motors Limited Board minutes of 18 September 2015 reported that "[f]*actoring elements of qualitative and risk, the total revised State aid of GBP [150-*

200] million[36] *in cash was sufficient to continue to progress Nitra over Mexico. Based on the financial State Aid, the Investment Agreement with Slovakia was being negotiated with signing in end-September 2015 and floating of new legal entity*".

(153) The JLR board presentation of 18 November 2015 explicitly refers to the presence of the qualitative factors discussed at the Globalisation Forum on 10 July 2015 and as ratified by the JLR and Tata Motors Board in early August 2015. The remaining NPV delta, after consideration of the quantified impact of the delay for the Mexican alternative and after consideration of State aid, "[…] *is balanced out by other more qualitative factors as agreed by the Board* […]"

(154) The Commission therefore concludes that as regards point (a) in Recital (147) the strategic considerations were only sufficient to bridge the remaining cash flow delta between Nitra and H[…], after the NPV of the Slovak State aid and the NPV impact of the delayed implementation in Mexico had been factored in. The Commission therefore excludes that strategic considerations alone could bridge the full NPV gap between Nitra and H[…].

(155) As regards point (b) in Recital (147), which was also referred to in paragraph (172) of the Opening decision the Commission considered the NPV figures as approved in November 2015 by the JLR Board. The State aid, worth GBP 76 million (EUR 91 million) referred to in Recital (146) could bridge between 33% and 43% of the NPV gap, taking into account the quantification of the expected delay in Mexico. It is clear from the decision documents provided that the full and maximum aid amount was considered throughout the entire decision making process. The decision makers were confronted with a remaining cash flow delta, after consideration of the maximum aid amount, and evaluated whether that cash flow delta could be accepted in view of other non-quantifiable considerations. After a lengthy discussion at its meeting of 10 July 2015, the Globalisation Forum finally agreed to accept the remaining gap. However it was recorded in the minutes of the meeting that, even taking into account the maximum amount of State aid available in Slovakia, a decision favouring Nitra over H[…] was very finely balanced. The Commission therefore concludes that other qualitative and risk factors played a role in the decision making process, explaining why the remaining cash flow delta could be accepted.

Conclusion on incentive effect

(156) The Commission therefore concludes that the aid clearly provided an incentive to locate the planned investment in Nitra rather than in H[…] because it compensates, in combination with strategic considerations, for the net cost disadvantages linked to building the plant in Nitra. There is therefore, the incentive effect required within the meaning of section 3.5 of the RAG.

6.4.4.4. Proportionality of the aid amount

(157) The Commission has to assess the proportionality of the aid package. According to section 3.6 of the RAG, the aid amount must pass a proportionality test which is twofold. Firstly it must be limited to the minimum necessary to induce the additional investment or activity in the area concerned. Secondly, since the Commission applies

[36] Nominal value – EUR [180-240] million.

maximum aid intensities for investment aid, those maximum aid intensities are used as a cap to the "net extra cost approach".

(158) Pursuant to paragraph 78 of the RAG, notified individual aid will be, as a general rule, considered to be limited to the minimum necessary, if the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual in the absence of aid. Pursuant to paragraph 80 of the RAG, in scenario 2 situations, that is to say location incentives, the aid must not exceed the difference between the NPV of the investment in the target area and the NPV of the investment in the alternative location, while taking into account all relevant costs and benefits.

(159) The relevant NPV figure to be considered for the proportionality assessment of the notified aid of EUR 129 812 750 in nominal value are those relating to the reduced scope of the project, that is to say 150 000 vehicles. The NPV figures were approved in October/November 2015 by the JLR Board. The NPV delta before consideration of the delayed implementation in Mexico was GBP 344 million or EUR 413 million. Any aid amount in excess of EUR 413 million would be disproportionate. In the Opening decision, the Commission referred in particular to the possible infrastructure aid and ALF fee exemption which, when added to the notified aid amount, may have resulted in an overall aid amount higher than that maximum threshold.

(160) As referred to in Recital (113) the Commission does not consider the sale of the NSP land, the provision of related infrastructure works or the exemption from the ALF fee as aid measures in favour of JLR. The proportionality assessment is therefore limited to the notified aid amount.

(161) Slovakia submitted the required documentation and demonstrated on the basis of that documentation that the first part of the proportionality test is met because the notified aid does not exceed the NPV difference between Nitra and H[…] of GBP 344 million or EUR 413 million. The nominal aid amount of GBP 108 million or EUR 130 million represented GBP 76 million or EUR 91 million in current value using the JLR discounting rate of […]%.

(162) The Commission notes that even if the aid is granted, Nitra still registers an NPV disadvantage of GBP 268 million or EUR 322 million. The incentive effect analysis demonstrated that the remaining NPV disadvantage was acceptable for JLR because of the expected implementation delay in Mexico and because of other risk and qualitative factors. Those factors had been discussed at length during the Globalisation Forum Meeting of 10 July 2015 and the conclusions of the risk analysis were confirmed in November 2015 during the presentation to the JLR board which specifically mentioned political/business environment, economic factors, distance from JLR HQ, natural disaster risk and the probability of the emergence of a EU/US Free Trade Agreement. On the basis of that risk analysis the decision was taken to confirm Nitra as preferred location.

(163) As the cap resulting from the net extra cost approach is not exceeded, the Commission considers that the aid conforms with the first part of the proportionality test.

(164) As regards the second part of the proportionality test, the Commission applies, in addition to the net extra cost approach, maximum aid intensities, scaled down in application of paragraph 20(c) of RAG for large investment projects.

(165) The Commission noted in the Opening decision that the notified aid amount of EUR 129 812 750 in nominal value and EUR 125 046 543 in current value, based upon an eligible investment of EUR 1 369 295 298 in current value, results in an aid intensity of 9.13%, which is prima facie below the maximum scaled down allowable aid intensity of 9.24% for investment in the region of Nitra, with applicable regional aid ceiling of 25%. The Commission further established that the eligible cost complies with the conditions of section 3.6.1.1. of the RAG, which is relevant for the assessment of the eligible cost base.

(166) Sections 3.6.1.1 and 3.6.1.2 of the RAG explain which investment costs can be taken into account as eligible costs. In this case, section 3.6.1.1 applies as the eligible costs for the proposed investment aid are calculated on the basis of investment costs. The Commission notes that the eligible costs are established in line with the provisions of those sections since the acquired assets will be new, the investment concerns an initial investment in the form of a new establishment, no leasing costs are taken into account and the intangible assets amount to about […]% of the total eligible costs, which is below the maximum allowed proportion of 50%. Slovakia confirmed that all other conditions that apply to intangible assets will be complied with.

(167) The Commission concluded in the Opening decision that the notified aid amount would be reduced in case the 'overspend' amounting to GBP [60-85] million or EUR [72-102] million would turn out to be ineligible.

(168) In Recital (119) of this Decision the Commission considered that the eligible investment amounts to EUR 1 460 620 591. The notified aid amount remains therefore below the maximum scaled down allowable aid intensity of 9.24%. Therefore, the double cap condition, laid down in paragraph 83 of the RAG, resulting from the combination of the net extra cost approach, that is to say aid limited to the minimum necessary with the allowable ceilings is respected. The Commission therefore considers proportionate the notified aid amount.

6.4.4.5. Conclusion as to the respect of the minimum requirements

(169) In accordance with the assessment referred to in Recitals (120) to (168) of this Decision it can be concluded that all minimum requirements laid down in sections 3.2 to 3.6 of the RAG are met.

6.4.5. Avoidance of undue negative effects on competition and trade

(170) The Commission mentioned in section 3.3.4.2 of the Opening decision that the notified aid does not have an undue negative effect on competition through the increase or maintenance of market power or an excessive capacity creation in a declining market. The Commission confirms its conclusion for the purposes of this Decision.

(171) However, the location effects of regional aid can still distort trade. Section 3.7.2 of the RAG lists a number of situations where the negative effects on trade manifestly outweigh any positive effects, and where regional aid is prohibited.

6.4.5.1. Manifest negative effect on trade: the adjusted aid intensity ceiling is exceeded

(172) A manifest negative effect would exist according to paragraph 119 of the RAG where the proposed aid amount exceeds, compared to the eligible standardised

investment expenditure[37], the maximum adjusted aid intensity ceiling that applies to a project of a given size, taking into account the required 'progressive scaling down'[38].

(173) Since this Decision establishes in Recital (113), that JLR does not benefit from further aid in addition to the notified aid and, in Recital (168), that the applicable adjusted regional aid ceiling is not exceeded, there is no manifest negative effect on trade within the meaning of paragraph 119 of the RAG.

6.4.5.2. Manifest negative effect: Counter-cohesion effect

(174) Paragraph 121 of the RAG specifies that where, in a scenario 2 case, without the aid the investment would have been located in a region with a regional aid intensity which is higher or the same as the target region, that would constitute a negative effect unlikely to be compensated by any positive effect of the aid because it runs counter the cohesion rationale of regional aid.

(175) The Commission considers that the provision applies to a scenario 2 situation in which both alternative locations are in the European Economic Area ('EEA'). The Polish site in Jawor which has been factored in the location decision process until 10 July 2015, is located in a region with the same aid intensity ceiling as Nitra[39].

(176) As outlined in the Opening decision, internal documents of JLR indicated that the investment, in comparison to Slovakia and in the absence of the incentives offered by Slovakia, could have been more cost-effective in Jawor.

(177) At the Globalisation Forum of 10 July 2015 a two-step analysis was presented, with first a location choice between Jawor and Nitra and in a second step a location choice between Nitra and Mexico. Jawor would have been more cost-effective, but JLR identified a number of disadvantages for that site in terms of site fundamentals, timing upfront cash and deliverability. The Polish site was given a red flag on site fundamentals because it is situated on agricultural land that required rezoning and, as explained by JLR, because of a road dissecting the Jawor site, and on deliverability expressly questioning the […] deliverability capabilities. The meeting minutes recorded that the Executive Committee Members concurred with the recommendation that the Polish site be put on hold for the reasons brought forward. Because of those red flags, the Polish site was not considered by the JLR Board as a feasible alternative.

(178) The Commission has not found evidence that would put into question the unsuitability of Jawor for the reasons identified by JLR, and notes that no third party commented on the issues concerned. Moreover, as explained in section 6.4.4.3 of this Decision, the site in Mexico has been established as the alternative location of the investment in case the State aid would not have been granted. The Commission therefore concludes that the aid has no counter-cohesion effect to the detriment of Jawor in the meaning of paragraph 121 of the RAG.

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37 The standardised eligible expenditure for investment projects by large firms is described in detail in section 3.6.1.1 and 3.6.1.2 of the RAG.

38 See paragraph 86 and 20(c) of the RAG.

39 SA.37485 – Regional aid map for Poland, OJ C 210, 4.7.2014, p. 1.

6.4.5.3. Manifest negative effect: closure of activities or relocation

(179) Pursuant to paragraph 122 of the RAG, where the beneficiary has concrete plans to close down or actually closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, where there is a causal link between the aid and the relocation, that will constitute a negative effect that is unlikely to be compensated by any positive elements.

(180) Based upon a confirmation from the Slovak authorities that JLR had not terminated the same or similar activity in the EEA in the two years preceding the application for aid and did not have any concrete plans to do so within two years after completion of investment, the Commission had concluded in the Opening decision that the State aid does not lead to a closure of activities or relocation of activities.

(181) However, several press articles dating from April 2018 reported a job-cutting exercise of about 1 000 jobs in the same or similar activity in the United Kingdom.

(182) The Slovak authorities explained that the job-cutting exercise is not related to the Nitra investment decision. They reconfirmed, supported by authentic evidence, that JLR had no concrete plans for job-cutting in its United Kingdom plant or in other plants at the time of aid application in Slovakia. The Slovak authorities provided also a copy of a "Security agreement" with the trade unions representing JLR's United Kingdom workforce signed by JLR on 30 April 2016. The Security agreement described the cycle plan, that is to say the vehicles that were to be produced at the United Kingdom plant. The Slovak authorities explained that in 2016, JLR and the United Kingdom trade unions agreed in writing that the investment in Slovakia, taking over the […] vehicle production of the Solihull plant, would not require relocation of any United Kingdom jobs nor the closure of any United Kingdom capacity. The Security agreement also establishes the circumstances in which cuts to United Kingdom jobs would be required and the steps that would be taken in response but those circumstances were described as "*major economic changes, such as another global downturn, that reduces demand or otherwise affect the previously agreed cycle plan*".

(183) The reallocation of the […] vehicle from Solihull to Nitra was known at the time of the aid application but JLR planned to expand production ouput overall and allow Solihull to meet increasing demand for other vehicles, in particular […] and […], with a resulting output increase. The plans indicated that the production capacity of the […] in Castle Bromwich would remain the same.

(184) As the Slovak authorities explained, with the support of publicly available information, the job cuts announced in 2018 were the result of a decline in the demand for diesel vehicles, partly due to the United Kingdom diesel tax policy, and to uncertainties surrounding Brexit. JLR decided to […], with direct impact on the capacity of Solihull. Those factors are unrelated to JLR's investment in Slovakia and occurred years after JLR's investment decision to build a plant in Nitra.

(185) Therefore the Commission reconfirms its conclusion that there is no causal link between the Slovak aid measure and the closure of activities in the United Kingdom.

6.4.5.4. Conclusion as to the existence of manifest negative effects on competition and trade

(186) Through the assessment referred to in paragraphs (170) to (185) of this Decision it is possible to conclude that the aid has no manifest negative effects on competition and trade within the meaning of section 3.7.2. of the RAG.

6.4.6. *Balancing of positive and negative effects of the aid*

(187) Paragraph 112 of the RAG lays down that for the aid to be compatible, the negative effects of the aid in terms of distortion of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest. There are certain situations where the negative effects manifestly outweigh any positive effects, meaning that the aid cannot be found compatible with the internal market.

(188) The Commission's assessment of the minimum requirements showed that the aid is appropriate, that the counterfactual scenario presented is credible and realistic, that the aid has incentive effect and is limited to the amount necessary to change the location decision of JLR. By triggering the location of the investment in the assisted region, the aid contributes to the regional development of the Nitra area. The assessment also showed that the aid has no manifest negative effect in the sense that it does neither lead to the creation or maintenance of overcapacity in a market in absolute decline, nor does it lead to excessive effects on trade, it respects the applicable regional aid ceiling, has no anti-cohesion effect, and is not causal for the closure of activities elsewhere and their relocation to Nitra. In addition, the aid does not entail a non-severable violation of Union law[40].

(189) Undue negative effects on competition that would have to be taken into account in the remaining balancing are identified in paragraphs 114, 115 and 132 of the RAG and concern the creation or reinforcement of a dominant market position or the creation or reinforcement of overcapacities in an underperforming market, even where the market is not in absolute decline.

(190) The Commission considers, in line with its analysis in the Opening decision which it confirms by this Decision, that the aid neither does it lead to, or reinforces, a dominant market position of the aid beneficiary on the relevant product and geographic market, nor does it lead to the creation of overcapacity in a market in decline. Therefore the Commission concludes that the aid has limited negative effects on competition.

(191) The effect of the aid on trade is limited since the adjusted regional aid ceiling is respected, and the measure has no counter cohesion and relocation effect.

(192) Since the aid meets all minimum requirements, has no manifest negative effect, and the analysis referred to in Recitals (190) and (191) of this Decision shows that it has limited negative effects on competition and trade, the Commission concludes that the substantial positive effects of the aid on the regional development of the Nitra region, and in particular the employment and income generation effects of the investment referred to in the Opening decision, clearly outweigh the limited negative effects.

6.5. Transparency

(193) In view of paragraph II.2 of the Commission's Transparency Communication[41], Member States must ensure the publication on a comprehensive State aid website, at

[40] Paragraph 28 of the RAG.

[41] Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30.

national or regional level, of a full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it, the identity of the granting authority or authorities, the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking, the region in which the beneficiary is located in terms of NUTS levels and the principal economic sector of the activities of the beneficiary, at NACE group level. Such information must be published after the decision to grant the aid has been taken, must be kept for at least ten years and must be available to the general public without restrictions. Member States are required to publish the information referred to in this Recital as from 1 July 2016.

(194) In the Opening decision, the Commission noted that Slovakia confirmed that it will comply with all requirements concerning transparency set out in paragraph II.2 of the Transparency Communication.

7. CONCLUSION

(195) The Commission concludes that the notified regional investment aid in favour of Jaguar Land Rover Slovakia s.r.o. fulfils all the conditions laid down in the RAG 2014-2020 and can therefore be considered compatible with the internal market in accordance with Article 107(3)(a) TFEU.

(196) In view that the Slovak authorities agreed exceptionally to waive the rights deriving from Article 342 TFEU in conjunction with Article 3 of the Council Regulation 1/1958[42] and to have the planned decision adopted and notified pursuant to Article 297 TFEU in the English language, this Decision should be adopted in the English language,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Slovakia is planning to implement in favour of Jaguar Land Rover Slovakia s.r.o. amounting to a maximum of EUR 125 046 543 in current value and a maximum aid intensity of 9.13% in gross grant equivalent is compatible with the internal market within the meaning of Article 107(3)(a) of the Treaty on the Functioning of the European Union.

Implementation of the aid is accordingly authorised.

Article 2

This decision is addressed to the Slovak Republic.

[42] EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community (OJ 017, 06.10.1958 p. 0385).

Done at Brussels, 4.10.2018

For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION