

COMMISSION

COMMISSION DECISION

of 23 October 2001

on the measure and State aid implemented by Spain for Santana Motor

(notified under document number C(2001) 3061)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/267/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾,

Whereas:

(3) On 3 May 1999 the Commission raised further questions with a view to gaining a better understanding of Santana's objectives and identifying the public financing involved. A visit was made to Linares (province of Jaén, Andalusia) on 26 and 27 May 1999, after which a meeting was held in Brussels on 29 July 1999, chiefly to discuss questions relating to the regional aid. By letters dated 1 July, 30 July and 17 November 1999 and 4 January 2000, the Spanish authorities supplied partial replies to the questions raised by the Commission, which requested additional information on 22 March 2000. The Spanish authorities responded to that request on 17 April 2000, and a meeting was held in Brussels on 12 May 2000. Following this, Spain addressed on 24 May 2000 a letter to the Commission amending the initial notification.

I. PROCEDURE

(1) After learning through press reports that a public guarantee covering a bank loan had been granted to Santana Motor SA (hereinafter Santana) by the Regional Government of Andalusia, the Commission sent Spain requests for additional information on 2 July, 9 October and 8 December 1998. Letters from Spain dated 11 August and 23 November 1998 and 12 February 1999 enabled the Commission to establish that the guarantee in question had been granted in June 1998. The case was consequently registered as unnotified aid under number NN 24/99.

(2) A meeting was held on 13 April 1999 between representatives of the Spanish authorities, Santana and the Commission. During the meeting, a number of documents were handed to the Commission, including the company's medium-term strategic plan. This referred to planned investment aid and a capital injection by a public body for which compliance with the market economy investor principle was not clearly demonstrated.

(4) By letter dated 28 July 2000, registered on 31 July 2000, Spain informed the Commission of its intention to implement the aid measures in favour of Santana, in accordance to Article 4(6) of Council Regulation (EC) No 659/1999 ⁽²⁾.

(5) The Commission decided on 17 August 2000 to initiate proceedings pursuant to Article 88(2) of the Treaty (decision to open the formal investigation procedure), as it found that there were doubts as to the compatibility of the measures with the common market. The Commission sent a fax to the Spanish Permanent Representation on the same date informing it of its decision to initiate proceedings. The text of the decision was then communicated to Spain by letter dated 22 August 2000, registered by the Spanish authorities on 23 August 2000. Spain submitted its comments on the initiation of proceedings on 25 September 2000.

⁽¹⁾ OJ C 328, 18.11.2000, p. 19.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

- (6) On 30 October 2000 Spain brought before the Court of Justice an action for annulment of the Commission decision to initiate proceedings, claiming that the time limit of 15 working days for the Commission to take a decision had not been respected.
- (7) By letter dated 22 November 2000, the Commission asked Spain to comment on press reports according to which the capital injection had already been carried out. In its reply of 28 December 2000, Spain confirmed that it had.
- (8) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid. No comments were received.

II. DETAILED DESCRIPTION OF THE AID

- (9) The planned aid was to be granted to the publicly owned Santana group. The Santana group is active in the motor vehicle industry mainly through two companies, the abovementioned Santana Motor SA and its subsidiary Santana Motor Andalucía SL. It generated turnover of ESP 59,5 billion in 1998 and of ESP 65,2 billion (EUR 392 million) in 1999. The Santana group sold 42 700 vehicles in 1999: 8 400 were Suzuki models (the Swift and the Baleno, for example) imported and sold on the European markets, while 34 300 vehicles were produced at the Linares plant, mainly the Samurai and Vitara four-wheel drive models. Santana achieves some 60 % of its sales outside Spain, with major outlets in France, Italy and the United Kingdom (1997 figures).
- (10) In 1998 the company developed a strategic plan for the period 1998-2006, the main objectives of which were to:
- enable Santana to match the industry's competitiveness standards;
 - draw up a product, sales and production programme linked to a coherent investment and financing plan;
 - diversify the company's activities in order to increase its independence;
 - achieve the necessary profitability; and
 - find a partner with a view to privatisation.

Other aims, such as safeguarding jobs, were also set out.

- (11) The strategic plan presented by Spain provided for the commercial launch of several vehicles between 1998 and 2002, including restyling and producing new (e.g. diesel) engines for the Suzuki four-wheel drive models and producing a new model designated YR 8-Jimny. Projects that are independent of Suzuki were also envisaged, with development of the PS 10, a four-wheel drive vehicle descending from an old Santana-Land Rover model, and, under a licence with Chatenet, manufacture

of a light cabin quadricycle called the Stella. The activities of component suppliers were also to be developed, for example the production of moulds and dies in a specialised workshop. Close cooperation with Suzuki was to continue also in importing and distributing models such as the Swift, the Alto, the Wagon R and the Baleno.

- (12) A number of investments were planned within this general framework. The largest one is referred to as 'Plan 15 000' and involves investments totalling ESP 13 336 million, spread mainly over the period 1998-2002 and broken down as follows:

(ESP million)	
Project	Amount
Jimmy YR 8	9 175
PS 10	2 700
Chatenet — Stella	200
Tooling and dies workshop	100
Modification of models and engines	1 003
Miscellaneous	158
Total	13 336

- (13) In addition to Plan 15 000, Spain stated that an extra ESP 3 500 million was to be invested in restyling models over the period 2003-2006.
- (14) These investments do not involve any increase in capacity.
- (15) To finance the company's strategic plan, two measures were planned by the Spanish authorities:
- a capital injection to be made by Soprea, a subsidiary of the Instituto de Fomento de Andalucía (IFA) and the company's sole shareholder; and
 - regional investment aid.
- (16) The capital injection provided for in Santana's strategic plan for 1998-2006 totalled ESP 3,9 billion to be granted in three equal instalments between 1999 and 2001. The capital was to be provided entirely by Soprea.
- (17) Regional aid was planned to be granted to Santana under the 'Régimen de ayudas a la inversión y a la investigación y desarrollo' (investment and R&D aid scheme) approved by the Commission on 13 March 2000. The initial requests for aid were made in April and July 1999 in respect of three investment projects within Plan 15 000: the Jimny project, development of the PS 10 and production of the Chatenet-Stella. In its letter of 24 May 2000, Spain stated that this aid would amount to ESP 1 977 million.

⁽³⁾ See footnote 1.

(18) Furthermore, an individual public guarantee was granted to Santana by the Regional Government of Andalusia to cover a credit line to be used for purchasing equipment necessary for producing the Jimny. The credit line, granted to Santana in June 1998 by a consortium of banks ⁽⁴⁾ was used to borrow ESP 1 700 million. The general terms for drawing on that credit line were as follows:

- (a) life of the loans: seven years;
- (b) amortisation: over four years following a three-year grace period;
- (c) interest rate: the Mibor rate at the date the loan tranches were drawn plus 0,175 %.

(19) Spain considers these to be market conditions. On the other hand, the price charged to Santana for the public guarantee is 0,05 % per quarter, whereas the Spanish authorities estimate the market price of such a guarantee at between 0,5 % and 0,8 % per year, having due regard to Santana's financial situation. Consequently, regional aid of up to ESP 57 million has been granted to Santana in relation to the public guarantee covering the credit line.

(20) The total nominal amount of the aid is therefore ESP 2 034 million (present value ⁽⁵⁾): ESP 1 675 million).

III. COMMENTS FROM SPAIN

(21) On 25 September 2000 the Spanish authorities sent their comments on the initiation of proceedings. Those comments have been taken into account by the Commission.

(22) In their comments, the Spanish authorities first assert that the decision to initiate proceedings after a lengthy preliminary phase caused delays in the investment schedule, leading to the postponement of the PS 10 project and the non-implementation of the investments aimed at increasing the share of components purchased in Europe. Such delays, together with the adverse evolution of the yen/euro exchange rate, were held responsible for Santana's underperformance with respect to the targets set out in the strategic plan.

(23) With regard to the capital injection, the Spanish authorities state that the Commission had not assessed the content of the strategic plan when it decided to initiate proceedings, but confined itself to observing the consequences of the yen/euro exchange rate *a posteriori*,

a factor that is external to the plan and beyond the control of its authors.

(24) As regards the PS 10 project, the Spanish authorities affirm that during the preliminary phase of the procedure the Commission did not refer to any aid element in the capital injection, and always considered the aid to the PS 10 project as compatible aid.

(25) As regards the Chatenet-Stella project the Spanish authorities point out that the quadricycle does not fall under the Community framework for State aid to the motor vehicle industry ⁽⁶⁾ (hereinafter 'the motor vehicle framework'), as its characteristics correspond to those of a motorcycle, as shown by the technical description contained in the strategic plan.

(26) With regard to the other investments, the Spanish authorities point out that the letter of 24 May 2000 amending the initial notification only included the investment relating to the tooling and dies workshop and excluded the remaining investments.

IV. ASSESSMENT OF THE AID

(27) The assessment of the alleged aid measures considers first the capital injection and subsequently the regional measures.

The capital injection

(28) In assessing whether a transaction between a Member State and a public undertaking constitutes a normal commercial transaction or whether it consists wholly or partly of State aid, the Commission must follow the market economy investor principle. In accordance with that principle, a capital injection does not involve State aid where it is made in circumstances which would be acceptable to a market economy investor operating under normal market conditions ⁽⁷⁾.

(29) The Court of Justice also stated in its judgment of 21 March 1991 in Case C-305/89 Italy v Commission ⁽⁸⁾ that 'although the conduct of a private investor with which the intervention of the public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term'.

⁽⁴⁾ Caja de Ahorros y Pensiones de Barcelona; Argentaria — Caja Postal y Banco Hipotecario SA; Caja de Ahorros y Monte de Piedad de Córdoba; Dexia, Banco Local SA; Caja Provincial de Ahorros de Jaén.

⁽⁵⁾ Base year: 1998; discount rate: 6,20 %.

⁽⁶⁾ OJ C 279, 15.9.1997, p. 1.

⁽⁷⁾ See for example the Commission communication to the Member States — Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

⁽⁸⁾ [1991] ECR I-1603.

- (30) The Commission must therefore consider whether it is likely that the strategic plan presented by Santana will lead to long-term profitability of the company, and whether the measures envisaged in the strategic plan would have induced a market economy investor to provide the capital necessary for its implementation.
- (31) The Commission notes that, given Santana's dependence on imports from Japan, particular attention must be paid to the impact of foreseeable exchange-rate fluctuations on the targets set out in the strategic plan, as well as to possible measures to counterbalance such fluctuations.
- (32) In its assessment, the Commission must take into account all relevant information that was available to market economy investors at the time when the decision on the capital injection was taken. The Spanish authorities notified the intention of carrying out the capital injection at a meeting held on 13 April 1999, and provided documentation dating from January 1999 in which the capital injection was indicated as part of the strategic plan. Based on these facts, the Commission concludes that the relevant time as regards the decision on the capital injection is the beginning of 1999.
- (33) The Commission notes that the capital injection was formally approved by Santana's shareholders on 22 December 1999. However, the Commission does not consider this date as the relevant date for the assessment. This is because the December 1999 vote only ratified a decision that had already been taken by Santana's sole shareholder, Soprea. Additionally, the actual date of the formal ratification of the capital injection was probably influenced by the need to notify the measure to the Commission, and thus may not represent the timing that a private investor would have followed when deciding to invest.
- (34) The company's annual accounts show a net profit of ESP 111 million in 1997 and of ESP 3 million in 1998. However, the positive results derive from extraordinary profits that offset operating losses (ESP 1 448 million in 1997 and ESP 1 233 million in 1998). The strategic plan forecasts higher operating losses for 1999 (ESP 3 735 million), a sharp improvement in 2000 (losses of ESP 45 million), and a return to operating profits as from 2001, reaching ESP 3 092 million in 2006.
- (35) Among the factors that were to lead to improved profitability, mention was made of a sharp increase in sales (from 38 000 vehicles per year in 1998 to around 60 000 from 2001 onwards), diversification of the range (among other things with the production of the new Jimny, PS10 and Stella models), and less dependence on Suzuki (increasing the share of components purchased in Europe, and production of the PS10 and Stella models).
- (36) The increase in production volumes was to be achieved through the new Jimny model (36 000 units per year in 2005 and 2006), the PS 10 (more than 9 000 units per year from 2001 onwards) and the Stella (3 500 units per year from 2004 onwards). In addition to its own production, Santana was to import and distribute around 13 000 vehicles per year (mainly the Baleno and Gran Vitara models) produced by Suzuki.
- (37) The Commission consulted an independent automotive expert who considered that the sales forecast in the strategic plan was acceptable and would lead to satisfactory profitability in the medium term. The experts regarded the yen/euro exchange rate as the main risk factor in the strategic plan.
- (38) The Commission notes that some degree of independence from Suzuki could be achieved through production of the PS10 and Stella models. However, the company would still be highly dependent on components and finished products supplied by Suzuki. This would imply that profitability would be highly dependent on import prices, and in particular on fluctuations of the Japanese yen.
- (39) The Commission notes that Santana did not make use of financial instruments in order to reduce the risk connected with fluctuations in the exchange rate between the euro and the Japanese yen.
- (40) The Commission consulted an independent financial expert in order to assess the significance of Santana's currency exposure and to quantify the potential costs associated with hedging such exposure.
- (41) The independent financial expert considered that Santana was exposed to foreign-exchange risk and that companies similar to Santana, in terms of currency exposure, location, size, and financial expertise, would normally hedge by concluding forward foreign-exchange contracts or (less likely) currency option contracts of the standard call or put type.
- (42) The costs associated with the above financial contracts are not large compared with the size of the transaction they secure: the cost of forward contracts is low, while the cost of option contracts depends on the chosen strike price.
- (43) The independent financial expert stressed that the above financial instruments are usually used to reduce or eliminate the currency risk in the short term (up to one year), but cannot eliminate the long-term currency risk that is associated with Santana's business. The financial expert considered that companies usually do not hedge their currency positions for very long periods, but rather assess the size of their currency exposure in the light of the expected profitability of the investment opportunities they have. Indeed, investors undertake riskier investments if the profitability prospects are sufficiently high.

- (44) On the basis of the foregoing considerations, the Commission has analysed whether Santana's profitability prospects were high enough to compensate for the foreign-exchange risk it was facing. Using the profitability figures given in the January 1999 strategic plan, the Commission calculated that Santana's expected return on capital invested was higher than what other companies in the automotive industry set as their targets. These profitability prospects were clearly sufficient to compensate for the higher risk facing the company.
- (45) The Commission also analysed Santana's return on capital invested using stricter estimates of profitability. Firstly, it used the revised profit figures as communicated in the letter of 24 May 2000, where profitability after 2003 was reduced to take account of additional investments for new models. Secondly, the Commission excluded from the profit calculation certain financial items that, although accruing with certainty to the company, were by nature more similar to extraordinary items than to the result of normal operations. The return on investment resulting from this calculation was still higher than what other companies in the automotive industry set as their targets.
- (46) In the assessment of Santana's exposure to foreign-exchange risk, the Commission also looked into the management of provisions by the company. In the course of 1997 and 1998 provisions for general risks were decreased, and the sums transferred to the profit and loss account as extraordinary profits. The Commission has assessed whether such management of provisions could have weakened Santana's position in managing its foreign-exchange risk.
- (47) The Commission concluded that, although not commendable from the point of view of prudent management, the decrease in provisions could not have weakened Santana's position with regard to foreign-exchange risk. This is because provisions do not eliminate or reduce foreign-exchange risk; they only anticipate estimated financial losses in the company's books. However high the provisions, the risk is never limited to their amount. For this reason, they cannot replace currency hedging as a tool for managing foreign-exchange risk.
- (48) In the light of the foregoing considerations and of the reports from the independent automotive and financial experts, the Commission concludes that a market economy investor would probably have required sounder short-term management of the currency risk, through the use of forward foreign-exchange and currency option contracts. A market economy investor could have asked for such change in hedging policy to be implemented at little cost to the company.
- (49) At the same time, the Commission concludes that a market economy investor would have agreed to take part in the capital injection, since the profitability prospects of Santana's strategic plan were sufficiently positive to compensate for the long-term risk connected with the company's currency exposure. Indeed, at the time the investment decision was taken in early 1999, Santana offered good chances of returning to profitability in the long term on the basis of plausible forecasts regarding the evolution of the yen/euro exchange rate.
- (50) The Commission consequently takes the view that Soprea, in making the capital injection in favour of its subsidiary Santana on the basis of the company's strategic plan, was behaving as a market economy investor. The capital injection under examination therefore complies with the market economy investor principle and does not constitute State aid within the meaning of Article 87(1).
- (51) Looking at the events that occurred after the point when the capital injection was made, the Commission notes that during the first half of 1999 the exchange rate remained relatively stable at a level compatible with the targets set out in the strategic plan. During the second half of 1999 and in the course of 2000, however, the euro depreciated significantly with respect to the main international currencies, including the Japanese yen.
- (52) A number of measures were decided by Santana at the beginning of 2000, in order to offset the negative effects of the depreciation of the euro, and were communicated to the Commission by letter dated 24 May 2000. Nevertheless, the adverse effects on Santana of the depreciation of the euro after the capital injection had been decided were particularly strong and the company failed to achieve the targets set out in the strategic plan. While volatility on the international currency markets and fluctuations of the euro were expected, partly as a consequence of the creation of the common currency, the extent of the depreciation that actually took place could not have been forecast at the time the strategic plan was drawn up and implemented. It cannot, therefore, be taken into account in determining whether the market economy investor principle was complied with when the capital injection into Santana was made.

Regional aid measures

- (53) The measures in the form of investment aid and a public guarantee granted to Santana constitute State aid within the meaning of Article 87(1) of the Treaty. They would be financed by the State or through State resources; moreover, given that they represent a significant proportion of the project funding, they are likely to distort competition within the Community, giving an advantage to Santana over other companies not receiving aid. Finally, Santana is active in the motor vehicle industry, and the market for motor vehicles is characterised by extensive trade between Member States. It is clear that the measures constitute an individual application of an approved scheme; they nevertheless have to be notified, pursuant to Article 88(3) of the Treaty, in accordance with the procedural rules in the State aid field.

- (54) Article 87(2) of the Treaty lists certain types of aid that are compatible with the common market. In view of the nature and purpose of the aid, and the geographical location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. The Commission notes that the project is located in the region of Andalusia, which qualifies for assistance under Article 87(3)(a), with a maximum regional ceiling of 50 % net grant equivalent (nge).
- (55) To determine whether the proposed measures are compatible with the common market under the exemption provided for in Article 87(3)(a) of the Treaty, the Commission must check compliance with the conditions specified in the motor vehicle framework.
- (56) The Commission notes that the public guarantee was granted to cover a bank loan financing investment linked to production of the Jimny model. It accordingly concludes that the public guarantee must be examined as regional investment aid, in conjunction with the investment grants.
- (57) The Commission establishes first and foremost whether regional aid may be granted. To this end, it considers in particular whether the investor could have chosen an alternative site for its project, so as to demonstrate the need for the aid, with special reference to the mobility of the project. If there were no other new or existing industrial site within the group capable of receiving the proposed investment, the firm would be compelled to carry out its project in the sole plant available, even in the absence of aid. Mobility may be demonstrated by the investor on the basis of studies it has carried out with a view to taking the final location decision. The alternative site need not necessarily be located within the Community. However, the Commission checks that it is a plausible option, with special reference to the relevant markets.
- (58) The Commission checks the eligibility of the costs relating to the mobile aspects of the project. It then checks that the planned aid is in proportion to the regional problems it is intended to overcome. To this end, it usually carries out a cost-benefit analysis, except where the intensity of the planned aid is lower than the ceiling indicated in the motor vehicle framework.
- (59) The Commission has assessed the compatibility of the regional aid with the common market for each of the individual investment projects: the PS 10 project, the Chatenet-Stella project and the remaining projects (notably the Jimny project).
- (60) The PS 10 is a motor vehicle within the meaning of the motor vehicle framework. After examining the data provided by the Spanish authorities and visiting the plant, the Commission concludes that the investments for production of the PS 10 are independent of the other investments included in the strategic plan.
- (61) The total cost of the project is ESP 2 700 million (EUR 16 million) and the planned aid amounts to ESP 405 million (EUR 2,4 million). These amounts are below the thresholds above which notification is compulsory under an approved scheme⁽⁹⁾. Therefore, the project is not individually notifiable.
- (62) The Chatenet-Stella project involves an investment of ESP 200 million (EUR 1,2 million) and concerns the production under licence of a light cabin quadricycle. After examining its technical characteristics⁽¹⁰⁾, the Commission concludes that the Stella is not a motor vehicle and therefore does not fall within the scope of the motor vehicle framework. As a consequence, the aid to the project must be assessed under the regional aid guidelines.
- (63) The regional aid element in the project (EUR 0,18 million) was granted under an approved scheme and is therefore compatible with the common market.
- (64) The regional aid planned for the remaining projects consists firstly of direct investment aid amounting to ESP 1 542 million (present value: ESP 1 255 million). Secondly, State aid is involved in the loan guarantee, which enabled productive equipment to be purchased for the Jimny assembly line. In accordance with the analysis set out in the decision initiating proceedings, the Commission concludes that Santana could have secured the loan in question even without a public guarantee. However, the Commission finds that the price of 0,05 % per quarter charged to Santana for the public guarantee is lower than the market price. On the basis of information provided by the Spanish authorities, the Commission estimates the market cost of a guarantee identical to that granted to Santana at between 0.5 % and 0.8 % per year.

⁽⁹⁾ The thresholds are EUR 50 million for the nominal cost of the investment project or EUR 5 million total gross aid.

⁽¹⁰⁾ The Stella specifications for unladen mass, engine power and maximum speed are in line with the technical characteristics laid down in Article 1(3) of Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles (OJ L 225, 10.8.1992, p. 72). This Directive was last amended by Parliament and Council Directive 2000/7/EC (OJ L 106, 3.5.2000, p. 1).

- (65) The difference between the cost of the public guarantee and the market price for an identical guarantee thus amounts to a maximum of ESP 57 million (EUR 0,34 million) for the duration of the project. The additional data provided by the Spanish authorities in their letter of 22 December 1999 do not alter this assessment, in particular because the examples given relate to loans contracted in July and September 1999, i.e. over a year after the public guarantee was obtained. The Commission has to assess the aid according to the specific conditions obtaining at the time it was granted.
- (66) The aid for the remaining projects therefore amounts to a total of ESP 1 312 million in present value. This aid should have been notified to the Commission under Article 88(3) of the Treaty. The public loan guarantee was granted to Santana in June 1998 without first having been authorised by the Commission, and must therefore be deemed illegal.
- (67) In the decision initiating proceedings, the Commission analysed whether the project in question is mobile, particularly taking into account the fact that Santana has only one assembly plant, at Linares. Although this situation is not unique, it is unusual for motor vehicle manufacturers. In accordance with the analysis set out in the decision initiating proceedings, the Commission takes the view that the recipient of the aid is a business group bringing together Santana and Suzuki and that this business group did have the alternative of choosing other Suzuki plants in the world for producing the vehicles and then supplying the Community market by means of imports.
- (68) The Commission therefore concludes that the Jimny project is mobile. The mobile investments involved amount to ESP 9 175 million (present value: ESP 8 213 million). A linked investment in the tooling and dies workshop amounting to ESP 100 million (present value: ESP 93 million) is also to be regarded as mobile since it has been demonstrated that the company could have subcontracted this activity.
- (69) Other investments included in the strategic plan are not mobile. These are: the investment relating to modification of models and engines (ESP 1 003 million), miscellaneous activities (ESP 158 million), and a number of measures to modernise the industrial processes and the product range over the period 2003-2006 (ESP 3 500 million). These investments cannot therefore be taken into consideration in calculating the allowable aid intensity, and the Spanish authorities' letter of 24 May 2000 amending the notification did not in fact include these investments in the computation of the aid intensity.
- (70) Total mobile investments (Jimny project plus tooling and dies workshop) amount to ESP 8 306 million in present value, while the total aid planned (regional aid and bank guarantee) amounts to ESP 1 312 million in present value. The resulting intensity of the aid is 15,8 % gross grant equivalent (gge).
- (71) As for the proportionality of the aid, the motor vehicle framework states that if the intensity of the planned regional aid is not more than 20 % of the regional ceiling for the period 2000-2006, a cost-benefit analysis will not be required by the Commission in so far as the new regional maps have lower ceilings than those for the period 1994-1999.
- (72) According to the new regional map for Spain approved on 14 April 2000, Linares is located in an assisted area under Article 87(3)(a) of the Treaty where regional aid can normally be allowed up to a ceiling of 50 % nge (69 % gge) for large firms. The old ceiling was 60 % nge. This means that the threshold above which a cost-benefit analysis is required is 13,8 % gge.
- (73) The Commission notes that the aid with an intensity of 15,8 % gge which the Spanish authorities have planned to grant for the Jimny project is higher than the threshold above which a cost-benefit-analysis is required. Therefore, Spain would still have to demonstrate the proportionality of the aid by means of a cost-benefit analysis.
- (74) Insofar as the total amount of the regional aid granted to Santana does not exceed 13,8 % of the eligible investment, a cost-benefit analysis is not necessary and the aid involved can be deemed compatible with the common market. The maximum amount of aid that can be granted is ESP 1 146 228 000 in present value. Any aid granted to Santana over and above that amount is to be considered incompatible.

V. CONCLUSIONS

- (75) The Commission finds that Spain has unlawfully implemented the aid linked to the public guarantee covering a bank loan granted to Santana by the Regional Government of Andalusia in breach of Article 88(3) of the Treaty.
- (76) However, the Commission finds that the regional aid that Spain has planned to grant to Santana is partially compatible with the common market under Article 87(3)(a) of the Treaty for the following reasons: the aid amounting to ESP 405 million for the PS 10 project is not individually notifiable. The Stella project does not relate to the manufacture of a motor vehicle within the meaning of the motor vehicle framework. Since it is granted under an approved scheme, the aid amounting

to ESP 30 million is compatible with the common market. The aid for the Jimny project is compatible insofar as it does not exceed 13,8 % of the eligible investment of ESP 8 306 million in present value (calculated using a discount rate of 6,2 % from base year 1998). The maximum amount of aid that can be granted is ESP 1 146 228 000 in present value.

- (77) The capital injection of ESP 3 900 million was carried out in accordance with the market economy investor principle and therefore does not constitute aid.
- (78) Any additional State aid for the investment projects in question is incompatible with the common market.
- (79) In view of the characteristics of the projects, the Commission calls on the Spanish authorities, pursuant to point 2.3 of the motor vehicle framework, to present to the Commission a detailed report on the implementation of the project,

HAS ADOPTED THIS DECISION:

Article 1

The capital injection made by Soprea, a subsidiary of the Instituto de Fomento de Andalucía (IFA), into Santana Motor SA and amounting to ESP 3 900 million does not constitute aid within the meaning of Article 87(1) of the Treaty.

The State aid which Spain has planned to implement for Santana Motor SA at Linares for the PS10 and Stella projects is compatible with the common market.

The State aid which Spain has planned to implement for Santana Motor SA at Linares for the Jimny and related projects is compatible with the common market within the meaning of Article 87(3)(a) of the Treaty, up to a maximum intensity of 13,8 % gross grant equivalent of the eligible investment

amounting to ESP 8 306 million in present value (calculated using a discount rate of 6,2 % from base year 1998).

Implementation of the aid, amounting to not more than ESP 1 146 228 000 in present value (calculated using a discount rate of 6,2 % from base year 1998), is accordingly authorised.

Article 2

Any State aid in addition to the aid referred to in Article 1 that Spain plans to grant to Santana Motor SA for the Jimny and related projects is incompatible with the common market.

Article 3

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply with it.

Article 4

Spain shall present, in December each year until the project is completed, a report on the state of progress and financial implementation of the project and general compliance with the conditions set out in the notification of the aid in question.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 23 October 2001.

For the Commission

Mario MONTI

Member of the Commission