

COMMISSION DECISION**of 6 July 2010****on State aid C 34/08 (ex N 170/08) which Germany is planning to implement in favour of Deutsche Solar AG***(notified under document C(2010) 4489)***(Only the German text is authentic)****(Text with EEA relevance)**

(2011/4/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) of the latter,

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:

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾ on 26 August 2008. The Commission invited interested parties to submit their comments on the aid measure.

(5) By letters dated 7 August (A/16575) and 26 September (A/19789) 2008, the German authorities asked a delay to submit their comments. The Commission received the comments from the German authorities on 31 October (A/22972) and 2 December (A/25961) 2008. The Commission received no comments from third parties.

(6) By letters dated 7 April (A/8226), 29 May (A/13120), 4 (A/25461) and 17 (A/26433) December 2009, and 12 January (A/550), 26 April (A/7045), 14 May (A/8206), and 10 June (A/9628) 2010, the German authorities submitted additional information to the Commission.

1. PROCEDURE

(1) By electronic notification of 28 March 2008, registered the same day at the Commission, Germany notified to the Commission, in line with the individual notification requirement resulting from the Guidelines on national regional aid for 2007-2013 ⁽²⁾ (hereinafter RAG), its intention to provide regional aid for a large investment project in favour of Deutsche Solar AG, for the setting-up of a plant to produce solar wafers in Freiberg, Saxony, Germany.

(7) On 12 October 2009, a meeting took place between the Commission services and the German authorities as well as the investor in Berlin.

2. DETAILED DESCRIPTION OF THE AID**2.1. Objective of the measure**

(2) On 27 February 2008 and on 25 June 2008, a meeting took place between the Commission services and the German authorities. The Commission requested additional information by letter of 28 May 2008 and sent an information letter on 10 June 2008. The additional information was provided by Germany by letter of 16 June 2008.

(8) The aid project aims at promoting regional development. The investment is to take place in eastern Germany, namely Freiberg in the land Saxony, an assisted area pursuant to Article 107(3)(a) TFEU.

(3) By letter dated 16 July 2008, with reference C(2008) 3507 final, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the aid.

(9) The German authorities intend to provide regional investment aid to Deutsche Solar AG (hereinafter DS) for the setting-up of a plant to produce solar wafers. The total eligible costs of the notified investment amount to EUR 350 million in nominal value.

⁽¹⁾ OJ C 217, 26.8.2008, p. 19.

⁽²⁾ OJ C 54, 4.3.2006, p. 13.

⁽³⁾ Cf. footnote 1. A corrigendum decision was adopted on 28 April 2009 (OJ C 203, 28.8.2009, p. 11).

2.2. The beneficiary

- (10) The beneficiary of the financial support is DS, a company producing crystalline silicon based solar wafers. DS is a 100 % daughter company of SolarWorld AG (hereinafter SW). The SW group is active at worldwide level (production sites in Germany, the US and South Korea) in the solar power industry, combining all stages of the solar value chain, from the raw material silicon to turn-key solar power plants. SW group produces solar wafers, solar cells and solar modules with the exception of solar systems⁽⁴⁾. In 2009, SW group had 2 000 employees and a consolidated revenue exceeding EUR 1 billion.
- (11) Further to the notified investment in Freiberg East, DS already has two other production plants located in Freiberg, Sachsen (one in the industrial park Freiberg South and one in the industrial park Freiberg Saxonia). The three sites are located within 5-6 km distance from each other. In 2007, DS had a turnover of EUR 318 million. In 2008, DS had 770 employees. Other 100 % subsidiaries of SW group located in Freiberg are Deutsche Cell GmbH (production of solar cells), Solar Factory GmbH (production of solar modules), Sunicon AG (recycling of silicon), SolarWorld Innovations GmbH (R & D), and SolarWorld Solicium GmbH (production of silicon). SW also holds 49 % in the Freiberg based JSi GmbH (production of silicon), a joint venture with Evonik Degussa GmbH.

2.3. The project

2.3.1. Notified project (Freiberg East)

- (12) Germany notified aid for a large investment project by DS, consisting in the setting-up of a new plant for the production of multi-crystalline solar wafers in Freiberg East. The new plant is planned to have a nominal annual capacity of 500 Megawatt peak (MWp)⁽⁵⁾.
- (13) The project started on 18 December 2007. The investment project should be finalised in 2010 and full production will be reached by end of 2010.

⁽⁴⁾ SW group does not make nor sell solar energy systems. However SolarWorld AG has a 29 % share in SolarParc AG, which has as its main activity to produce and set up solar plants. As this is only a minority shareholding, SolarParc AG was not taken into account for the market assessment of the present State aid case.

⁽⁵⁾ One megawatt peak (MWp) corresponds to 1 000 000 Watt peak (Wp). Watt peak is a measurement unit for the capacity (nominal output) of solar cells and solar modules. Watt peak is the standard usually used in the photovoltaic industry to measure the technical capacity of solar modules; it expresses the nominal output of the module under standard test conditions.

- (14) With the new project, DS intends to create at least 130 direct jobs and the same number of indirect jobs in a region with high unemployment rates.

2.3.2. Previous projects (Freiberg South)

- (15) At the time of the notification, Germany informed the Commission on aid to be granted for another DS investment (project P3 in Freiberg South) started almost simultaneously with the notified project (on 1 September 2007), for the extension of its existing solar wafer plant from 350 to 500 MWp. Eligible costs of this project amount to EUR 49 million (nominal value). The German authorities intended to grant regional aid amounting to EUR 14 million (nominal value) for this investment. The aid for this project was however withdrawn and Germany informed the Commission after the opening of the formal investigation that no aid was paid out or would be granted for this project.
- (16) After the opening of the formal investigation, Germany informed the Commission about aid granted for a DS investment previous to the above mentioned project P3, started also within 3 years (on 1 June 2006) from the start of the notified investment project in Freiberg East. This project P2 relates to an earlier extension of the existing solar wafer plant (from 270 to 350 MWp), involving aid amounting to EUR 16 905 000 (nominal value) for eligible costs of EUR 49 995 991 (nominal value). The aid was granted in 2006 on the basis of existing aid schemes⁽⁶⁾.

2.4. Legal basis

- (17) The aid for the notified project Freiberg East is to be granted under existing aid schemes in the form of two instruments: a direct grant and an investment premium.
- (18) The direct grant will be based on the aid scheme '36. Rahmenplan der Gemeinschaftsaufgabe Verbesserung des regionalen Wirtschaftsstruktur'⁽⁷⁾ ('Improvement of the regional economic structure') (hereinafter GA scheme).

⁽⁶⁾ Commission Decision of 1 October 2003 on State aid case N 642/02 — Renewal of the joint task scheme 'Improvement of the regional economic structure' (OJ C 284, 27.11.2003, p. 5), Commission Decision of 19 January 2005 on State aid case N 142a/04 — Law on investment premiums 2005 — standard rules (OJ C 235, 23.9.2005, p. 4), and block-exempted scheme XR 6/2007 — Law on investment premiums 2007 (OJ C 41, 24.2.2007, p. 9).

⁽⁷⁾ In conformity with Article 8 of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (Block Exemption Regulation for regional aid; OJ L 302, 1.11.2006, p. 29), Germany submitted a summary of the aid that can be granted under this scheme, registered at the Commission under reference XR 31/2007 (OJ C 102, 5.5.2007, p. 11).

- (19) The investment premium will be granted on the basis of the 'Investitionszulagengesetz 2007' ⁽⁸⁾ ('Law on investment premiums 2007') and if necessary its successor scheme 'Investitionszulagengesetz 2010' ⁽⁹⁾ (hereinafter IZ schemes).

2.5. Investment costs

- (20) The notified project in Freiberg East involves a total eligible investment in nominal value of EUR 350 000 000. A breakdown of the eligible costs over the years is given in the table below:

(EUR)

	2008	2009	2010	Total
Eligible costs	136 000 000	164 000 000	50 000 000	350 000 000

2.6. Financing of the project

- (21) DS will finance the notified project in Freiberg East using own resources and (bank) loans, in addition to the aid applied for. An overview of the relevant amounts per source is given in the table below (nominal values):

(EUR)

Source	Amount
Own resources	[...] ^(*)
Grant under GA scheme and IZ schemes	45 395 000
Bank loan (not covered by public guarantee)	[...]
Total	350 000 000

^(*) Covered by the obligation of professional secrecy.

2.7. Applicable regional aid intensity ceiling

- (22) Freiberg, Saxony is an assisted area in virtue of Article 107(3)(a) TFEU with a maximum aid intensity of 30 % gross grant equivalent (GGE) for large undertakings according to the RAG and the German regional aid map ⁽¹⁰⁾ in force at the time of the notification.

2.8. Aid amount and aid intensity

- (23) The beneficiary applied for aid for the notified project on 17 August 2007. By letter dated 22 August 2007, the German authorities informed the beneficiary that the project was eligible for aid. Germany committed to not grant the aid before approval by the Commission and to respect the maximum aid approved.
- (24) Germany initially notified regional aid amounting to EUR 48 million (nominal value) for the DS investment project in Freiberg East. The Commission however initiated the formal investigation against this aid based on doubts that the notified project should be considered a single investment project (point 60 of the RAG) with a previous aided project in Freiberg South, and that hence the notified aid intensity would exceed the maximum allowable (applying the scaling down mechanism of point 67 of the RAG).

⁽⁸⁾ In conformity with article 8 of Commission Regulation (EC) No 1628/2006, Germany submitted a summary of the aid that can be granted under this scheme, registered at the Commission under reference XR 6/2007 (OJ C 41, 24.2.2007, p. 9).

⁽⁹⁾ In conformity with Article 9 of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation, OJ L 214, 9.8.2008, p. 3), Germany submitted a summary of the aid that can be granted under this scheme, registered at the Commission under reference X 167/2008 (OJ C 280, 20.11.2009, p. 5).

⁽¹⁰⁾ Commission Decision of 8 November 2006 on State aid case N 459/06 — Regional State aid map for Germany 2007-2013 (OJ C 295, 5.12.2006, p. 6).

- (25) After the opening of the formal investigation, Germany informed the Commission that it had withdrawn the aid for project P3 in Freiberg South. Germany also reduced the notified aid for the DS project in Freiberg East to EUR 40 364 760 (discounted value⁽¹¹⁾), corresponding to an aid intensity of 12,97 % GGE, in order to limit the total aid granted for the combined eligible costs (EUR 402 865 942 in discounted value) of the notified project and previous projects P2 and P3 undertaken within 3 years to the maximum allowable (EUR 55 749 652 in discounted value – 14,06 % GGE) in a 'single investment project' scenario.

2.9. General commitments

- (26) The German authorities have committed to submit to the Commission:
- within 2 months of granting the aid, a copy of the signed aid contract between the granting authority and the beneficiary,
 - on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant),
 - within 6 months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (27) The Commission, in its decision to initiate the formal investigation procedure in the present case, noted that it had doubts on the compatibility of the aid with the internal market based on Article 107(3)(a) TFEU and with the RAG.
- (28) According to point 60 of the RAG, in order to prevent that a large investment project is being artificially divided into sub-projects in order to escape the provisions of these guidelines, an investment project will be considered to be a 'single investment project' when the initial investment is undertaken in a period of 3 years by one or more companies and consists of fixed assets combined in an economically indivisible way.
- (29) To assess whether an initial investment is economically indivisible, the RAG stipulates in its footnote 55 that the Commission will take into account the technical, functional and strategic links and the immediate geographical proximity.

⁽¹¹⁾ Discounted to the year of granting the first aid to project P2 (12 September 2006), using the discount rate applicable at that date (4,36 %).

- (30) In case the notified project would constitute a single investment project with project P3 in Freiberg South, the scaling down mechanism of point 67 of the RAG would have to be applied to the combined eligible costs of the two projects, and the notified aid together with the aid to be granted for the project P3 would exceed the maximum allowable, and the excess would be incompatible with Article 107(3)(a) TFEU.
- (31) In its decision to initiate the formal investigation procedure, the Commission noted that the distance of only about 5 km between the location of the notified project (Freiberg East) and the previous project P3 (Freiberg South) could be regarded as immediate geographical proximity. The Commission further noted the presence of certain functional and technical links between the two investments, as well as rather strong strategic links. On this basis, the Commission raised doubts against Germany's view that the notified project did not constitute a single investment project (in the meaning of point 60 and footnote 55 of the RAG) with the project P3 in Freiberg South, and invited third parties to comment on the indivisibility of the two DS investment projects in Freiberg.
- (32) In its decision to initiate the formal investigation procedure, the Commission also assessed the compatibility with the general provisions of the RAG and with the specific rules for aid to large investment projects in point 68(a) and (b) of the RAG, concluding that the notified measure was in compliance with them.

4. COMMENTS FROM INTERESTED PARTIES

- (33) The Commission received no observations from third parties.

5. COMMENTS FROM THE GERMAN AUTHORITIES

5.1. Initial comments submitted by Germany

- (34) In its initial comments submitted to the Commission (on 31 October and 2 December 2008), Germany expressed the view that the criteria (geographical proximity, technical, functional and strategic links) specified in point 60 and footnote 55 of the RAG are not suitable to determine whether two investment projects should be considered 'economically indivisible', because these factors do not allow to clarify the circumstances in which a project can be considered to be economically viable without the other project. Germany further argued that to interpret the legal concept of 'economic indivisibility' the sole decisive factor is whether one project is economically feasible without the other.

- (35) Germany further considered that the Commission's argument that there is some kind of functional and technical links between the projects in Freiberg East and South is not sufficient to establish that they are economically indivisible. Germany concluded that the Commission's grounds for initiating the formal investigation procedure were therefore based on a misuse of the discretionary power of the Commission accorded to it under Article 107(3) TFEU, which resulted in a disproportionate decision against the beneficiary of the aid.
- (36) Moreover, Germany stated that the application of the criterion 'geographical proximity' is inappropriate for the purpose of preventing subsidy increases, since not all language versions of footnote 55 of the RAG include the requirement that the investment sites be in 'immediate' geographical proximity to one another (e.g. the French version does not specify 'immediate' but only 'geographical proximity'). Germany argued that the criteria in footnote 55 do therefore not form a uniform legal framework for the regulation of subsidy spirals.
- (37) In view of the above, Germany concluded that the DS projects in Freiberg South and Freiberg East were not economically indivisible and were not to be considered to form a single investment project in the meaning of point 60 and footnote 55 of the RAG. According to Germany, the notified aid for the Freiberg East investment was therefore not to be reduced applying the scaling down mechanism to the combined eligible investment costs of the DS projects in Freiberg South and East.
- (38) With its initial comments, Germany also submitted updated information on the investment projects undertaken by DS in Freiberg South and East within 3 years from the start of the notified project: previously to the project P3 (extension of solar wafer production capacity from 350 to 500 MWp) in Freiberg South, another project P2 (previous extension of solar wafer production capacity from 270 to 350 MWp) had been undertaken at the same site. Aid had also been granted (under existing aid schemes) to this project P2. Furthermore, Germany informed that the planned aid to project P3 would only be granted in the form of investment premium (based on the IZ scheme).

5.2. Further updating information submitted to the Commission — amendment of the initial notification

- (39) Subsequently to its initial comments, Germany at several stages submitted updated information on the investment projects undertaken or to be undertaken by the beneficiary group in Freiberg South within a period of 3 years from the start of the notified investment project.
- (40) The final picture of the situation is summarised in the table below:

	Freiberg South (P2 – P3)	Freiberg East	Freiberg Saxonia
Status	Previous projects P2 and P3, non-notifiable aid	Notified project	Future project
Product	Solar wafers	Solar wafers	Solar modules
Production capacity (in MWp)	From 270 to 350 (P2) From 350 to 500 (P3)	500	300
Start of project	1.6.2006 (P2) 1.9.2007 (P3)	18.12.2007	Summer/Autumn 2010
Eligible costs (EUR, nominal values)	49 995 991 (P2) 49 000 000 (P3)	350 000 000	72 500 000
Aid amount (EUR, nominal values)	16 905 000 (P2) 0 (*) (P3)	45 395 000 (**)	?

(*) Germany withdrew the initially planned EUR 14 million of aid for P3.

(**) Germany reduced the aid for the notified project in Freiberg East.

- (41) The main changes to the initial notification concern the withdrawal of all aid to be granted for project P3 in Freiberg South, and the reduction of the aid to be granted for the notified project in Freiberg East. Germany also committed that no aid had been or would be paid out for project P3.
- (42) Germany informed the Commission in the course of the formal investigation that, even though it did not explicitly admit that the notified project in Freiberg East would form a single investment project in the meaning of point 60 and footnote 55 of the RAG together with the projects in Freiberg South, Germany would limit the total aid granted for the combined eligible costs (EUR 402 865 942 in discounted value) of the three projects P2, P3 and the notified project to the maximum allowable (EUR 55 749 652 in discounted value – 14,06 % GGE) in a ‘single investment project’ scenario.
- (43) Additionally, Germany also included information on a future large investment project SF III by SW group in Freiberg Saxonia (setting-up of a new plant for the production of solar modules), to be started within 3 years from the start of the notified project, and announced its intention to grant aid to this project. Germany committed to notify the aid for SF III separately and make it conditional to Commission approval.

6. ASSESSMENT OF THE AID

6.1. Existence of State aid in the meaning of Article 107(1) TFEU

- (44) In its decision to initiate the formal investigation procedure, the Commission concluded that the financial support to be granted by Germany to DS on the basis of existing regional aid schemes (GA scheme and IZ schemes) constitutes State aid within the meaning of Article 107(1) TFEU. The German authorities have not contested that conclusion.

6.2. Notification requirement, legality of the aid, and applicable law

- (45) By notifying the planned aid measure on 28 March 2008 before putting it into effect, Germany respected its obligations under Article 108(3) TFEU and the individual notification requirement expressed in Article 7(e) of the Block Exemption Regulation for regional aid.
- (46) Having established that the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the above mentioned measure can be found compatible with the internal market. As the measure relates to a regional investment

aid, the Commission assessed it on the basis of the RAG, and, more specifically, the provisions of section 4.3 of the RAG relating to large investment projects.

6.3. Compatibility of the aid with general provisions of the RAG

- (47) In its decision to initiate the formal investigation procedure, the Commission indicated that the notified aid is to be granted on the basis of, and in conformity with, the provisions of block-exempted aid schemes which respect the general compatibility criteria of the RAG.
- (48) In particular, the project comprises an initial investment within the meaning of the RAG as it concerns the setting-up of a new establishment. The costs eligible for investment aid are defined in line with the RAG, and the rules on cumulation are respected.
- (49) Furthermore, the beneficiary has applied for aid, the German authorities confirmed in writing, before DS started work on the project, that the project was eligible for aid, and agreed to grant the aid subject to the Commission's approval.
- (50) DS has the obligation to maintain the investment in the region for a minimum of 5 years after completion of the project.
- (51) DS provides a financial contribution of at least 25 % of the eligible costs in a form which is free of any public support.

6.4. Compatibility with the provisions for aid to large investment projects

6.4.1. Single investment project and maximum aid intensity

- (52) According to point 60 of the RAG, in order to prevent that a large investment project is being artificially divided into sub-projects in order to escape the provisions of these guidelines, an investment project will be considered to be a ‘single investment project’ when the initial investment is undertaken in a period of 3 years by one or more companies and consists of fixed assets combined in an economically indivisible way.
- (53) Member States might be inclined to notify separate projects because treating them as separate instead of as a single investment project normally allows a higher maximum aid intensity due to the application of the automatic scaling-down mechanism (point 67 of the RAG) ⁽¹²⁾.

⁽¹²⁾ Indeed, for one project above EUR 100 million divided into two projects, the Member State could apply twice the full regional aid ceiling to the first EUR 50 million of the projects (no scaling down of the applicable regional aid ceiling required) and twice half of this ceiling to the next EUR 50 million, while for all eligible costs above EUR 100 million the regional aid ceiling is reduced to one third (by 34 %).

- (54) In the present case, the Commission opened the formal investigation based on doubts that the notified aid would exceed the maximum allowable if the project would form a single investment project with a previously subsidised project (P3) in Freiberg South. Project P3 is a follow-up project of P2 (both projects are related to subsequent extensions of the production capacity of an existing solar wafer plant from 270 to 350 MW and then from 350 to 500 MW), which is a classical example of a 'single investment project' scenario. Indeed, the investments are carried out within 3 years in immediate geographical proximity (within the same integrated production site of SW group in Freiberg South) and present clear technical (same product and production technology), functional (same raw material, common suppliers/customers, common services) and strategic (integrated capacity increase strategy addressing a same market) links.
- (55) In this case, Germany withdrew all aid to project P3 and amended the notification to reduce the aid intensity for the notified project in order to limit the total aid granted for the combined eligible costs of the notified project in Freiberg East and two previous projects (P2 and P3) in Freiberg South to the maximum allowable in a 'single investment project' scenario (covering all projects undertaken within 3 years). The Commission therefore does not need to further investigate and take a position on whether the notified project forms a single investment project with these previous projects.
- (56) As regards the calculation of the aid, Germany agreed that projects P3 and P2 will be taken into account for the calculation of the maximum aid intensity like in a 'single investment project' scenario between the notified project and previous projects.
- (57) Therefore, regarding the calculation of the maximum allowable aid intensity, in line with point 41 of the RAG, all eligible costs were discounted to the year of granting the first aid to project P2 (12 September 2006), using the discount rate applicable at that date (4,36 %): the total costs amount to EUR 402 865 942 in discounted value. The maximum allowable aid in discounted value in this case would be EUR 55 749 652 ⁽¹³⁾, corresponding to an aid intensity of 14,06 % GGE for the single investment project.
- (58) As EUR 15 384 891 (discounted value) has already been granted (for P2), the maximum allowable aid for the notified project would be EUR 40 364 760 (discounted value), corresponding to an aid intensity of 12,97 % GGE. Since Germany committed to respect this maximum, it can be concluded that the scaling down rules under point 67 of the RAG are respected even in case the notified project would constitute a single investment project with previous subsidised projects within 3 years.
- (59) Since Germany committed to notify the aid for the mentioned future project SF III in Freiberg Saxonia separately and make it conditional to Commission approval, the Commission does not need to take a position in the present decision on whether the notified project forms a single investment project with the future project SF III.
- 6.4.2. *Compatibility with point 68 of the RAG*
- (60) The Commission's decision to allow regional aid to large investment projects falling under point 68 of the RAG depends on the market shares of the beneficiary before and after the investment and on the capacity created by the investment. To carry out the relevant tests under point 68(a) and (b) of the RAG, the Commission has to establish appropriate product and geographic market definitions.
- (61) In its decision opening the formal investigation, the Commission noted that the product envisaged by the notified investment project is multi-crystalline silicon based solar wafers.
- (62) In line with point 69 of the RAG (where the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be the downstream product), since the Commission could not exclude that the solar wafers produced in Freiberg East would not, at least partly, be used internally by the beneficiary group for further production into solar cells or solar modules, the Commission took the view, in its decision opening the formal investigation procedure, that the product concerned by the notified project was thus not only solar wafers but also solar cells and solar modules. The Commission further defined the relevant product markets for the assessment of point 68(a) of the RAG to be the markets for solar wafers, solar cells and solar modules, and defined the geographical market for the assessment as being worldwide.

⁽¹³⁾ Applying a regional ceiling of 35 % GGE for eligible costs related to P2 (based on the German regional aid map in force at the time of granting aid to this project — Commission Decision of 2 April 2003 on State aid case N 641/02 — Regional State aid map for Germany 2004-2006, OJ C 186, 6.8.2003, p. 18), and of 30 % GGE for P3 and the notified project, as the standard regional ceiling was reduced in the new German aid map applicable since 2007.

(63) In its decision to initiate the investigation procedure, the Commission calculated the beneficiary group market shares on all relevant markets before and after the investment (2006 to 2011), taking into account a worst case scenario that the market would not grow after 2010 (as the independent studies available did not provide a forecast for the years after 2010). Since based on these calculations, all market shares were below 20 % before the investment and below 15 % after the investment, the Commission noted that the market shares would not exceed 25 % and concluded that hence the notified aid was in line with point 68(a) of the RAG.

(64) In its decision to initiate the investigation procedure, the Commission also concluded that since the Compound Annual Growth Rate (CAGR) of the apparent consumption for photovoltaic products in the EEA for the year 2001 to 2006 (35 %) was clearly above the CAGR of the European Economic Area's GDP (1,97 %) for the same years, there should be no doubt that the CAGR of the apparent consumption in the EEA for the same years for the intermediate products would also be clearly above this 1,97 % even if there was no data available on these intermediate products in the EEA. The Commission consequently concluded that the notified aid was compatible with point 68(b) of the RAG.

(65) During the formal investigation procedure there were no indications that could raise doubts on the above statements regarding the compatibility with point 68 of the RAG. Moreover, the analysis in the opening decision demonstrated that the SW group expected market shares on all relevant markets in 2011 were below 15 %, there is thus no risk that when recalculated based on more recent studies they would exceed 25 %.

(66) In view of the above, the Commission confirms its conclusion taken in the decision to initiate the formal

investigation that the notified aid is compatible with point 68 of the RAG.

6.5. Conclusion

(67) Based on the above assessment, the Commission concludes that the notified aid measure is in line with the RAG and the regional aid map for Germany in force at the time of the notification,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which the Federal Republic of Germany is planning to implement for Deutsche Solar AG, amounting to EUR 40 364 760 in discounted value, corresponding to an aid intensity of 12,97 % GGE, is compatible with the internal market within the meaning of Article 107(3)(a) of the Treaty on the Functioning of the European Union.

2. Implementation of the aid amounting to EUR 40 364 760 in discounted value, corresponding to an aid intensity of 12,97 % GGE, is accordingly authorised.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 6 July 2010.

For the Commission

Joaquín ALMUNIA
Vice-President