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*(Announcements)*

# PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMPETITION POLICY

# EUROPEAN COMMISSION

## STATE AID SA.45359 (2016/N) — SLOVAKIA

## State Aid SA.45359 (2017/C) (ex 2016/N)

## Aid for Jaguar Land Rover s.r.o.

## Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union

**(Text with EEA relevance)**

(2017/C 422/03)

By means of the letter dated 24/05/2017 in the English language on the pages following this summary, the Commission notified Slovakia of its decision to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union concerning the abovementioned aid.

Interested parties may submit their comments on the aid in respect of which the Commission is initiating the procedure within one month of the date of publication of this summary and the following letter, to:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Fax + 32 2 2961242
Stateaidgreffe@ec.europa.eu

These comments will be communicated to Slovakia. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

## TEXT OF SUMMARY

*Description of the measure and the investment project*

Slovakia notified a regional investment aid grant of EUR 129 812 750 in nominal value (EUR 125 046 543 in present value) in favour of the large undertaking Jaguar Land Rover, (hereinafter 'JLR') for investment in the region of Nitra, Slovakia, an area eligible for regional aid under Article 107(3)(a) TFEU, with a standard regional aid ceiling of 25 % under the regional aid map of Slovakia for the time period from July 2014 to 2020.

The investment project with proposed eligible investment costs of EUR 1 406 621 000 aims at establishing a car manufacturing plant with an annual capacity of 150 000 'Premium D SUV segment' vehicles. The investment started in December 2015 and will be completed in 2020. The investment will take place in an industrial park under construction, the Nitra Strategic Park (hereafter 'NSP').

In addition to the notified regional aid grant, JLR may have benefited from further State aid in the form of 1) sale of land below market price in the NSP, which may be dedicated to JLR and 2) exemption from a fee payable at the exclusion of land from the 'agricultural land fund' before land is transformed into industrial land. These two elements of the incentive package have not been notified to the Commission.

*Assessment of the compatibility of the aid measures*

In the preliminary assessment phase, the Commission could not establish the compatibility of the above measures with the provisions of the Guidelines on Regional State Aid for 2014-2020 ([1]) (hereinafter 'RAG').

The RAG requires that the notifying Member State demonstrates that regional investment aid 1) has incentive effect, 2) is proportionate, and 3) has no negative effect on trade and competition or on EU cohesion.

1) Lack of incentive effect of the notified regional aid grant

Paragraph 61 of the RAG stipulates that (substantive) incentive effect can be proven in either one of two scenarios: i.e. in the absence of aid, the investment would not be sufficiently profitable (scenario 1) or that, in the absence of aid, the investment would take place in another location (scenario 2).

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, because the aid compensates the beneficiary for the net disadvantages and costs linked to the selected region compared to the other 'counterfactual' region.

Slovakia argues that the relevant incentive effect scenario in this case is 'scenario 2' because, in the absence of the aid, the investment would have been located in Mexico. According to the notification, the net present value of the investment project in Mexico over the lifetime of 20 years of the project would have been EUR 413 million lower in Nitra, Slovakia than in Mexico.

Regarding evidence that the aid indeed has an incentive effect, the Member State must provide a comprehensive description of the counterfactual scenario and the Commission has to verify that these scenarios are realistic and credible.

The Commission has doubts that the notified regional aid measure has incentive effect. The Commission has doubts whether the underlying documentation proves that Mexico was a credible alternative scenario at the time of the location decision. The Commission considers that the real counterfactual location for Nitra Slovakia may not have been the Mexican location, but a location in Jawor, Poland. The Commission's doubts regarding the notified regional aid measure's incentive effect is also based on the large gap in net present value between Mexico and Nitra, which is only partially compensated by the notified regional aid. Hence, the strategic considerations for the choice of Nitra over Mexico described in the notification, such as proximity to JLR headquarters (i.e. in Great Britain), volcanic activity and government effectiveness in Mexico, etc. appear to have been the real reasons for the beneficiary's selection of Nitra over Mexico, rather than the EUR 125 million (in present value) of notified aid.

2) Lack of proportionality

According to the RAG, the total amount of regional aid granted for an initial investment project should not exceed the adjusted regional aid ceiling set in the regional aid map. The notified aid is equivalent to the maximum amount of aid that can be granted for this investment in the Nitra region under Slovakia's current regional aid map. This maximum could be exceeded if the Commission would come to the conclusion that the project benefits from additional aid measures in the form of 1) sale of land below market price in the NSP, which may be dedicated to JLR and 2) exemption from a fee payable at the exclusion of land from the 'agricultural land fund' before land is transformed into industrial land.

a) Possible aid in the form of transfer of NSP land below market value

The Commission considers at this stage that there is a possibility that the sale of NSP land to JLR may involve a certain amount of additional State aid.

([1]) OJ C 209, 23.7.2013, p. 1.

Slovakia has already incurred EUR 75 million for the expropriation of agricultural land on which the NSP under construction will be located. It is also incurring a significant amount of additional expenditure for the development of the site itself. At the same time, according to information submitted by Slovakia, JLR will pay only a fraction of the total cost for the development of the NSP. The discrepancy between the cost incurred by Slovakia to expropriate the land and to develop the NSP on it and the price to be paid by JLR for the NSP land raises the question whether the sale of NSP land to JLR involves State aid.

Slovakia argues that the NSP construction cannot involve State aid as it falls within the public remit pursuant to paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter 'the NOA'); hence the NSP construction is not an economic activity. In addition, according to Slovakia, JLR will pay a market price for the NSP land it purchases and this market price is to be established on the basis of valuations carried out by independent experts.

The Commission, however, doubts at this stage whether the NSP is analogous to the situation referred to in paragraph 17 of the NOA, which is only applicable to measures that do not involve dedicated infrastructure.

Contractual agreements between Slovakia and the beneficiary provide to JLR outright ownership rights or option rights for later purchase relating to almost the entire surface area of the NSP under construction. According to 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) and applicable case practice, infrastructure is dedicated if it is built for a pre-identified undertaking and is tailored to this undertaking's specific needs. In the Commission's preliminary view, the NSP may be regarded as infrastructure dedicated to JLR for the following reasons: (1) a large surface area is reserved to the company under contractual terms (2) the beneficiary was a pre-identified undertaking and (3) the NSP appears to have been tailored to the beneficiary's specific needs.

If it were to be confirmed that the NSP is infrastructure that is dedicated to JLR, the company would have to pay for the development costs of the site, with the exception of costs relating to truly general infrastructure items, which still remain to be defined in this case.

Even if the outcome of the investigation would be that the NSP is not a dedicated infrastructure, questions remain as to the method to be used to establish a market price and whether the price paid by JLR is in line with the market price. In particular, the Commission questions whether the value of specific development works carried out by Slovakia and directly benefitting JLR is properly reflected in the valuations prepared by the independent experts or whether JLR pays a proportionate share of the NSP development cost commensurate with its ownership interest in the park.

b) Possible aid in the form of exemption from a fee payable at the exclusion of land from the 'agricultural land fund' before land is transformed into industrial land

The Commission considers that Slovakia may have granted to the beneficiary an exemption from a fee normally payable at the exclusion of land from the 'agricultural land fund' before agricultural land is transformed into industrial land. Slovakia argues that the fee does not constitute State aid as 1) it is part of the public remit task of industrial park construction and 2) the liability for the agricultural land fee is with a State-owned company which buys the agricultural land, prepares it for industrial use, then resells it to third parties, such as the beneficiary. Thus, the fee waiver is a matter concerning intra-State transfers.

The Commission cannot exclude at this stage that despite the interjection of a State-owned company in the transaction, imputability to the Slovak State and selective advantage to the beneficiary may be present. Thus, the Commission considers at this stage that the exemption from the fee may constitute State aid within the meaning of Article 107(1) of the TFEU.

3) Manifest negative effects

a) Maximum State aid intensity ceiling is exceeded

A manifest negative effect would exist where the proposed aid amount exceeds, compared to the eligible investment expenditure, the maximum aid intensity ceiling that applies to a project of a given size. The notified regional aid grant in present value results in an aid intensity *prima facie* below the maximum allowable aid intensity for this investment in the region of Nitra. However, any additional aid element (in the form of aid in the transfer of land below market value and/or the exemption from the agricultural land transformation fee) would result in the total amount of aid exceeding this aid intensity ceiling. The Commission therefore has doubts, at this stage of its assessment, that the aid measures satisfy the basic requirement that the maximum aid intensity ceiling for a notified investment project with the notified eligible investment amount in the Nitra region is respected.

b) The aid has manifest anti-cohesion effect

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, this will 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.

At this stage, the Commission has doubts as to whether the Mexico alternative is credible and whether in reality the alternative location was not Jawor in Poland. Internal company calculations show that the investment would have been more profitable in Jawor, Poland, which is in a region with the same regional State aid intensity ceiling as Nitra, i.e. 25 %. Therefore, the Commission is of the preliminary view that without the aid, the investment may have been located in Jawor, and that the investment aid has, therefore, a manifest anti-cohesion effect.

For the above reasons, the Commission raises doubts as to the compatibility of the aid measure with the conditions of the RAG and invites interested parties to comment.

TEXT OF LETTER

Sir,

The Commission wishes to inform Slovakia that, having examined the information supplied by your authorities on the aid measures referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

## 1. PROCEDURE

(1) By electronic notification registered on 12 May 2016, the Slovak authorities notified to the Commission an EUR 125 046 543 regional aid measure in favour of Jaguar Land Rover Slovakia s.r.o. subject to Commission approval. In addition to this notified aid measure, Slovakia may have granted additional non-notified aid via its Investment Agreement and Agreement on Future Agreements ([1]) with the beneficiary in the form of public funding for infrastructure that may be dedicated to the beneficiary, and in the form of exemption from the obligation of paying an 'agricultural land transformation fee' normally due at the exclusion of agricultural land from the 'Agricultural Land Fund'.

(2) By letters of 26 May, 6 July, 14 October, 10 November 2016, 26 January, 22 March and 28 April 2017, the Commission requested information which was submitted by letters of 27 May, 20 June, 14 September, 30 November 2016, 14 February, 27 March 2017 and 3 May 2017. Regarding the information relevant to the non-notified possible aid, information was also received in the case SA.45562 (2016/EO) — Aid measures related to the Act on Agricultural Land Fund (hereinafter 'the Agricultural Land Fund case') and Slovakia confirmed by letter of 3 May 2017 that this information can be used in the current case. By letters of 15 June, 16 August, 21 November 2016 and 9 January 2017 the Commission requested information in the Agricultural Land Fund case which was submitted on 11 July, 16 August, 13 October, 16 December 2016 and 6 February 2017. By a language waiver submitted on 7 April 2017, Slovakia agreed that this Commission decision will be adopted and notified to Slovakia in the English language.

## 2. DETAILED DESCRIPTION OF THE AID MEASURES

### 2.1. Objective of the aid

(3) The Slovak authorities intend to promote regional development by providing regional aid for an investment by the large undertaking Jaguar Land Rover Slovakia s.r.o. for building and tooling a premium aluminium vehicle manufacturing facility in Nitra, which is situated in the Nitra region, 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 July 2014 to 2020 ([2]) (hereinafter 'Regional Aid Map'). The project is expected to create 2 834 new direct jobs.

### 2.2. The beneficiary

(4) Slovakia indicates that the direct recipient of the aid is Jaguar Land Rover Slovakia s.r.o., which 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 Holdings PTE, which is 100 % owned by Tata Motors Limited India.

(5) Tata Motors Limited India is a public company incorporated in India, and listed on the National Stock Exchange of India and on the New York Stock Exchange. The main business activities of Tata Motors Limited India are the manufacture and sale of passenger cars, commercial vehicles, buses and coaches. Tata Motors Limited India is 34.3 % owned by Tata Group Companies (mainly Tata Sons, the central holding company of the Tata Group). The remaining shares are mainly owned by public shareholders; no other shareholder owns more than 10 %. The term 'Tata Group' has not been defined by the Slovak authorities in the notification. The Commission considers that the ultimate beneficiary of the aid measures is Tata Motors Limited India. Where Slovakia refers in the notification to 'JLR', it refers to the 'Jaguar Land Rover Slovakia s.r.o. (JLR) Group' and the reference does not include Tata Motors Limited India.

(6) JLR has more than 36 000 employees globally and manufacturing facilities in the United Kingdom, Brazil, India and China. More than 80 % of the cars produced in the UK are exported to 160 markets worldwide. JLR had total revenues of GBP 21 866 million in the financial year 2015 ([3]).

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([1]) The Investment Agreement and the Agreement on Future Agreements between Slovakia and JLR were signed on 11 December 2015.
([2]) SA.37423 (N/2013), OJ C 280 of 22.08.2014 p. 1.
([3]) The financial figures are consolidated at the level of Jaguar Land Rover Automotive plc.

(7) The Slovak authorities confirmed and provided information on the basis of which the Commission verified that JLR, and its parent company Tata Motors Limited do not constitute companies in difficulty within the meaning of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([4]).

### 2.3. **The investment project**

#### 2.3.1. ***The notified project***

(8) The investment project in its notified scope aims at setting up a new establishment (green-field investment) for the production of the All-new Land Rover Discovery (known as […] (*) and […] (known as […]), both of which belong to the 'Premium D SUV segment' as defined by the consultancy IHS Markit ([5]). The production site will have an annual capacity of 150,000 units of these models, which will be built on one single platform, the […] aluminium intensive architecture. The investment will take place in an industrial park under construction, the Nitra Strategic Park (hereinafter 'NSP'), on land which, on 8 July 2015, was still predominantly privately owned, agricultural land.

(9) The scope of the investment project, as originally (until September 2015) proposed in JLR's aid application to the Slovak authorities, referred to an investment with an annual production capacity of 300 000 units to be implemented in two phases, Phase 1 and Phase 2, and including the production of two further, not yet decided models. In the notification, Slovakia states that in the autumn of 2015 the beneficiary decided to reduce the initial scope of the project to a plant with the notified production capacity of 150 000 cars per annum. The investment itself involves the Phase 1 investment and some elements initially envisaged under Phase 2, but also usable in Phase 1. The beneficiary may extend the investment project into Phase 2 beginning in [2020-2025]. However, Slovakia states that the product to be manufactured in Phase 2 at the site is currently not known, and the expansion of the investment into Phase 2 has not yet been decided. Therefore, the intended subject matter of the notification is exclusively the Phase 1 project ([6]).

#### 2.3.2. ***Infrastructure investment and legislative changes in view of the notified project***

Legislative changes

(10) The Slovak government decided on 27 May 2015 to change the Significant Investments Act (Act No. 175/1999 on significant investments) and other laws (such as Act No 50/1976 on spatial planning and building order i.e. 'the building act', and Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land, ('Regulation 58/2013') to facilitate the creation of large industrial parks (300-400 hectares). The main elements of the planned changes included 1) a modification of the definition of 'significant investment' (to transform it into investments that are in the public interest), 2) adding a definition of 'strategic parks', 3) streamlining the rules relating to the issuance of certificates of 'significant investments', 4) simplifying the ownership transfer and expropriation of land in case of 'significant investments', 5) simplifying the planning permission process for 'significant investments' and 6) introducing an exemption from the obligation of paying an 'agricultural land transformation fee', normally due at the exclusion of agricultural land from the 'Agricultural Land Fund' (hereinafter 'ALF') in favour of land used for 'significant investments' with investment costs of at least EUR 1 billion which lead to the creation of at least 2000 new jobs. This is the so-called 'Exemption G' ([7]).

(11) Most of the changes were decided and initiated by the government on 27 May 2015 and entered into effect on 7 and 8 July 2015. 'Exemption G' entered into force on 1 August 2015 but, following contacts between the Commission and the Slovak authorities in the framework of the Agricultural Land Fund case, was repealed on 7 December 2016 without ever having been applied.

(12) A further change to Regulation 58 ([8]) introduced another exemption (the so-called 'Exemption H') from the 'agricultural land transformation fee' which applies to land purchased by 100 % state owned companies that construct strategic industrial parks that are recognised as 'significant investments'. This exemption entered into force on 31 October 2015.

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([4]) OJ C 249, 31.7.2014, p. 1–28.
(*) Business secret
([5]) See Annex 8 'IHS Premium D SUV Segment' Market Share May 2016 p. 21 of Slovakia's submission of 30 November 2016.
([6]) The Board of Tata Motors Limited noted in September 2015 that the project will be carried out in two phases. Documents submitted do not show that the decision to implement Phase 2 is suspended, only that Jaguar decided to apply for aid only for the first phase, as the models to be produced in the second phase are not yet defined, and the Commission could not have assessed the competition effects of aid for these unknown models in this situation.
([7]) This exemption is laid down in section 4 (g) of Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land", as amended.
([8]) In the Agricultural Land Fund case, Slovakia states that land purchases in connection with the NSP started on 14 July 2015, presumably of land that did not need expropriation.

Investment into infrastructure/Exemption from the ALF

(13) The JLR investment will take place in a new industrial park, the NSP, which is now under construction. The NSP is located next to an already existing industrial park of 29,7 hectares. The site where the beneficiary's future production site will be located is partially still agricultural land, or has until recently been agricultural land, without any existing infrastructure that would enable productive investments to settle on the site. The NSP was recognised, by decision of the Slovak government, upon entry into force of the relevant legislative change mentioned above, as a 'significant investment' on 8 July 2015.

(14) The entity made responsible by the Slovak authorities for the implementation of the NSP is MH Invest (hereinafter 'MHI'), a 100 % State-owned company that is controlled, governed and financed by the Ministry of Transport, Construction and Regional Development of Slovakia.

(15) MHI is responsible for (i) land expropriation, (ii) preparatory land works and the construction of the NSP. The Slovak authorities (through MHI's engagement of third parties, such as the Slovak Rail and Strabag and likely others) are carrying out the following works on the NSP: 1) certain preparatory land remediation works, in the value of EUR 221 million, 2) infrastructure development work, such as temporary utilities for EUR 2.1 million, final utilities at the point of connection for EUR 8,58 million, 3) motorway connection, rail connection, general road infrastructure and dual carriageway in the industrial park for EUR 185,9 million, 4) flood defence system and ground water management for EUR 25 million, and 5) logistics improvements in the form of intermodal, finished goods storage and expedition for EUR 51,85 million.

(16) MHI is becoming the initial owner of the future site of the NSP. MHI has already purchased the bulk of the land needed for the notified JLR investment project for a total amount of EUR 75 million ([9]).

(17) In the system that Slovakia created under Exemption H, the exempted and developed land is to be sold by MHI to third parties as industrial land at a price which according to Slovakia will reflect the market price as established on the basis of independent evaluation reports, which take into account the fact that the land is no longer designated as agricultural land, but has already been converted into industrial land.

(18) The NSP is to be developed in two phases. In a first phase it is foreseen to have 469.9 hectares of land developed, of which 298.9 hectares will be available for investors (excluding 29.7 hectares of the existing industrial park next to the NSP under construction and a further 171 hectare area designated for general infrastructure — a so-called 'Technical Land' — that are not available for commercial use). The 298.9 hectare area will be called hereinafter 'the NSP under construction'. The NSP will be extended, in a second phase, to 732,9 hectares, of which 441,9 hectares will be available to investors. This area will be called hereinafter 'the future, enlarged NSP'.

(19) MHI will transfer ownership and contractual options rights of the developed site to JLR. The Investment Agreement stipulates MHI's obligation to acquire the 'Site' (a parcel of 185,3 hectares where the first sections of JLR's plant will be located), prepare it for industrial use and then resell it to JLR in a 'future purchase agreement'. The Investment Agreement clearly states that 'Slovakia undertakes, represents and warrants that the S[pecial] P[urpose] V[ehicle] [i.e. MHI], the wholly owned subsidiary of the Ministry shall become owner of the Site [i.e. the initial parcel of 185,3 hectares' and 'transfers the Site to the Company [i.e. JLR]'. The Investment Agreement contains similarly binding language with respect to options to purchase two further parcels. One is an option for 12 months after purchase of the Site to buy the so-called 'South Land' (44,4 hectares) and another one for 10 years after purchase of the Site to buy 'the Expansion Land' (136 hectares). In addition, JLR received a right of first refusal for 20 years to buy another parcel, the so-called 'North Land' ([10]) (a further 69 hectares). The Investment Agreement provides that the market value of the 'optional' lands will be determined on the basis of market reports when they come up for sale. Besides, the Investment Agreement contains detailed obligations for Slovakia's execution of various land preparation and infrastructure development obligations, such as land reorganisation, site remediation works, utilities provision, etc. The Investment Agreement appears to give JLR wide-ranging oversight rights to ensure that preparatory works correspond to the specific needs of JLR (at least very clearly with respect to the initial 'Site'). The Investment Agreement also contains a list of certain Investor Specific Works which according to Slovakia will be paid for by JLR in the amount of EUR 16,9 million.

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([9]) The allocated budget for land acquisition is estimated at EUR [80-110] million.

([10]) Since the Slovak government is marketing this piece of land, this right of first refusal is effectively an option to buy at a time when the Slovak government is in the position to offer the land to a company other than JLR.

(20) The actual land purchase agreement for the initial 185,3 hectares (i.e. the Site) is expected to be signed in the second quarter of 2017, and the Agreement on Future Agreement stipulates that the land purchase agreement would be signed by 31 December 2018. The information relating to the price JLR will be paying for the Site is contradictory. On the one hand, the Slovak authorities declared that the land will be transferred to JLR at market value given that the price to be paid by JLR is calculated as an average of three independent expert valuations. Two land valuation reports specifically prepared for JLR state that the market value for the Site was assessed on the basis of the land being construction ready ([11]). One of the evaluation reports ([12]) indicates a EUR 15/m$^2$ value for the land in question, indicating a total value for the 185,3 hectares as circa EUR 27 795 000. Another one ([13]) indicates a price of EUR 15,5/m$^2$ (equalling EUR 28 725 000). Both reports were prepared on the order of the beneficiary and already contain 'market value' for the South Land and the North Land ([14]). A third report ([15]), a real estate market report prepared for MHI, indicates the value of industrial land in the Nitra area as between EUR 25 and EUR 35 per m$^2$, although it is unclear what the size of such industrial land would be. According to notification documents (e.g. in the application form for aid with the Slovak authorities in June 2015), the price JLR is expecting to pay for the 185,3 hectare parcel is about EUR 30 million, and the Agreement on Future Agreement indicates a price of EUR 15,83/m$^2$ (plus VAT).

(21) It is to be noted that JLR received the land purchase options relating to the South Land, the North Land and the Expansion Land free of charge.

(22) As regards the issue of the exemption from the ALF, the Investment Agreement states that 'Slovakia declares no part of the Site and no part of the Expansion Land will be classified as agricultural land pursuant to Act No. 220/2004 Coll. on the Protection and use of the Agricultural Land, as amended, prior to their sale to the Company ([16]).' The Slovak authorities state in the notification that it is MHI that, as the owner of the land on which the NSP will be established, is 'liable' to pay the fee for the exclusion of the respective land from the ALF and that it is therefore also MHI that had to request the exemption. The Commission has no information as to the overall amount of the ALF fee that was payable to transform the land needed for the NSP or for the notified JLR project. It notes though that JLR internal documents prepared for the site selection process (e.g. presentation of 15 June 2015) indicated that JLR would possibly have to pay EUR [50 — 110] million. This relates to a 368 hectares area, which appears to include land that is later designated as the South Land and the North Land. The Commission also notes that the same document already indicates a commitment by the Slovak government to exempt JLR from the obligation to pay the exemption fee.

### 2.3.3. *Eligible investment costs*

(23) According to the notification documents, the total envisaged investment costs for the notified project are GBP 1,665 billion (circa EUR 1,99 billion calculating with the beneficiary's internal exchange rate of 1,2 for EUR/GBP used at the time of the investment decision for corporate planning purposes) ([17]). The proposed eligible investment costs were indicated as amounting to EUR 1 406 620 591 in nominal value, (circa GBP 1,172 billion) which is EUR 1 369 295 298 in present value ([18]). Table 1 below presents the breakdown of the proposed eligible costs in nominal value.

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([11]) Construction ready means in two of the evaluation reports that the Site and the optional parcels are zoned for industrial use, that utilities in the site are relocated and made available at site boundary, that the site has been remediated and levelled, that road systems and public parking are put in place throughout the park, that there is clear title and that there is no conversion cost associated with the transfer of agricultural land to industrial use.

([12]) The […] Valuation Report.

([13]) The […] Valuation Report.

([14]) The value of the South Land and the North Land combined is EUR 17 010 000 according to […] and EUR 20 461 000 according to […].

([15]) Slovakia real Estate market report 'CBRE'.

([16]) The Commission considers that the expression 'as amended', which is attached to 'Act No. 220/2004 Coll. on the Protection and use of the Agricultural Land' in the sentence, is likely to refer to Exemption H which entered into force on 31 October 2015 as an amendment to Regulation 58/2013 (see recital 12).

([17]) The Commission notes that the total investment cost for the Nitra project is indicated as GBP 1 billion in press articles; see e.g. http://media.jaguarlandrover.com/news/2015/12/jaguar-land-rover-confirms-new-factory-slovakia; but also in Tata Motors Limited's filing document 20F with the US Securities and Exchange Commission: See e.g. pages 20, 23 and 75 of the form under the link https://www.sec.gov/Archives/edgar/data/926042/000 119312516662177/d185203d20f.htm#tx 18520313. On page 20 of this document, for example, there is the following statement: 'In December 2015, Jaguar Land Rover concluded an agreement with the Government of the Slovak Republic for the development of a new manufacturing plant in western Slovakia with the first cars expected to be produced in 2018. The new facility represents an investment of GBP 1 billion and initial annual capacity of up to 150 000 units…' (emphasis added). The Commission notes the discrepancy for the purpose of accuracy.

([18]) The present values in this decision are calculated on the basis of a discounting rate of 1,17 %, applicable at the time of submitting the aid application (24 November 2015). Present values are discounted to the UK financial year 2015/2016, which is the planned date of award. JLR uses the UK financial year running from 1 April to 31 March.

*Table 1*

**Breakdown of proposed eligible investment costs (nominal in EUR thousands)**

| In EUR thousand (rounded)/UK financial years | 2015/2016 | 2016/2017 | 2017/2018 | 2018/2019 | 2019/2020 | Total |
|---|---|---|---|---|---|---|
| Land | | […] | […] | | | […] |
| Building | […] | […] | […] | […] | […] | […] |
| Machinery/Equipment | […] | […] | […] | […] | […] | […] |
| Intangible assets | […] | […] | […] | […] | | […] |
| Total | […] | […] | […] | […] | […] | 1 406 621 |

(24) According to notification documents, at least a GBP [60 — 85] million investment cost item that is listed as eligible cost in notification documents is described as 'provision', which Slovakia describes as 'unexpected overspend'.

(25) The Slovak authorities stated that […]% of the eligible costs will be spent on vendor tooling ([19]), and commit that all vendor tooling assets will be located in a NUTS area which is either of the same maximum State aid intensity ceiling as Nitra, or higher.

(26) The Slovak authorities confirmed that all assets included in the proposed eligible expenditure will be new and that intangible assets are obtained from third parties at market prices. The Slovak authorities also confirmed that the intangible assets will be used exclusively in the establishment receiving the aid, they are amortisable as part of the beneficiary's assets, and will remain associated with the aided project for at least five years after its completion.

### 2.4. **Legal basis**

(27) The notified financial support is based on the following legal acts:

a. Act No. 561/2007 Coll. On Investment Aid Act and on amendings and supplements to certain acts as amended;

b. Act No. 358/2015 Coll. governing certain relationships in state aid agenda and de minimis aid and on amendments and supplements to certain acts (state aid act);

c. Government Regulation No. 219/2015 Coll. of 26 August 2015 fixing the maximum intensity of investment aid and the amount of investment aid in particular regions of the Slovak Republic;

d. Decree of the Ministry of the Economy of the Slovak Republic no. 123/2012 Coll. laying down a template application for the granting of investment aid.

(28) Slovakia submitted the summary information for the resulting regional aid scheme ([20]) as required by Article 11 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 ([21]) (hereinafter GBER) on 5 April 2015.

([19]) Vendor tooling is equipment installed at a supplier's production facility used for the manufacture of parts to be used in the beneficiary's production.
([20]) SA. 41768 (2015/X).
([21]) OJ L 187, 26.6.2014, p. 1-78.

### 2.5. **Notified aid amount**

(29) The notified aid is to be awarded in the form of a direct grant and amounts to EUR 129 812 750 in nominal value and EUR 125 046 543 in present value. The aid is planned to be paid out according to the following schedule:

*Table 2*

**Nominal aid amount (nominal in EUR thousands)**

| In 1 000 EUR (rounded) *UK financial years* | 2015/ 2016 | 2016/ 2017 | 2017/ 2018 | 2018/ *2019* | 2019/ *2020* | 2020/ *2021* | *Total* |
|---|---|---|---|---|---|---|---|
| *Grants* | | | […] | […] | […] | […] | *129 812* |

### 2.6. **Notified aid intensity**

(30) The notified aid of EUR 125,046 million in present value refers to the above mentioned eligible expenditure of EUR 1 369 295 000 in present value, and thus corresponds to an aid intensity of 9,13 %.

(31) The Commission notes that the Slovak authorities confirmed that neither the approved maximum aid amount in present value nor the approved aid intensity will be exceeded if the amount of eligible expenditures deviates from the estimated amount and that the notified regional investment aid will not be cumulated with other State aid with respect to the same eligible costs.

### 2.7. **Own contribution**

(32) The aid beneficiary will contribute at least 25 % to the financing of the investment.

### 2.8. **Maintenance of the assisted activity**

(33) The direct grant is awarded under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after completion of the investment project (Phase 1).

### 2.9. **Slovakia's arguments why the aid contributes to regional development (cohesion) objective**

(34) Slovakia explained that the investment will contribute to the regional development of the Nitra region for the following reasons:

— The investment project creates 2 834 additional jobs at the beneficiary. The quality of the created jobs will be high and this will be reflected in the average monthly total salary costs which will be much higher than the average monthly salary cost in Slovak manufacturing (EUR […] per month in 2016 for JLR as compared with EUR 965 per month in June 2015 for Slovak manufacturing).

— The investment will also lead to the creation of indirect jobs in the supply chain. Slovakia estimates that each new direct JLR job will generate at least 4 new jobs in the supply chain.

— Further employment effects can be expected in service industries during the construction phase and once the plant is operational.

— The beneficiary is also active when it comes to training for employees and attaches great importance to the regular further training of his own employees. JLR will also be able to share the best practice and lessons learned from successful training programmes.

— The beneficiary expects to work in partnership with local universities and technical colleges in the region in order to stimulate the pipeline of talent into JLR, the supply base and the industry in general. JLR will engage with local education and training establishments in order to build a workforce motivated by engineering and manufacturing as a future career choice and to support the development of skills of the local population. The project will significantly impact the development of higher education by bringing increased cooperation between universities and industry in formulating the content of higher education, particularly in the fields of mechanical engineering, electrical engineering and materials so that the graduates are ready to be employed in industry.

— The beneficiary's world-leading use of aluminium in automotive manufacturing will also encourage investment in the aluminium processing in research and development facilities such as the R&D Centre in Žiar and Hronom.

— The investment project will facilitate innovation at local level and the transfer of technology to a less-favoured region. The first to benefit will be the suppliers which will be assisted in order to achieve the JLR 'Q' standard, a JLR-specific governance model with definitive criteria for suppliers to follow.

— The beneficiary plans for the facility to achieve environmental excellence and sustainability.

### 2.10. **Slovakia's arguments why the aid is appropriate**

(35) Slovakia notes that attracting foreign direct investment is a vital part of the regional development plan for the Nitra region. In 2014, the regional GDP of Nitra represented 10,9 % of the total GDP of the Slovak Republic and the GDP per capita was below the national average: i.e. EUR 12 030 versus EUR 14 010 for the entire Slovak Republic. The unemployment rate was 11,21 % which is close to the national average.

(36) The Slovak authorities pointed out that the low level of economic development is also demonstrated through the fact that infrastructure in the Nitra region is of poor quality, which has not yet been upgraded and that revenues from the investment project will be necessary to improve this aspect of the economic climate of the region.

(37) Slovakia considers that a direct grant was necessary in order to generate sufficient incentive for JLR to locate the investment in Slovakia. Equivalent benefits in form of tax incentives were not preferred due to their administrative complexity.

### 2.11. **Slovakia's arguments why the measure has incentive effect — counterfactual scenario**

#### 2.11.1. ***Formal incentive effect requirement***

(38) The Commission notes that a first aid application (relating to the then envisaged, combined Phase 1 and Phase 2 project) for a nominal aid amount of EUR [230-320] million regarding an investment volume of circa EUR [2,7-3,7] billion was submitted to the Slovak authorities on 25 June 2015 and a unilateral letter of intent to support the investment, subject to Commission approval, was issued on 8 July 2015. After a reduction of the scope of the investment, another application for aid was submitted to Slovakia on 24 November 2015. As works started in December 2015, the aid application took place before start of works.

#### 2.11.2. ***Counterfactual scenario: The decision making process***

(39) Slovakia argues that the counterfactual scenario is a so-called scenario 2 situation within the meaning of Paragraph 61 (b) of the Guidelines on regional State aid for 2014-2020 ([22]) (hereinafter 'the RAG'): the aid triggered the beneficiary's decision to locate the investment in Nitra, Slovakia, as opposed to H[…] in the State of Puebla, in Mexico.

(40) Slovakia submitted information about relevant corporate governance and the decision making process and included documentary evidence to underpin the information about the decision making process, as described below.

<u>Decision making bodies for investment decisions</u>

(41) Slovakia explains that the JLR Board is ultimately responsible for the company. JLR's normal practice of governance is as follows: the CEO and other Executive Committee Members (ECM) lead the management of business operations with authority delegated from the Board. There are regular Board meetings to assist the Board's oversight of JLR's business.

(42) Two groups of directors act as a board to JLR Automotive plc, JLR Holdings Limited and Jaguar Land Rover Limited, which form 'the JLR Board'. The Board approves decisions relating to investments. Before final approval by the JLR Board, JLR management engages in a number of preliminary steps to test and assess investment decisions. These steps involve various governance fora. At the respective fora, proposals are prepared, reviewed and recommended for approval/amendment. The comprehensive description on Corporate Governance given by Slovakia does not include information on the involvement and role of the Tata Motors Limited Board in investment and location decisions. The Commission notes however that the Tata Motors Limited India Board was also involved in the decision making process.

([22]) OJ C 209, 23.7.2013, p. 1.

(43) In the notified case, three key fora were involved under the authority of the ECM in supporting the decision making process:

a. Strategy Council. The purpose of this forum is to govern the major gateways of the strategy planning process, review strategic options and make decisions and recommendations for the allocation of company resource for future investment. This body meets […] times a year.

b. Globalisation Forum. (NB: the International Development Committee and International Programme Review are historical names for the Globalisation Forum). The role of the committee is to consider and approve the long term globalisation strategy and oversee its deployment and evolution. This body meets […].

c. Product Strategy Forum. The purpose is to provide a discussion and decision making platform for the ECM to discuss both product and technology strategies in the cycle plan phase.

The actual decision making process for the investment

(44) According to Slovakia, JLR undertook within a period of at least 18 months before 10 July 2015, an extensive global search to identify one or several possible locations for new production facilities that were considered necessary to meet actual capacity shortages and to satisfy expected future demand. The process considered dozens of potential sites in North America (Canada, Mexico, and the Unites States), in the EU (in particular Czech Republic, Hungary, Poland, and Slovakia), and in Turkey. A possible location in the UK had been excluded at a preliminary stage. This process led on 10 July 2015 to the recommendation to locate the additional capacities in Slovakia. The recommendation was approved ('ratified') by the JLR board on 3 August 2015 and by the Tata Motors Board on 7 August 2015. On 10 August 2015, Slovakia and JLR signed a Letter of Intent on the location of the investment project in its initially intended scope in Nitra. The Tata Motors Limited Board meeting of 18 September 2015 confirmed the investment project and its location, establishing that it will be implemented in two phases, each covering a capacity of 150 000 vehicles per annum. The models for Phase 1 were confirmed at ECM level in September/October 2015, and on 15 November 2015, the JLR Board authorised the ECM and its CEO to apply for aid for the Phase 1 investment (application introduced on 24 November 2015) for the selected models, and to sign the Investment Agreement (signed on 11 December 2015).

(45) JLR used a green-field site selection process (called Project Oak) in the North American Free Trade Agreement ('NAFTA')region starting in 2014 which resulted in the identification of Mexico as the most promising country and the selection of the H[…] site in Puebla, Mexico as the preferred option. A second selection process starting in February 2015 (titled 'Project Darwin') focused on a range of low cost Central and Eastern European (hereinafter 'CEE') countries.

(46) The notification indicated a number of key dates on which meetings relating to the investment project and its location took place: 21 January, 30 March, 27 April, 15 May, 1 June, 15 June, 10 July, 3 August, 7 August, 18 September, 21 October and 18 November 2015.

Project Oak

(47) JLR started by looking at suitable sites in the NAFTA region in 2014. Following an initial phase (called project '[…]') in which mothballed manufacturing sites in the region were examined, JLR started to look at possible sites for a green-field (or brownfield) site in the region in a project that later became known as 'Project Oak'.

(48) Project Oak's site selection process involved the following 'filtering' steps: an 1) initial macroeconomic country evaluation, 2) identification of key assumptions and assessment criteria, 3) pre-filtering based on key criteria for state selection (i.e. within the selected countries), 4) request for information and communication packages, 5) roadshows across preselected states and commercial analysis to enable site evaluation based on key criteria for the manufacturing site.

(49) The economics of production were examined on the basis of a set of key criteria (including the later further developed 'Golden Site requirements') such as 1) access to population with high skills, 2) political environment, including experience with OEMs and availability of suppliers 3) national economy (labour costs, productivity, GDP, etc.,) 4) infrastructure/logistics/proximity to transport junctions, 5) quality of site/time line for construction and 6) availability of incentives.

(50) Although North America had been the company's preferred starting point for its new global manufacturing site, in November 2014 JLR decided to engage in a wider assessment of options in order to determine the optimal location of the new plant. A desktop global manufacturing competitiveness study was already undertaken in November 2014, including benchmarking lower cost CEE countries to the NAFTA region. This was the genesis of 'Project Darwin', i.e. the European site selection process.

(51) Late in the year of 2014, JLR analysed possible US locations in more detail, and started to pre-select states in Mexico for screening. In December 2014 meetings took place with Mexican authorities and some states in Mexico were visited. Following this, in January 2015, JLR carried out a more detailed quantitative and qualitative assessment of whether to locate manufacturing in US/Canada or at a lower cost location or combination of locations in Mexico and Eastern Europe (Hungary, or perhaps Turkey). The US/Canada option had the major advantage of being a mature market, but it had to be balanced against the option of lower costs in Mexico and Hungary. The process of this analysis was captured in an 'ECM Off-site' presentation of 21 January 2015: it was based on six factors, such as sourcing, commercial, political environment, people, logistics and site suitability. On this basis, a ranking of the sites was set up and an intention was indicated to visit Mexico in February 2015.

(52) At that point in time, although this was not specifically mentioned by the Slovak authorities in the notification, it appears that JLR was considering the possibility of building two new production facilities, possibly on two different continents. The 21 January 2015 presentation shows that the establishment of even two different sites, perhaps both in the NAFTA region, or one in Europe and one in the NAFTA region, was still contemplated. The minutes of the 21 January 2015 ECM meeting explicitly state that Canada, Mexico and the US were to be considered for Plant 2, while priority was given to the evaluation of locations in CEE for Plant 1. At this junction, it appears that the Canadian and US sites started to be seen as having too many disadvantages and that they were shortly thereafter eliminated as potential sites.

(53) In the meantime, by early 2015, JLR had further refined its criteria for the assessment of potential manufacturing sites, as it developed a more sophisticated set of criteria, the so-called 'Golden Site' requirements that would enable it to optimise the design, cost, speed of construction and operational efficiency of a site. The Golden Site requirements were in fact a collection of desired standards in respect of manufacturing, supply chain, logistics, HR and IT requirements. A report on 20 March 2015 prepared by Ernst & Young analysed Mexican locations for a possible site through this set of criteria. The report provided information on the characteristics of the H[…] site, although the Commission notes that there are gaps in the information relating to a number of 'golden site criteria' (e.g. on land stability, ground capacity, main utilities, infrastructure quality, cost difference between workforce in-house versus outside workforce, supplier base and their availability in close proximity, skilled workforce for suppliers, applicant pool availability to recruit, expat offering, such as leisure, availability of schools, hospital, nursery, shopping, etc. safety of site and site's adherence to safety and health requirements).

(54) In May 2015, the notification states, JLR provided feedback to Mexican states and received further information from the Puebla government in the form of an information package. The information package provided broad time lines for the following steps in site preparation: land grading to be completed by 12/2016, water wells to be completed by 12/2015; waste water treatment plant by 12/217; road infrastructure to be completed by 7/2017, rail infrastructure to be completed by 11/2017, land acquisition to be completed by early 2017 and obtaining operating permit by 11/2016, while start of construction by JLR was indicated as March 2016 and start of production as June 2018. In June 2015, a JLR team visited Puebla. A presentation which appears to have been made on 16 June 2015 to the JLR delegation in Mexico contained the following information: 1) details of an incentive package including infrastructure works on site, offices, training, recruitment assistance, payroll tax reimbursement, etc. and USD [750-1100] million in general infrastructure measures, including highways and by-passes to site, of which one bypass appears to amount to USD [150-220] million. (A total amount of USD [400-600] million for apparent infrastructural development expenditure could *prima facie* be linked directly to a JLR plant at the H[…] location); 2) general information about the State relating to work force, their educational level in general terms, number of universities, number of strikes, presence of Tier 1 suppliers in State, seismic activity in the State, crime rate, etc. 3) In terms of JLR Site requirements: rail connection was indicated as 2.5 miles away, and electric substation as well as a gas station at a 0,9 and 0,6 mile distance, respectively.

(55) However, the Commission notes that the information submitted does not appear to contain the results of a scoring exercise that would be comparable in its level of detail to the scoring exercise prepared for the CEE sites.

(56) On 25 June 2015, JLR confirmed in writing that H[…] has been shortlisted together with a number of CEE locations. The letter says that JLR 'look forward to continuing a positive working relationship with [the Puebla governor] and [his] team over the next few months as [JLR] enter[s] the next phase of Project Oak'.

Project Darwin

(57) The project dealing with the selection of an EU site started with a global desktop competitiveness study commissioned in November 2014 that included benchmarking of lower cost CEE countries to the NAFTA region. Project Darwin was officially started early 2015.

(58) Slovakia explains that by the end of February 2015, JLR finalised its site selection methodology for the European site, by developing a 'scoring methodology' or 'scoring model'. This scoring model consisted of [60-80] country level and [35-65] site related criteria (with an individual weighting for each) which were fed into 6 factors ([23]) — so-called 'programme objectives': 1) operating costs, 2) site fundamentals, 3) labour market, 4) business risks, 5) timing and 6) upfront cash. 'Country level' filtering criteria and 'site level' filtering criteria, (this latter being the 'Golden Site' requirements) were assessed together with a 'business case' for a given site. The 'business case' appears to consist of 1) operating costs, 2) investment costs, 3) cash-flow) and 4) sensitivities.

(59) The scoring model and the 'business case', Slovakia explained, supported the country/site selection decision in different ways. In particular, the scorecard (scoring methodology) combined macro-level and site specific views to give a broader perspective on the sites. The business case focused in greater detail on the financials for each country/site. Once developed, the Slovak authorities stated, the scoring model as described above remained the same throughout the assessment.

(60) Slovakia further states that given that by February 2015 considerable progress had already been made with the search in the NAFTA region, Project Darwin had to be accelerated. After eliminating 11 countries from an initial 32 due to severe political, economic or geographical problems, 21 countries in the CEE region were subjected to a further filtering process focusing on the level of political risks, access to supply chain, and the existence of established OEMs. This resulted in 10 pre-selected countries. On the basis of macroeconomic data, business and fiscal security, stability, infrastructure/logistics, labour costs and quality as well as material costs (including supplier base) four front-runner countries were identified: the Czech Republic, Hungary, Slovakia and Poland.

(61) After reviewing 27 sites in these four countries against the Golden Site requirements by the 30 March 2015 meeting of the International Development Committee (IDC), the following four sites have been shortlisted: B[…] (Czech Republic), Nitra (Slovakia), D[…] (Hungary) and S[…] (Poland) which were in turn subjected to a more intensive analysis. It is to be noted that another Polish site, Jawor, (which was later re-introduced into the site selection process), was by this date eliminated as a potential site. The reasons included the insufficient size of the site, limits to future expansion due to an electric power line, existing tenants on the land and a roadway dissecting the site. In addition, the region was classified as an agricultural zone and not a Special Economic Zone (SEZ).

(62) Slovakia states that, after the initial 4 favourite sites were selected, each was assessed in further detail in the spring and early summer of 2015, which included a number of site visits. In this iterative process the pros and cons of each site were explored and analysed in detail. As JLR evaluated the CEE sites in greater level of detail, its evaluation of risks associated with the sites evolved and changed significantly, some being mitigated, others being compounded. During this time, and up until the 10 July 2015 Globalisation Forum meeting in which the preferred site was selected for recommendation to the JLR and Tata Motors Limited Boards, the order in which the shortlisted sites ranked changed a number of times.

(63) Relating to milestones of this site selection process, the Slovak authorities submitted documents showing that meetings took place on key dates of which especially the following ones appear to be of particular relevance: 30 March, 27 April, 15 May, 1 June, 15 June, 10 July, 3 August, 7 August, 18 September, 21 October and 18 November 2015.

(64) The first important date in the CEE site selection process is the 30 March 2015 IDC meeting, when S[…] and Nitra were considered to be front-runners while D[…] and B[…] were scoring lower due to relative disadvantages in labour, logistics, timing and other reasons. For S[…] it was stated as a negative that it was contingent on a 20 km connecting road to the nearest highway.

(65) At the Strategy Council meeting of 27 April 2015 S[…] was on top despite a continuing question mark regarding the 20 km connecting road, and B[…] improved its ranking to second place due to a promise of accelerated time line. Nitra became 3rd (due to a drop of confidence in the team's ability and a timing problem, the only positive in Nitra was that 'site is on established industrial estate') and D[…] fell out of the competition despite favourable operating costs due to lower labour availability and other reasons. The presentation contained very detailed scoring for all four sites ([24]). The presentation also included elaborate project start plans for S[…], and stated that the company 'will undertake a detailed financial comparison of the H[…] site against S[…]' ([25]).

([23]) 1) […], 2) […], 3) […], 4) […], 5) […], 6) […].

([24]) A summary chart showed that each location, except Nitra, had at least 2 positives.

([25]) Page 53 of the aid application form for Poland of 24 June 2015 shows the NPV difference between Mexico and Poland (Jawor) to be GBP 320 million, so this must have been the result of the 'financial comparison'.

(66) At the Globalisation Forum meeting of 15 May 2015, S[…] was still the preferred site. This was despite a delay of one further year in the construction of a connecting road to the closest highway as well as heightened site enabling requirements and poor local road quality, as government activity and commitment was perceived as still very high. A reassessment of other Polish sites, including Jawor was undertaken. The B[…] site, ranked second, was put on hold as a result of environmental issues, site deliverability, infrastructure quality and flood risks for which no plan existed. B […] was replaced with Nitra as an alternative to S[…], as flood risks also existing on this site were promised to be solved, and the beneficiary was prepared to evaluate the timing and costs impact of this flood mitigation ([26]).

(67) The notification further explains that between 15 May and 1 June 2015 the problems with the highway connection at S[…] were explained to Poland where the government was asked to propose solutions.

(68) On 27 May 2015 the Slovak government decided to amend the Significant Investments Act and Regulation 58/2013 (about the Agricultural Land Fund) to facilitate the creation of large industrial parks (300-400 hectares, the details of which are explained in recitals 10-12 of this decision.)

(69) At the 1 June 2015 meeting of the IDC, S[…] was still the frontrunner and Nitra is compared with S[…] and to a lesser extent Jawor. By this date, JLR's perception was that the risks associated with S[…] increased. Nitra's position has been strengthened as a clear second choice as it is already described as 'the best insurance policy due to site readiness and infrastructure' and progress is foreseen with the 'significant investment status' and with 'land acquisition'. In the presentation prepared for this meeting, there is indication that a Mexico field trip was going to take place, but the presentation already states that despite the NPV advantage of Mexico, 'there are additional strategic factors associated with Mexico that need to be explored further, such as distance from operational base, infrastructure risk, natural disaster risk, government effectiveness, political stability, regulatory quality, control corruption, forecast GDP growth, potential US-EU FTA'.

(70) At the 15 June 2015 meeting of the Strategy Council S[…] was put on hold due to the highway connection issue and poor road quality, after the Polish authorities had failed to find a satisfactory solution to the motorway connection problem. At this point, a very extensive comparison took place between Nitra, Jawor and S[…] which resulted in the following conclusions:

(a) Nitra was the site with the highest score. The reasons for this appear to be the following: government authority to expropriate and rezone the site and a promise to exempt JLR from the agricultural land transformation fee, land acquisition and preparation costs that were lower than at the other sites and that included areas outside the site boundary, a flood mitigation strategy had been developed, and highest incentives were provided as there was a lower risk in an established industrial site. This was in addition to the commitments given by Slovakia regarding improvements in rail and road connections to site, the bringing of utilities to site and the setting up of a training centre at no cost to JLR (for which the promise was made at this time, but which in the end appears to have been paid for by JLR). In a summary statement, Nitra was characterised as a site with no major flaw and no major infrastructure need.

(b) For Jawor, on the other hand, the following drawbacks were identified: delay in the construction of a connecting road to the motorway and for the motorway construction, lack of industrial land status for the site, potentially significant upfront cash requirements and lack of funding for infrastructure items.

(c) For S[…], road infrastructure (the condition of existing road and delay in new highway connecting road) was now flagged as a fatal flaw, and additional drawbacks, such as larger upfront cash requirement (for land preparation) and a lack of an offer for a training centre were identified.

At this junction (i.e. 15 June 2015), a detailed operating cost comparison ([27]) was carried out between Slovakia and Poland, which showed that Nitra had a GBP [80-120] million NPV disadvantage ([28]) vis-à-vis Jawor Poland, (for the entire lifetime of the project, linked to a GBP [110-150] in per unit operating cost disadvantage) but this was viewed as being compensated by Jawor's timing disadvantage and Slovakia's upfront cash offer and lower land preparation costs in the amount of GBP [70-100] million, As regards the Mexico alternative, the presentation mentions that 'Mexico vs. Darwin decision [should be made] w/c 6 July'. The minutes of this meeting refers to Mexico only to the extent that it says: 'Action: Conduct Mexico field trip to discuss RFP (Request for proposal) on Puebla site'.

([26]) There was indication in this 15 May 2015 presentation that in Nitra 'expropriation [was] needed to acquire land' and that '[…]'. However, Slovakia's position since 27 April 2015 appears to have improved also as a result of the observations that the project was 'not infrastructure reliant like Poland or the Czech Republic', and there were improvements in the 'quality of the team'.

([27]) Based on […] costs, […] and […] costs and […] costs.

([28]) The Commission would like to note that this NPV analysis does not have the same factors that the Commission considers to be the necessary elements of an NPV analysis as it only contains material costs, logistics costs and labour costs, (i.e. operating costs) and does not contain revenues, investment costs or other elements that could be relevant to an NPV analysis of the profitability of an investment.

(71) On 24 June 2015, the beneficiary submitted an application for regional investment aid to the Polish authorities and on 25 June, it did the same with respect to the Slovak authorities. The Commission notes that there was no indication that an 'aid application' was submitted with the Mexican authorities.

(72) On 8 July 2015, the Slovak Republic issued an unilateral letter of intent to support the investment (then still planned to be EUR [2,7-3,7] billion with a planned investment aid of EUR [230-320] million) with the condition that the Commission's approval is secured.

(73) According to the presentation of 10 July 2015, the Globalisation Forum meeting ended the race between Mexico/Nitra/Jawor and finally selected Nitra as the site to be recommended to the Boards as the best location for the investment. As regards the Jawor site, the Slovak authorities stated that JLR considered the proposed highway dissecting the site as a 'red flag' and that it doubted that the required infrastructure and site preparation could be completed in time. In addition, it was stated that 'the site in Poland was far less advanced than the sites at H[…] in Mexico and Nitra'. The minutes of the 10 July 2015 meeting stated with respect to the Polish site that 'significant concerns [were identified] with site fundamentals and deliverability whilst timing and upfront cash requirements were also significant concern.'

(74) The Commission notes that the 6 factors described in recital 58 of this decision, which according to Slovakia's statement had not changed since February 2015, were modified by 10 July 2015 for the purpose of the final considerations of the Globalisation Forum: the factor 'business risk' was eliminated (or renamed) and another factor was added to make up a total of seven factors: 1) automotive cluster, 2) site fundamentals, 3) labour availability, 4) timing, 5) operating costs, 6) upfront cash and 7) deliverability. The slide presentation of 10 July 2015 contains the following details:

(a) Jawor had a marginally better operating cost of GBP [120-180] p.u. ([29]) which was compensated by Slovakia through an 'upfront cash impact of incentive, land cost and timing' equalling a total amount of GBP [230-290] million. This was composed of GBP [200-300] million land cost advantage ([30]), GBP [10-30] million timing and composition advantage of Slovak aid (as half of the Polish aid would have been in the form of tax exemption) and GBP [80-120] million 'working capital' advantage (VAT advantage and a shorter VAT reclaim period).

(b) Infrastructure and site fundamentals: in Nitra, the site 'is in established industrial park with infrastructure that exists today', but half of the future site was owned by 1 600 owners who would be expropriated by November 2015 for which 'no issues [were] envisaged'. Besides, the Slovak government planned industrial park preparation, including planned investment into what is described as general public infrastructure (general road infrastructure, i.e. road carriageway around site, motorway connection, logistics infrastructure: intermodal truck staging, parking, finished goods storage, plus utilities to site) with an indication of a total value of GBP 339 million. The investment agreement was going to include commitment relating to these 'general infrastructure' measures. As to the Polish site, it was agricultural land requiring rezoning that could pose a timing issue (a three month delay behind Nitra) which is marked with a red flag. Besides, JLR would need to pay for land remediation, the extension of an electricity line and it would not be getting a state-of-the-art training centre. The general infrastructure planned by Poland for the benefit of the beneficiary would only amount to GBP 129 million (and the investment agreement would not contain a commitment about the 'general infrastructure measures'). In addition, a connecting road would only be ready for the first or second quarter of 2018 which required an acceleration or interim solution for which promise was given.

(c) Further factors: established industrial park in Nitra and existence of suppliers to supply other OEMs reduced State aid risks and government promised further job creation incentives. As to Poland, the supplier park could be considered dedicated infrastructure for the benefit of JLR. The Nitra project is better linked to a regional development strategy, whereas the Polish site is not. The Slovak team is more motivated, and the Polish team lacks […] although its commitment remained high. In a summary chart of the presentation, the Polish team's delivery capabilities are designated with a 'red flag'.

([29]) This must be more than GBP [80-120] million during the lifetime of the project, as on 15 June 2015 the operating cost disadvantage of GBP [110-150] per unit resulted in an NPV gap of GBP [80-120] million, see recital 70.

([30]) I.e. land differential of GBP [40-60] million + GBP [20-40] million 'deferred land repayment' + GBP [30-50] million construction timing delay. To be noted that the land value in Slovakia on 10 July is GBP [25-45] million whereas on 15 June it is still GBP [80-120] million, possibly indicating that in the meantime a promise was made by Slovakia to cover at least some land preparation costs.

(75) On 10 July 2015, according to the presentation to the Globalisation Forum, Mexico's cost advantage in NPV against Nitra was based on the 'Business case' criteria of 1) operating costs such as material, logistics, labour, 2) cash-flow data, such as duties and taxes and 3) 'sensitivities', such as incentives from Mexico which is indicated as GBP [150-220] million. The NPV calculation showed a difference of GBP 437 million over the 20 years lifetime of the project. JLR considered, based on market intelligence that was received too late to be incorporated in the NPV calculation, that there was a likelihood that Slovakia would have a timing advantage ranging from 6 to 9 months which would reduce the NPV gap between Mexico and Slovakia by a figure ranging from GBP [80-130] million to GBP [110-180] million. By deducting the maximum amount of State aid available which was calculated as GBP [100-110] million in present value (using JLR internal discounting rate of […]%) ([31]), the net advantage of the Mexican location was ranging from GBP [110-180] million to GBP [200-250] million. At the same time, there is a statement in this presentation that in case Slovakia is chosen 'mobility should be maintained for as long as possible to permit assessment of payment risk as the regulatory process unfolds.'

(76) The minutes of the 10 July 2015 Globalisation Forum meeting state that the 'ECM attached particular importance to the timing impacts, distance from JLR HQ and the relatively higher risk of reputational damage associated with Mexico.' The minutes of the 10 July meeting go on to say that 'the decision [in favour of Slovakia] 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.' The ECM was concerned about the deliverability of this component of the project NPV, given that it depended on obtaining approval from the European Commission. It was noted that the judgment of the project team was that the Government of Slovakia had the capacity and was prepared to defend its grant decision before the European Commission. It was also noted that Slovakia had coherent arguments as to why approval should be forthcoming.

(77) The location choice with the investment volume of 300 000 vehicles as explained in recital 9 recommended by the Globalisation Forum of 10 July 2015 was ratified at a meeting of 3 August 2015 of the JLR Board and a meeting on 7 August 2015 of the Tata Motors Limited Board. Slovakia describes the 'conclusion' of the 10 July 2015 meeting as follows: 'this [i.e. the 10 July 2015] internal decision was ratified by the JLRA plc Board on 3 August 2015, and by the TML Board on 7 August 2015'. The Commission notes that documents on the basis of which the conclusions on 3 and 7 August took place were not submitted by Slovakia but the minutes of the 3 August JLR Board meeting states that 'the approval was subject to a more detailed business plan, investment, volume, return analysis, cost structure assumptions and actions to maximise cost savings, to be presented at the time of approval.' In addition, the minutes of Tata Motors' Board meeting of 7 August 2015 stated that 'a detailed presentation would be made by the JLR CFO on the project financials at the next meeting ([32]).'

(78) On 10 August 2015, a Letter of Intent was signed by Slovak Prime Minister Robert Fico and JLR in which Slovakia promised to develop what was called the Nitra industrial park and make it available for potential investors.

(79) In view of the language of minutes submitted by Slovakia (see recital 77), which appeared to indicate that the decisions of the JLR and the Tata Motors Limited Boards in August 2015 were not final, the Commission asked Slovakia to indicate the Tata Motors Limited Board meeting at which the final location decision was made and requested documentation of that meeting. Slovakia stated in its reply of 30 November 2016 that 'Tata Motors Limited approved the location decision for the investment project at its meeting of 18 September 2015.'

(80) Minutes of the meeting of Tata Motors Limited's Board on 18 September 2015 show that the decision was made that the capacity of the project would be 300 000 units p.a. and it 'would be spread out in two phases equally for producing […]: […] and […] (150 000 units) in Phase 1, and […] ([…] and […]) (150 000 units) in Phase 2.' The minutes also state that 'Factoring elements of qualitative risk, the total revised State aid of GBP [150-200] million in cash was sufficient to continue to progress Nitra over Mexico.'

([31]) The maximum State aid used for the calculation was GBP [180-230] million in nominal value which was the equivalent of EUR [230-320] million for the originally planned eligible investment costs of EUR [2.7-3.7] billion with a conversion rate of 1.35 (based on the exchange rate from June 2015, the time of the initial aid application) and not the long-term business planning rate of 1.2 which was subsequently chosen by JLR for all the calculations.

([32]) As far as other important events in August are concerned, an email of 19 August 2015 summarizing a phone call to a high level Mexican official explained that the 'Mexican authorities had given a very positive impression and built a good relationship and that it was really [JLR's] focus on timing and deliverability that swung it in favour of Slovakia, i.e. more about where [JLR's] business is today rather than about [Mexico]'.

(81) Slovakia states in the notification that 'the vehicle product strategy was finally decided at the Globalisation Forum on 21 October 2015', which 'defined the initial investment project for the purposes of the revision of the draft State aid application form. The Phase 2 vehicle strategy was not available', Slovakia continues, and 'the Investment Agreement reflects that JLR did not commit to Phase 2.' At this meeting, other formerly considered CEE locations, or any possible Mexico location were not discussed. In fact, the presentation for this meeting suggests that the most important consideration for the reduction of the project to Phase 1 was the State aid application process. A nine-page presentation for this meeting focuses largely on the implications of applying for State aid only for Phase 1. It states, for example, that the State aid implication for removing Phase 2 from the eligible costs would be GBP [20-70] million or GBP [10-40] million less in NPV. The minutes of this meeting state this: 'Solid and committed business case for Phase 2 is required for aid application — which is not available within the available time window. Phase 2 potential aid is c. £[10-50] million (NPV, i.e. equivalent to cost of only two weeks of slippage of Job 1 timing; Recommendation: Redefine initial investment project for aid calculation purposes as Phase 1 only. Include generic commitment (investment amounts and job creation) in Investment Agreement with SK government.'

(82) Ahead of the JLR Board Meeting of 18 November 2015, which was to confirm the reduced project emphasizing that the reduction is needed for State aid recalculation purposes, the NPV calculations for Nitra and Puebla were adjusted by removing the Phase 2 investment.

(83) The NPV difference between Mexico and Slovakia which was communicated to the JLR Board for the amended investment project on 18 November 2015 was GBP 344 million ([33]) or EUR 413 million using an exchange rate of 1:1.2. This figure included revised assumptions as to the amount of Mexican financial incentives that were reduced from GBP [150-220] million to GBP [80-120] million. The nominal aid amount to be granted by Slovakia was known and amounted to GBP 108 million (EUR 129 million), which was GBP 76 million (EUR 91 million) in present value using JLR discounting rate of […]% and exchange rate of 1,2. The timing advantage for the Nitra site, to which in July a specific value was attributed (i.e. between GBP [80-130] million and GBP [110-180] million) was considered only as a qualitative factor in November ([34]).

(84) Slovakia argues that the reasons for the decision to locate the investment in Slovakia as opposed to Mexico are captured in this presentation of 18 November 2015 for the JLR Board. It shows that Nitra was the preferred location despite the fact that, even after taking into account the maximum permissible level of State aid, the implementation of the investment project in Mexico would have resulted in a substantially higher NPV than in Slovakia.

(85) Slovakia argues that in JLR's internal decision making, the direct State aid grant reduced the NPV disadvantage to GBP 268 million (i.e. GBP 344 million minus GBP 76 million), and the rest of the disadvantage was accepted in view of certain not directly quantifiable, qualitative elements, such as distance to JLR headquarters, delays in timing, natural disaster risks in Mexico, (volcanic activity), political instability, government effectiveness and corruption risks, brand equity considerations and investment in the EU as hedge against the possibility of the UK's departure from the EU.

(86) Slovakia described JLR's concerns relating to the Mexico option in more detail as follows:

— The distance of Mexico from the UK: the Slovak Republic is advantageous due to its closer proximity to the beneficiary's headquarters, thus leadership and technical experts are only a short haul flight away. The time difference with Mexico would increase the difficulty in communicating through the various chains of command.

— Earthquake and volcano risk poses potential for major disruption. The risk was assessed as low but potentially high impact.

— […] and the quality of public administration in Mexico.

— Brand equity considerations. There is a school of thought that attributes greater brand equity to EU produced vehicles.

([33]) The planned project revenues were identical. The lifetime of the project was 20 years and the NPV was calculated using a cost of capital discount rate of […]%, which was the same rate the company used in its business planning. The main cost items used in the NPV calculation included net revenues, material costs, inbound and outbound logistics, duties, manufacturing costs and investment costs.

([34]) At this meeting, other formerly considered CEE locations were not discussed. This meeting did not discuss any other Mexican locations either, and the conclusions only repeated the general Mexico-related doubts articulated in July. It is to be noted that no Tata Motors Limited approval appears to have been made regarding the definitive reduction of the project to Phase 1 only.

— The likelihood and timing of any TTIP deal. This would substantially erode Mexico's advantages over the EU, e.g. in respect of output that would be destined for the US market.

(87) Slovakia holds that these qualitative factors alone were not sufficient to bring the investment to Slovakia in the absence of aid, and that the grant offer equivalent to the maximum amount permissible under the State aid rules was necessary to trigger the balance, and had thus incentive effect to locate the new production facility in Nitra.

2.11.3. ***Slovakia's arguments as to the proportionality of the aid***

(88) Slovakia intends to compensate the EUR 413 million disadvantage resulting from the NPV calculation by providing regional investment aid of nominal EUR 129 million which amounts to EUR 91 million in NPV using company internal discounting rate. Slovakia considers that this aid amount is proportionate as it does not exceed the amount necessary for the beneficiary to locate its investment in Nitra instead of Mexico.

2.11.4. ***Slovakia's arguments about the possible negative effects of the aid***

Avoidance of negative effects on competition and trade

(89) In the notification, the Slovak authorities suggest that the relevant product market for the EEA market is the Premium D SUV segment and geographic market for this segment is the global market given that, with the exception of China, there are no obstacles or barriers isolating one geographic region from competitive pressure of companies located in another region. The arguments brought by the Slovak authorities are linked to the fact that JLR's vehicles, and most of its competitors in the relevant product market, in this case the Premium D SUV segment, are manufactured in just one global location to serve the entire global market leading to high levels of cross-border trade. The vehicles manufactured at the Nitra factory are planned to be exported all over the world, [60-90]% of them outside Europe and, according to Slovakia, there are no plans to produce these models locally or regionally outside Europe.

(90) The Slovak authorities understand that in previous car sector cases the Commission considered the relevant markets to be EEA-wide ([35]). However, they consider that in the current case the impact of the investment aid on competition will be insignificant, and they suggest that it is not necessary to reach a final decision on the relevant geographic market definition. Therefore, Slovakia provided the data necessary for the assessment of the competition effects of the aid for the EEA, as well as for the global market, and it does not oppose at this stage an assessment at EEA level.

(91) As regards market power, the information submitted by Slovakia indicates that the market share of the beneficiary at Tata Motors Group level in the Premium D SUV segment in the EEA in the time period from 2012 to 2021 is estimated to lie between [4-8] % and [20-30] % in volume.

(92) As regards capacity increase, the Slovak authorities simply state that 'no concern [exists] that the relevant product market has existing overcapacity'.

(93) As regards expected market performance, the Slovak authorities provided information about expected EEA sales in the Premium D SUV segment ([36]). The Slovak authorities emphasized that the market for Premium D SUV segment is not suffering from underperformance which, according to paragraph 136 of the RAG, is measured in comparison to the EEA GDP over the three years before the start of the project or on the basis of projected growth rates in the coming three to five years. In the three years prior to the start of the project (i.e. 2012-2014), the EEA market for the Premium D SUV segment achieved annual average growth rate in volume (AAGR) of 1,00 % as compared to an AAGR of 0.5 % for the EEA GDP and the AAGR of the segment is expected to be 9,9 % in the years 2015-2017.

Manifest negative effects

(94) The Slovak authorities state that without the aid, the investment would not have been located in a region with a regional aid intensity that was higher or the same as in the Nitra region, as without the aid, the investment would have been carried out in Mexico.

(95) The Slovak authorities confirmed that the beneficiary at group level had not closed down the same or a similar activity in another area of the EEA in the two years prior to aid application (i.e. 24 November 2015) and did not intend to do so at the time of aid application in a time period of up to two years after completion of the investment. The beneficiary confirmed that the new investment will not result in the loss of any jobs at existing JLR locations within the EEA.

([35]) In fact, the Commission considered that it could not exclude that these markets were only EEA wide.
([36]) The source of this information is IHS market data from May 2016.

### 2.12. **Transparency requirements**

(96) The Slovak authorities confirmed that they will publish on a central website, or on a single website retrieving information from several websites at least the following information on the notified measure: granting authority, individual beneficiary, aid amount, and aid intensity. The information will be published after the granting decision has been taken, will be kept for at least 10 years and will be available for the general public without restrictions.

## 3. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

### 3.1. **Existence of aid**

#### 3.1.1. ***The notified direct grant***

(97) The financial support that will be awarded by the Slovak authorities in the form of a direct grant will be financed from the state budget. The support will thus be given by a Member State and through State resources within the meaning of Article 107(1) TFEU.

(98) As the aid is to be granted to a single company, JLR, the measure is selective.

(99) The financial support in the form of the grant of nominally EUR 129 812 750 will relieve JLR from costs which it normally would have to bear itself as part of its business operations. Therefore, the company will benefit from an economic advantage over its competitors.

(100) The measure is likely to affect trade between Member States as it applies to the automotive sector, where trade between Member States exists.

(101) The favouring of JLR and its production by the Slovak authorities over other car manufacturers means that competition is distorted or threatened to be distorted.

(102) Consequently, the Commission considers that the direct grant constitutes State aid within the meaning of Article 107 (1) of the TFEU.

#### 3.1.2. ***Possible further aid related to the sale of NSP land***

(103) As explained in recitals 15-16, the Slovak authorities (through MHI's engagement of third parties) carried out expropriation of land for the development of the NSP. They are also carrying out certain preparatory and infrastructural work on the NSP, such as land remediation works, temporary utilities, final utilities at the point of connection, motorway connection, rail connection, general road infrastructure and dual carriageway in the industrial park, flood defence system and ground water management, logistics improvements in the form of intermodal, finished goods storage and expedition. It is unclear at this stage to what extent some of these infrastructures can be regarded as truly general infrastructures available to the general public.

(104) As explained in recitals 19-20, JLR will obtain a 185,3 hectares parcel, the Site, in the NSP in outright ownership for about EUR 30 million. It will also obtain (at no extra cost) options to buy as well as a right of first refusal relating to further parts of the NSP. It must also be noted that certain Investor Specific Works, according to one of Slovakia's reply to an information request, will be paid for by JLR in the amount of EUR 16,9 million.

(105) The discrepancy between the price paid by JLR for the 185,3 hectares of NSP land to be purchased in accordance with the Investment Agreement and the cost for the expropriation and the development of that land raises questions as to whether this transaction could involve State aid to JLR.

(106) The Slovak authorities argue in the context of the Agricultural Land Fund case that 'ensuring the construction of strategic parks' does not involve an economic activity but falls within the public remit pursuant to paragraph 17(f) of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union ([37]). Expenditures incurred in connection with the NSP consequently do not constitute State aid ([38]), provided that the land is subsequently sold to an undertaking such as JLR at a price established on the basis of a valuation carried out by an independent expert, given that this undertaking would not receive any advantage.

([37]) OJ C 262, 19.7.2016, p. 1.
See: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN.

([38]) This information also comes from the case SA.45562 (2016/EO), as Slovakia did not provide full information in the framework of this notification about the NSP construction.

(107) The Commission has doubts whether this reasoning can be sustained in the case of sale of the 185,3 hectares of NSP land to JLR for two reasons. First, the Commission questions whether this reasoning remains valid in case the infrastructure (i.e. the NSP) is found to be dedicated to JLR. Second, the Commission questions to what extent the price at which the NSP land is valued by the independent experts reflects, in addition to the general land preparation costs that would normally be covered by the public remit function of the State, works that are specifically carried out for the benefit of JLR and that should, therefore, also be borne by JLR. These two assessments and their implications for the finding of possible State aid in the land sale transaction are discussed in more detail below.

3.1.2.1. *The development of NSP as an economic activity*

(108) The notion that the construction of industrial parks constitutes a public task and is not an economic activity is set out in the Commission Decision SA.36346 — Germany — GRW land development scheme for industrial and commercial use ([39]). In that case, in the context of a measure that supported the revitalisation (including decontamination) of public land by local authorities, the Commission found that making a public terrain ready to build upon and ensuring that it is connected to utilities (water, gas, sewage and electricity) and transport networks (rail and roads) did 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.

(109) The Commission notes, however, that this approach is only applicable to situations which do not involve dedicated infrastructure. The scheme assessed in the GRW case in fact excludes customised development of land for 1) ex-ante identified undertakings which are 2) tailored to the undertaking's specific needs, i.e. 'bespoke' land development that is dedicated to one single undertaking. Therefore, development of public land tailored to specific needs of the undertaking identified ex-ante is considered dedicated infrastructure and, its development and revitalisation constitutes an economic activity. It is to be noted that the GBER also defines dedicated infrastructure as infrastructure that is 'built for ex-ante identifiable undertaking(s) which is tailored to their needs' ([40]).

(110) The Commission considers that there are a number of elements that suggest that the NSP could be regarded as an infrastructure that is dedicated to JLR and hence that the works related to the development and revitalization of the NSP constitute an economic activity. They are discussed below.

3.1.2.2. *Existence of an advantage*

(a) *Part of the commercially exploitable area of the NSP sold to or reserved for JLR*

(111) As mentioned in recitals 18 and 19, the NSP in a first phase has a total surface of 469,9 hectares, of which 298,7 hectares, the NSP under construction, is commercially exploitable. According to the Investment Agreement and the Agreement on Future Agreements, 185,3 hectares of this land is to be sold outright to JLR and the company is given options on a further 113,4 hectares (taken together this accounts for 100 % of the NSP under construction in the first phase). The Slovak authorities indicated that JLR is prepared to release 12 hectares from its option to buy the South Land. If this release were put into effect, JLR would still own or have option rights over some 97 % of the NSP under construction. In addition, JLR also has a purchase option for the 'Expansion Land' (136 hectares) of the second phase of the NPS construction, which would give it ownership or optional rights over 98 % of the future, enlarged NSP. Under the Investment Agreement, JLR could therefore end up owning 100 % or close to 100 % of the commercially exploitable surface area of the NSP ([41]).

(b) *JLR as a pre-identified undertaking*

(112) The Slovak authorities claim that 'the Nitra location was already recommended for a strategic park in 2003, and the government decided to build the NSP on 8 July 2015, at [which] time no concrete investor was confirmed for the site.'

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([39]) Commission decision of 27 March 2014 on State aid SA.36346 — Germany — GRW land development scheme for industrial and commercial use, OJ C 141, 9.5.2014, p. 1.

([40]) 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.

([41]) As to what 'dedicated infrastructure' in the Commission's case practice is, the Commission would like to point out that in the case SA.36147 (C 30/2010) regarding alleged infrastructure aid in favour of Propapier PM2 GmbH, the Commission found that a waste water treatment plant was not infrastructure dedicated to Propapier for reasons, among other things, the construction of the waste water treatment plant was planned long before the arrival of Propapier, that Propapier used only a maximum of 70 % of the capacity of the plant and that the plant had a modular design that allowed expansion of its capacity for other users.

(113) In terms of evidence, Slovakia submitted three documents: one document of July 2003 in which the Slovak government approved a Study for the Location of Industrial Parks in Selected Areas of the Slovak Republic, evaluating the suitability of 529 different locations across Slovakia for industrial parks, a second document from December 2003 which listed one site among about 60 other potential sites, which appears to be partially covering the site in question, and a third document identifying the area as the only site for an investment park suitable for international investment in 2004, although the plan was for R&D activities and innovative productive investments.

(114) The existence of these documents does not address the question of why no concrete plans for the Nitra Strategic Park were specifically made before end of May 2015, when JLR emerged as a pre-identified undertaking.

(115) The fact that JLR was a pre-identified undertaking is supported by the finding that a significant (perhaps the most important) element in Slovakia's pitch for the JLR investment throughout the bidding process was the 'readiness or existence of an industrial site' argument. On 30 March 2015, Slovakia competed with the 'strategic park factor' statement: 'situated on professionally developed industrial park' ([42]). On 27 April 2015, the only positive argument in Nitra's favour in the summary chart assessing the competing CEE sites (see recital 65) was that the 'site [was] on an established industrial estate'. On 15 May 2015, the presentation (see recital 66 and footnote 26) states that the investment project in Nitra is 'not infrastructure project reliant like CZ ad PL'. On 1 June 2015, the information (see recital 69) shows that Nitra was 'best insurance policy due to site readiness and infrastructure' and that the next step will be 'progress Significant Investor Status and land acquisition'. On 15 June 2015, the information (see recital 70) is given that the site is 'in established industrial site with rail and road connection' and that incentives for Slovakia include 'land preparation costs including outside of site boundary, utilities at no cost for delivery to site, and road and rail access improvements supporting the site' and that in sum, there is no 'major infrastructure need.'

(116) It could be argued that no specific investor was confirmed for the site on 8 July 2015, and that the selection of the site for formal recommendation of the Globalisation Forum to the JLR and Tata Motors Limited Boards took place on 10 July 2015. However, 8 July is very close to 10 July and the analysis on 15 June already strongly suggests that Nitra is favoured as the top choice. In addition, Slovakia's unilateral Letter of Intent to support the investment was issued on 8 July 2015. Thus, on the basis of the above, the Commission considers at this stage that JLR was a pre-identified user for the NSP at the time when the NSP was declared to be a significant investment on 8 July 2015. In addition, the Letter of Intent of 10 August 2015 made explicit reference to the commitment of Slovakia to carry out the infrastructural development on what was called the Nitra industrial park.

(c) *The NSP as a site tailored to JLR's needs*

(117) The Investment Agreement also gave JLR an extensive supervisory role over the construction phase (at least relating to the 185.3 hectares to be purchased outright) in order to ensure that the NSP is tailored to its specific needs. The Investment Agreement contains detailed description about what site remediation works should be carried out and provides extensive supervisory authority to JLR. The language of the contract is unclear as to whether these supervisory rights refer only to the 185.3 hectares (i.e. the Site) initially to be purchased by JLR or to the entire site construction, but considering that JLR reserved rights to virtually the entirety of the NSP, such rights have either been provided or will be provided once JLR decides to exercise its rights of option to buy. In terms of detail, the Investment Agreement specifies that 'SPV [Special purpose vehicle, i.e. MHI] and its subcontractors would have to provide all relevant design drawings and specifications to the Investor [i.e. JLR] and the Investor's team of consultants to review and provide feedback on seven days before the work is scheduled to commence. The drawings shall be provided in DWG format and shall include plans, details of relevant areas and supporting information outlining the methodology for executing the works. The Investor shall be issued with a weekly Site report outlining the progress of the works during the period.' On this basis the Commission considers at this stage that the NSP is tailored to the specific needs of JLR.

*Preliminary conclusion:*

(118) The above suggests that it could be argued that the NSP is an infrastructure that is dedicated to JLR. If that were to be confirmed, in order to exclude an advantage to JLR, JLR's consideration for ownership interest and other rights relating to the NSP would 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 a truly general nature, which still remain to be defined in this case.

([42]) It must be pointed out that it is clear that the NSP was not ready in 2015. Statements in internal documents of the beneficiary to the effect that the industrial park is 'ready', or 'established' presumably refer to a future condition, when the industrial park will have been ready. It is unlikely that the industrial park that is adjacent to the future NSP and which did exist in 2015 is referred to in these presentations as the 'site'.

(d) *Possible advantage to JLR in case the NSP is not dedicated*

(119) In case the NSP is not dedicated to JLR, the Commission is of the preliminary view that the transaction relating to the infrastructure may still involve State aid to JLR, as certain infrastructural development measures may have been designed specifically to satisfy the specific needs of JLR ([43]). The Commission must assess whether the sale of 62 % of the NSP under construction (i.e. the 185.3 hectares) confers an advantage to JLR. In the case of a land sale, an independent expert evaluation can establish the market value on the basis of generally accepted market indicators and valuation standards, only if these methods accurately establish the land value.

(120) Case practice ([44]) suggests that certain infrastructural development costs benefitting a settler of an industrial site constitute State aid to the extent that they are not reflected in the land sales price. The cases do not present a unified approach, but each mentions at least some of the following items: internal development of the site, site clearance, site levelling, waste water treatment facility, electricity, gas and other pipe line construction, water provision, connection to water mains, road link.

(121) As explained in recital 20 above, the market evaluation reports prepared for JLR indicate a value of EUR 27 795 000 and EUR 28 725 000 for this 185,3 hectares parcel in a condition which is 'construction ready'. A third report prepared for MHI indicates a square meter price of EUR 25 to EUR 35 for industrial land in the Nitra region, which would result in a value of between EUR 46 325 000 and EUR 64 855 000 for the 185,3 hectares parcel. The sales prices indicated in the first two reports are based on the following assumptions: all utilities are at the border of the subject site; the site has been remediated and levelled; all existing utilities and a railway line across the industrial site are relocated and road systems and a public parking are developed throughout the park ([45]).

(122) These estimates from the evaluation reports appear to be very low in the light of the much higher amounts (to be) spent by Slovakia on the expropriation of the land (see recital 16) and on the development of the site, even if a significant part of Slovakia's expenditure on works to develop the site could be regarded as related to truly general infrastructures.

(123) As explained in recital 20, the price JLR is expected to pay amounts to about EUR 30 million for the outright purchase of 185,3 hectares land and the Agreement on Future Agreement indicates a price of EUR 15,83 (plus VAT) per square meter ([46]). JLR is responsible for an additional EUR 16,9 million 'investor specific site development costs' in relation to the purchase of the 185,3 hectares. This increases JLR's contribution to a total of circa EUR 47 million in relation to the purchase of the 185,3 hectares, which appears to be only a fraction of the corresponding expropriation and development costs, which should ultimately be the basis of its market value. Therefore, the Commission's preliminary finding is that the sale of the 62 % ownership interest in the NSP under construction could confer an advantage on JLR, even if the infrastructure is not dedicated.

(124) In this respect, the following questions can be raised. A first question is what the market price estimates established by the independent experts (referred to in recital 121) actually relate to. It should be clarified whether they reflect exclusively the general land preparation costs that would normally be covered by the public remit function of the State (i.e. expropriation, decontamination, basic levelling of the site, bringing transport, energy and telecommunication infrastructures to the border of the site owned by the company), or whether they also cover costs of investor specific works (such as costs for company specific foundations, transport, energy, telecommunication infrastructure on the site to be utilised by the company itself etc.).

(125) In addition, to the extent that the market price estimates established by the independent experts do not reflect the investor specific development works, the question arises as to whether a company settling in an industrial site, even if that industrial site cannot be regarded as a dedicated infrastructure, should be expected to bear the cost of these company specific works or a proportionate share of the costs that are associated with the development of the site commensurate with their ownership/use and that go beyond the costs associated with the public remit activities) in order to ensure market conformity of the sale.

([43]) The Commission also notes that in case the conclusion is reached that the NSP is not dedicated, and that therefore the construction of the NSP does not constitute an economic activity, but a public task, the question could still arise whether JLR, the purchaser of the developed land benefits from State aid in the form of sale of land below the market price. (See recital 40 of the GRW case, which stipulates that in order to exclude a benefit for the purchaser of developed land, a market price must be paid for the land.)

([44]) E.g. *Fritz Egger Spanplattenindustrie*, State Aid C 41/94 (ex NN 37/94) Germany OJ C 281, 26.9.96, p. 18, *Mercedes-Benz in Ludwigsfelde*, OJ L 5, 9.1.97, p. 30. *Sangalli Manfredonia Vetro*, OJ L 137, 8.63.2000, p. 1, *Lenzing Lyocell GmbH*, OJ L 260, 6.10.1999, p. 1.

([45]) The third report prepared by CBRE for MHI and submitted by the Slovak authorities may possibly not be complete as some sections that are refered to in it such as Valuation Considerations section –Land Sales Evidence section, as well as the appendix E referred to in point 28 footnote 10 of the notification form are missing, making it impossible to determine what the assumptions used in the report were.

([46]) This would would bring the total price for the 185,3 hectares parcel to some EUR 29,33 million (plus VAT) which is of the same order of magnitude as the EUR 30 million mentioned as the purchase price JLR is expected to pay according to the notification documents.

3.1.2.3. Other elements of the notion of State aid

(126) *State resources:* The costs of NSP development (in full, or in part) stem from the budget of the Slovak State. Moreover, the site to be sold to JLR belongs to the State (through the state owned company MHI) and thus forms part of its State resources. The support will thus be given through State resources within the meaning of Article 107(1) TFEU.

(127) *Imputability*: Any aid that may be linked to the sale of NSP land to JLR is imputable to the Slovak State. As explained in recitals 14-16 and 19-21 above, the State-owned company MHI becomes the initial owner of the future site of the NSP and will transfer ownership or contractual options rights of the developed site to JLR. Imputability can be inferred from the fact that the Investment Agreement laying down the commitment of Slovakia to purchase and resell parts of the NSP (initially 185.3 hectares, and the parcels subject to the option or right of first refusal at a later point in time) to JLR through a State owned company (MHI) was concluded directly between the beneficiary and the Slovak State.

(128) *Selectivity:* Expenditure for the development of the NSP, with the exception of the expenditure relating to the development of infrastructures that are of a truly general nature, seems to benefit a single company, Jaguar Land Rover Slovakia, s.r.o., thus the measure is selective.

(129) The measure is likely to affect trade between Member States as it applies to the automotive sector, where trade between Member States exists. The favouring of JLR and its production by the Slovak authorities means that competition is distorted or threatened to be distorted.

(130) In sum, the Commission has doubts whether the sale of NSP land to JLR involves the granting of further State aid to JLR. In this respect it seeks comments from interested parties, and more in particular on the following issues:

— To what extent the NSP under construction can be regarded as an infrastructure that is dedicated to JLR.

— The discrepancies between the price paid for expropriating the land and the purchase price JLR is expected to pay (see recital 122).

— Even if it were to be concluded that the NSP under construction is an infrastructure that is dedicated to JLR, what cost items (see recital 103) could be regarded as costs related to general infrastructure.

— If it were to be concluded that the NSP is not an infrastructure that is dedicated to JLR, what method should be used to establish whether the price paid by JLR for the land is in line with the market price. In this context, the question arises as to the extent to which the market prices indicated in the […] and the […] evaluation reports reflect specific development costs directly benefitting JLR, or alternatively, a proportionate share of the NSP development costs commensurate with JLR's outright ownership interest in the NSP in the initial phase..

— In case the market price indicated in the market evaluation reports does not need to reflect all or a proportionate share of the development costs incurred by the Slovak government in developing a 'construction ready' industrial site for JLR, the Commission would need to assess whether the price range between EUR 27 795 000 and EUR 28 725 000 indicated by these two reports constitutes the market price for the parcel in question or whether the third, CBRE report indicating a value of between EUR 46 325 000 and EUR 64 855 000 should instead be taken into account.

3.1.3. ***Exemption from the agricultural land transformation fee***

*Economic activity*

(131) As explained above in recitals 12 and 22, the so-called Exemption H provides an exemption from the agricultural land transformation fee. The Slovak authorities' argument on why the exemption does not constitute State aid was similar to the argumentation described above in relation to the expenditure incurred for the NSP development, which, in their view, is not economic.

(132) As explained above (see recital 110), the Commission at this point considers that the development of the NSP may be regarded as an economic activity. If that is confirmed, the exemption from the agricultural land transformation fee is targeted at the economic activity in question.

*State resources*

(133) The exemption granted by the Slovak authorities, stems from the State budget as the State forgoes a fee that is due to it. Therefore, the granting of the exemption involves State resources.

*Imputability*

(134) As explained in recital 12, Regulation 58/2013 as amended provides an exemption from the agricultural land transformation fee to State owned companies that construct strategic industrial parks that are recognised as 'significant investments', such as the NSP. Moreover, in the Investment Agreement between Slovakia and JLR, the Slovak State committed towards JLR that the NSP will not be classified as agricultural land and there will not be any liability for JLR for land transformation costs. Hence, the exemption is imputable to the State.

*Selective advantage*

(135) The Commission considers that in its application to the NSP construction, Exemption H confers a selective advantage to JLR. The intermediary MHI serves merely as a vehicle in order for the Slovak State to pass that advantage to JLR (see also recitals 14-17). The exemption, therefore, is passed on to JLR, which is the actual beneficiary of the exemption. This is also supported by the fact that both the Investment Agreement between Slovakia and JLR, as well as the land evaluation reports prepared for JLR contain references that the sites will not be classified as agricultural land and there will not be any liability for JLR for land transformation costs (See recitals 20 and 22 and footnote 11). The measure provides a selective advantage to JLR over other undertakings, which would be liable for the agricultural land transformation fee, should they purchase agricultural land for the purpose of turning it into industrial land and carrying out an investment on it.

*Other elements of the notion of State aid*

(136) The measure is likely to affect trade between Member States as it applies to the automotive sector, where trade between Member States exists.

(137) The favouring of JLR and its production of automotive vehicles by the Slovak authorities means that competition is distorted or threatened to be distorted.

(138) Consequently, the Commission considers at this stage that the exemption from the agricultural land transformation fee may constitute State aid within the meaning of Article 107(1) of the TFEU.

(139) The Commission is seeking comments from interested parties on this question, specifically as regards the advantage granted to JLR.

### 3.2. **Legality of the aid measures**

(140) The notified regional investment aid in form of a direct grant of nominally EUR 129 812 750 constitutes an individually notifiable measure, as the amount exceeds the notification threshold laid down in Article 4(1)(a) of the GBER. In Nitra, the applicable notification threshold is EUR 18,75 million.

(141) Slovakia confirmed that in line with the provisions of Article 108(3) TFEU, and as reflected in the Investment Agreement, the notified aid will be granted only after the Commission has approved it. By notifying the planned direct grant subject to Commission approval, the Slovak authorities have thus respected their obligations under Article 108(3) TFEU with regard to that part of the aid.

(142) As regards the legality of the non-notified possible aid measures linked to the sale of NSP land and to the exemption from the ALF, the Commission considers that the measures have been granted.

(143) As regards the possible infrastructure development aid, as described in recital 19, the Investment Agreement signed by JLR and the Slovak government on 11 December 2015 clearly entrusts ownership of the Site to the State owned MHI with the obligation to transfer the Site to JLR- and obliges MHI to carry out various land preparation and infrastructure development works. The Investment Agreement contains similarly binding language with respect to the options to purchase the South Land and the Expansion Land and the right of first refusal to the North Land. It is also to be noted that there is a commitment already to future land remediation in relation to the Expansion Land, should JLR exercise its option to buy this parcel in the future. The fact that the granting of aid in connection with the NSP related transaction has taken place can also be derived from the Agreement on Future Agreements, which was also signed on 11 December 2015. This agreement contains further modalities on the conclusion of the land sales agreement and contains a sales price element of EUR 15,83/$m^2$. Therefore, the Commission considers that those two agreements have conferred to JLR the right to receive the infrastructure development aid under the applicable national rules ([47]).

([47]) Case C-129/12 *Magdeburger Mühlenwerke* EU:C:2013:200, para. 40.

(144) As regards the exemption from the ALF, the Investment Agreement states that 'Slovakia declares no part of the Site and no part of the Expansion Land will be classified as agricultural land pursuant to Act No. 220/2004 Coll. on the Protection and use of the Agricultural Land, as amended prior to their sale to the Company,' In addition, the land evaluations reports also state that the Site will be free of a 'conversion fee associated with transfer of agricultural/arable land use to industrial use.' Finally, in its reply of 11 July 2016 in the 'Agricultural Land Fund' case, Slovakia indicated that an exemption in the amount of EUR 17 806 000 had been granted in connection with the NSP by 11 July 2016. These facts, in addition to the promise made to JLR during the bidding process about the exemption, demonstrate that JLR has been conferred the right to receive the exemption under the applicable national rules ([48]).

(145) Therefore, the infrastructure development aid and the the exemption from the ALF constitute unlawfully granted aid measures in favour of JLR.

### 3.3. **Compatibility of the aid measures**

(146) As the notified measure constitutes State aid and the aid in the form of 1) dedicated infrastructure development and 2) exemption from the agricultural land transformation fee is likely to constitute State aid, it is necessary to examine whether they can be found compatible with the internal market.

#### 3.3.1. ***Legal basis for the assessment of the compatibility of the aid***

(147) As Slovakia invokes that the objective of the measure is to promote regional development in an area designated in accordance with Article 107(3)(a) TFEU, and the aid is to be granted in the period between 1 July 2014 and 31 December 2020, the legal basis for its assessment are the RAG 2014-20.

(148) In line with the provisions of the RAG, the Commission will verify the compatibility of the aid measures in application of the Common Assessment Principles laid down in the RAG.

#### 3.3.2. ***Eligibility of the investment project***

(149) JLR is investing in setting up a new establishment in Nitra. Nitra is located in the Nitra region, 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 period from July 2014 to 2020.

(150) JLR's investment in 'the setting up of a new establishment' in Nitra constitutes an initial investment within the meaning of the RAG. An initial investment is defined in paragraph 20(h) RAG as *inter alia* an investment in tangible and intangible assets related to (i) the setting-up of a new establishment. On the basis of the above, 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.

#### 3.3.3. ***Eligibility of expenditure***

(151) 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'. In the presentation to the JLR Board of 18 November 2015, GBP [60 — 85] million is estimated for 'provision costs' as one of the cost items of the Phase 1 project. As explained by the Slovak authorities, they constituted 'unexpected overspend' (see recital 24). The Commission has doubts whether 'provision costs' which appear to be included in the eligible costs can be considered to be eligible for the purpose of regional investment aid.

#### 3.3.4. ***Other elements of the compatibility assessment***

(152) The Commission communication on state aid modernisation ([49]) of 8 May 2012 called for the identification and definition of common principles applicable to the assessment of the compatibility of all aid measures. In their section 3, the RAG defines and operationalizes these 'Common Assessment Principles' (CAP) for the purposes of regional aid.

(153) The assessment under the CAP of the RAG takes place in three steps:

— in a first step, it is checked whether minimum requirements regarding credibility of counterfactual scenario, appropriateness, incentive effect, and proportionality of the aid and its contribution to regional development are met (see RAG, sections 3.2-3.6);

([48]) Case C-129/12 *Magdeburger Mühlenwerke* EU:C:2013:200, para. 40.
([49]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on EU State Aid Modernisation (SAM), COM/2012/0209 final.

— in the second step, it is verified, that the aid does not lead to manifest negative effects (blacklist) that would prohibit the granting of aid, e.g. aid exceeding the allowable maximum aid intensity ceiling, creating overcapacity in a sector in absolute decline, attracting an investment that would have gone without the aid to another region with a similar or worse socio-economic situation, or causal for the closure of activities elsewhere in the EEA (see RAG, section 3.7.2);

— in the third step, for not blacklisted aid projects meeting the minimum requirements, a balancing test is carried out to ensure that the contribution to regional development outweighs the negative effects on trade and competition (see RAG, sections 3.7.1 and 3.7.4).

3.3.4.1 *Minimum requirements*

(a) *Contribution to regional objective and need for State intervention*

(154) According to Section 3.2. of the RAG, aid must contribute to regional development. Section 3.2.2. of the RAG lays down a number of indicators to demonstrate the contribution of individual investment aid to the development of the target region. The Commission takes note of the positive effects of the aided investment project, as presented by Slovakia (see recital 34 of this decision) on regional development. In particular the direct and indirect job creation effects, the partnership with local universities and technical colleges, the knowledge transfer into the region and the training activities organised represent a contribution to the development of the region and to the achievement of the EU cohesion objective, in line with Section 3.2.2. of the RAG.

(155) To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment has to be maintained in the area concerned for a minimum period of five years (three years for SMEs) after completion of the investment ([50]). The Commission notes that the beneficiary commits to keep the investment for 5 years after completion of the project in the area concerned (see recital 33 of this decision).

(156) To ensure that the investment is viable, the beneficiary must provide a financial contribution of at least 25 % of the eligible costs, provided through its own resources or by external financing, in a form that is free of any public financial support ([51]). The Commission notes that the beneficiary will contribute at least 25 % of the proposed eligible costs.

(157) According to Section 3.2 of the RAG, State intervention is considered justified for the development of the areas included in the regional aid map. The Commission notes that Nitra (situated in the Nitra area) is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU, which is in line with Section 3.2. of the RAG.

(b) *Appropriateness of regional aid and of the aid instrument*

(158) According to Section 3.4 of the RAG, the notified aid measure must be an appropriate policy instrument to address the policy objective concerned. An aid measure will not be considered compatible if other less distortive policy instruments or other less distortive types of aid instruments are available.

(159) Member States, considering the bottlenecks to regional development and the specific handicaps of firms operating in the target region, have to clarify to what extent these bottlenecks could also successfully be targeted by non-aid measures. Under the second appropriateness test, the Member State has to indicate why — in view of the individual merits of the case — the chosen form of regional investment aid is the best instrument to influence the investment or location decision.

(160) Slovakia based its explanation for appropriateness of the notified investment aid on the economic situation in the Nitra area and provided evidence to prove that the area is disadvantaged in terms of GDP per capita and of available income in comparison with the average of the Slovak Republic. (See recital 35.)

(161) The Commission notes that the underdeveloped nature of the Nitra region in general is confirmed by its status as a region eligible for regional aid in accordance with Article 107(3)(a) TFEU.

([50]) See paragraph 36 of the RAG.
([51]) See paragraph 38 of the RAG.

(162) The Commission notes that Slovakia provided sufficient justification that horizontal measures alone would be insufficient to address the particular challenges of the region. For example, Slovakia mentions that the general infrastructure (such as the road and rail network) surrounding the Nitra region is of very poor quality and that additional revenues that the notified project will create will be necessary to upgrade these networks. The Commission, in line with earlier case practise under comparable provisions of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects ([52]) (hereinafter 'IDAC') (e.g. in the Dell Poland decision ([53]), Porsche decision ([54])), accepts that State aid, and investment aid in particular, is an appropriate form of support to achieve the cohesion objective for the concerned area of Nitra.

(163) The Commission considers that a direct grant constitutes in principle an appropriate aid instrument to bridge viability gaps by reducing investment costs and that tax incentives were not preferred due to their administrative complexity.

(164) Although no argument was made by Slovakia regarding the appropriateness of the infrastructure aid and an exemption from the payment of certain duties and levies, (given that according to Slovakia, these elements do not constitute State aid), the Commission preliminarily does not exclude that in principle these constitute appropriate policy instruments in the particular case.

(c) *Incentive effect*

(165) According to Section 3.5 of the RAG, regional aid can only be found compatible with the internal market, if it has an incentive effect. An incentive effect is present when 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.

(166) Paragraphs 64-65 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 notes that the formal incentive effect requirement for the grant has been respected (see recital 38).

(167) In addition to the formal incentive effect requirement, Paragraph 61 of the RAG stipulates that the (substantive) incentive effect can be proven in two possible manners: in the absence of aid the investment would not be sufficiently profitable (scenario 1); in the absence of aid the investment would take place in another location (scenario 2).

(168) As set out in section 3.5.2 of the RAG, the Member State must provide clear evidence that the aid effectively has an impact on the investment choice or the location choice. To this end, the Member State must provide a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The Commission has to verify that these scenarios are realistic and credible. According to paragraph 68 of the RAG, a counterfactual scenario is credible if it is genuine and relates to the decision-making factors at the time of the decision.

(169) The Commission notes that Slovakia presents 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[…] (Mexico).

(170) 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 assisted region selected with alternative locations. For that purpose, the Member State is invited by paragraph 72 of the RAG 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.

([52]) OJ C 223, 16.9.2009, p. 3.
([53]) Commission Decision of 23 September 2009 on the aid which Poland is planning to implement for Dell Products (Poland) Sp. z o.o. C 46/08 (ex N 775/07), OJ L 29, 2.2.2010. p. 8.
([54]) Commission Decision (EU) 2015/1966 of 9 July 2014 on the State aid SA. 34118 (2012/C ex 2011/N) which Germany is planning to implement in favour of Porsche Leipzig GmbH and Dr Ing. H.c.F. Porsche Aktiengesellschaft, OJ L 287, 31.10.2015, p. 68.

(171) The Commission notes that the Slovak authorities submitted the required information in the form of an explanation of the location selection process based on contemporary documents which the Slovak authorities also submitted. These documents described the decision-making process of the beneficiary concerning the investment and location decision.

(172) The Commission notes, however, that the very significant NPV gap between Mexico and Nitra Slovakia, with NPV higher in Mexico, is only to a very limited extent covered by the notified State aid amount ([55]). To have an incentive effect and attract the investment to Nitra instead of Mexico, the aid should in principle cover a significant proportion of the gap.

(173) More in particular, the Commission is of the preliminary view that the qualitative factors against the Mexico location may have tilted the location choice in favour of Nitra. These factors were the following: distance to JLR headquarters, delays in timing, natural disaster risks in Mexico, (volcanic activity), political instability, government effectiveness and corruption risks, brand equity considerations and investment in the EU as hedge against the possibility of the UK's departure from the EU. The conclusions of the 10 July 2015 presentation from the field trips of June 2015 appear to emphasize the remaining concerns over safety, seismic activity, deliverability, port capacity and risk of OEM saturation in Mexico.

(174) The preliminary finding that it was not the notified regional aid that was the decisive factor in the location decision but rather strategic considerations is also confirmed by the minutes of the 10 July 2015 Globalisation Forum meeting that state that the 'ECM attached particular importance to the timing impacts, distance from JLR HQ and the relatively higher risk of reputational damage associated with Mexico.' The summary of a phone call to a Mexican official on 19 August 2015 explained that the Mexican authorities had given JLR a very positive impression and built a good relationship and that it was really JLR's 'focus on timing and deliverability that swung [JLR] in favour of Slovakia, i.e. more about where our business is today rather than about them'.

(175) Based on the above, the Commission expresses doubts as to whether the investment aid had an incentive effect and cannot exclude that strategic considerations were the main reason for selecting a CEE location over Mexico. The Commission seeks comments from interested parties.

Credibility of the Mexico alternative

(176) With respect to the credibility of the Mexico scenario, the Commission also has doubts that this alternative was a genuine and credible alternative to Nitra, Slovakia, at the time when the location decision was made.

(177) The Commission first examined the issue of when the location decision was made. It appears from the information submitted that the location decision was made by the JLR and Tata Motors Limited Board meetings of 3 and 7 August 2015, respectively ([56]), for which the location recommendation was made on 10 July. Therefore, the Commission considers that the location choice was made in July/August 2015.

(178) Second, the Commission examined whether the scenario (Nitra versus H[…], Mexico) at the time when the location decision was made was realistic and credible. Credibility can be established if the evidence of the comparison is genuine and it relates to the decision making factors at the time of the decision making.

(179) Regarding the issue of the comparison relating to the decision making factors at the time of the decision making, the Commission notes that the comparison was based on the same factors in both locations, with the exception of the incentives, which were only taken into account for the Mexico location.

(180) Despite the fact that the factors for comparison appear to be the same, the Commission has doubts at this point that the Mexico alternative was indeed a credible and genuine alternative to Nitra at the time of the recommendation of Nitra for the location, i.e. on 10 July 2015.

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([55]) The Commission notes that the proportions were as follows: in July 2015, the NPV gap was EUR 590 million (using for that calculation the exchange rate of 1,35, as explained in footnote 31) and the regional aid was EUR [230-320] million aid, i.e. 47 % of the gap was going to be financed from regional State aid. In November 2015, the gap was thought to be EUR 413 million and the aid amount of circa EUR 125 million was going to cover circa 30 % of the NPV gap.

([56]) The Commission believes that the location was merely confirmed at the Tata Motors Limited Board meeting of 18 September 2015 and that the purpose of the meeting was to agree on a division of the original investment project into Phase 1 and Phase 2. This is because the 18 September 2015 meeting decided that the capacity will be 300 000 units p.a. in two phases and that the GBP [150-200] million State aid was enough to *continue to progress with Nitra* [emphasis added]. The expression 'continue to progress with Nitra' presupposes a prior decision to select Nitra as the investment location. See recital 80 above.

(181) There are several factors contributing to doubts that Mexico was indeed a realistic alternative scenario to an EEA site and that the aid had provided an incentive to lure the investment away from Mexico. On the basis of the submitted documents, it appears at this stage of the assessment that Project Oak was meant to be a separate project. It was either not meant to be merged with the Darwin project, and was going to have a life on its own, or was abandoned altogether in the spring of 2015 ([57]). In either case, there are indications that it was not meant to be a credible alternative to *this* investment project at the time of the location recommendation/decision, i.e. in July, August 2015. The reasons for this preliminary conclusions are as follows:

— First, two locations for two different investment projects were seriously considered, in two separate search processes, for an extended period of time (see recital 52). The information submitted by Slovakia did not provide a clear answer as to when the two location approach was abandoned. However, even as late as 11 December 2015, JLR said to the Puebla State governor 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. In addition, at the discussion of 27 April 2015, when Mexico was identified as an alternative to *the* CEE location to be selected in July 2015, an on-line article (see footnote 57) says JLR is planning a more than $500 million investment in Mexico. This raises the possibility that a Mexico location was seriously considered in April 2015, not as an alternative location for the Nitra investment, but rather for an investment project that is fundamentally different from the one in Nitra. Finally, the presentation of 27 April 2015 marks the fate of the non-EU alternative to *this* project with a question mark for the time period following 30 June 2015. This could suggest that it was questionable in April 2015, what the 'fate' of a Mexico alternative will be after the location decision for the investment project in question will have been made, i.e. in July 2015. These elements together question whether the Mexico alternative was considered as a genuine alternative to *the* investment project to be carried out in Nitra.

— Second, the analysis that appears to have been prepared for the Mexican site for comparison with the CEE alternatives analysed as part of Project Darwin is less detailed. Notably, there is no elaborate scoring that would be comparable in detail to the elaborate scoring prepared for the CEE sites that took into account over 100 criteria. At the 27 April 2015, when H[…] is said to have been selected as the non-EU alternative, there is much more detailed analysis for Turkey, another non-EU alternative, which was also eliminated on that date. About Mexico, an information slide from a presentation from January 2015 was recycled comparing Mexico with Hungary, Canada and the US and another slide described generalities without any quantitative information. Appendix F, designated in an introductory slide as one providing an 'update from Oak study', is missing from this presentation. Finally, even as late as 10 July 2015, Project Oak is presented on 4 slides with fewer details about H […] than about the remaining CEE locations (i.e. Nitra and Jawor). These only extend to plot size, distances from Puebla, and Mexico City, labour availability, the existence of good road and rail connection and the designation 'flat land' as well as very general information about the political environment, economic environment and geographic considerations, while there was very detailed information on the Nitra and the Jawor sites extending to 17 slides.

— Third, while it is apparent that timing was critical for the project, the Mexico alternative appeared to have significant delay. A Request for Proposal was only issued for Mexico in the days when Poland's and Slovakia's replies to a Request for Proposal were already in the discussion phase, i.e. on 24, 26 and 28 May 2015. As regards site related information from H[…], (factors analysed in great detail for several weeks in the spring of 2015 for the CEE sites), as late as until June 2015 only rudimentary information appears to be available regarding site preparation activities. (See recital 54.)

(182) Based on these considerations, the Commission raises doubts about the credibility of the Mexico location as a counter-factual scenario within the meaning of paragraph 68 of the RAG for the present investment. On the basis of the information available at this point, the Commission cannot exclude the possibility that the aid measure did not have incentive effect to attract the investment to Nitra. If an incentive effect with regard to the Mexico alternative is not demonstrated, it cannot be excluded that the real alternative scenario to the Nitra location was Jawor, Poland and that the effective location decision was based on a pure intra-EEA scenario 2 analysis. The Commission calls upon interested parties to comment on this element.

([57]) This latter view seems to be confirmed by internal anonymous JLR sources cited in a FT article https://www.ft.com/content/4ec6972c-73db-11e5-bdb1-e6e4767162cc. In late July (2015) the Polish Deputy Prime Minister reportedly stated that Poland was in negotiation with JLR about the investment when no location decision had been made by JLR, which '<u>for months</u> had fastidiously told journalists <u>no decision</u> had been made on the location <u>except it would be in eastern Europe</u>.' [emphasis added]. Another on-line article on 27 April 2015 at http://www.autoblog.com/2015/04/27/jaguar-land-rover-plant-mexico-report/ states that the 'British automaker is considering spending more than <u>half a billion $</u> [emphasis added] to build a new assembly plant in Mexico' and that JLR could conceivably be thinking about two different plants: one in the US and another one in Mexico. This article suggests that JLR may have been thinking about another plant (or plants) in the NAFTA region, and not the one that is an alternative to the Nitra plant.

(d) *Proportionality of the aid amount* ([58])

(183) The Commission has to assess the proportionality of the aid package. According to section 3.6 of the RAG, the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned.

(184) According to paragraph 78 pf the RAG, as a general rule, notified individual aid will be considered to be limited to the minimum, if the aid amount corresponds to the net extra costs ('net-extra cost' approach) 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 (location incentives), the aid must not exceed the difference between the net present value (NPV) of the investment in the target area with the NPV of the investment in the alternative location, while taking into account all relevant costs and benefits.

(185) The Commission notes that the notified aid of EUR 129 812 750 in nominal value and EUR 125 046 543 in present value does not exceed the NPV difference of EUR 413 million in costs between the Nitra location and the H[…], Mexico locations.

(186) However, the Commission takes at this stage the preliminary view that the public expenditure on the NSP construction — fully or partially (as described in recitals 103, 111, 121, 123 and 130) — and/or the exemption from the ALF may constitute State aid to the benefit of JLR (see recital 139), and that it cannot be excluded that the cost difference of EUR 413 million between the Mexico and the Nitra alternatives would be exceeded. Any amount in excess of the EUR 413 million identified would be disproportionate. In fact, as Slovakia invokes multiple quantitative and credible factors that reduce the attractiveness of Mexico, the proportionality threshold could be reached already at a much lower level. The Commission does not consider it necessary at this stage to quantify the resulting effective proportionality threshold.

(187) In view of the above, the Commission raises doubts that the total amount of aid (the notified regional aid in combination with the possible infrastructure aid and agricultural land transformation fee exemption Slovakia is planning to grant) to JLR in the framework of this investment project is proportionate and seeks comments from interested parties on this question.

(e) *Conclusion as to the respect of the minimum requirements*

(188) In view of the doubts expressed in connection with the possible lack of the incentive effect, (see recitals 165-182), and doubts as to the proportionality of the aid (see recital 187), the Commission at this point has doubts that the regional aid measure meets the minimum requirements of the RAG.

3.3.4.2 *Avoidance of undue negative effects on competition and trade*

(189) Pursuant to paragraph 139 of the RAG, if the counterfactual analysis suggests that without the aid the investment would have gone ahead in another location (scenario 2) which belongs to the same relevant geographical market, and if the aid is proportional, possible outcomes in terms of overcapacity or substantial market power would in principle be the same regardless of the aid. In such cases, the positive effects of the aid are likely to outweigh the limited negative effects on competition.

(190) Although Slovakia argued that the relevant geographic market in this case is the worldwide market except for China, it did not provide sufficient information to corroborate this view. Therefore, the Commission leaves the relevant geographic market definition open at this stage, but considers for the present preliminary assessment that it cannot exclude that the relevant geographic market is the EEA.

(191) Section 3.7 of the RAG describes certain situations where the aid could potentially have an undue negative effect on competition and trade. One of these situations is where the aid induces a substantial capacity expansion in an underperforming market. Another situation is when the aid enables the beneficiary to increase or maintain substantial market power in the relevant market.

([58]) See the following section of this decision regarding conformity with the applicable aid intensity ceiling (see paragraph 81 to 86 and paragraph 107 of the RAG).

(192) The Commission accepts Slovakia's proposition that the relevant product market in this case is the Premium D SUV segment. As regards the relevant geographic market, the Commission notes that even if it considers that the relevant geographic market is EEA, the required competition analysis does not reveal any problem. Indeed, as the market share of the beneficiary in the Premium D SUV segment in the EEA in the time period from 2012 to 2021 is between [4-8]% and [20-30]% and since the relevant market is not in relative or absolute decline (see recital 93) on the EEA, the Commission finds that the measure 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.

3.3.4.3 *Manifest negative effects on competition and trade*

(193) Section 3.7.2 of the RAG explicitly lists a series of situations where the negative effects on trade and/or competition manifestly outweigh any positive effects, so that the regional aid cannot be found compatible with the internal market.

(a) *Manifest negative effect: The (adjusted) aid intensity ceiling is exceeded*

Eligible costs and aid intensity

(194) 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 ([59]), the maximum (adjusted) aid intensity ceiling that applies to a project of a given size, taking into account the required 'progressive scaling down' ([60]).

(195) The applicable regional aid ceiling in the Nitra region is 25 %. The proposed planned total eligible expenditure for the notified investment project is EUR 1 406 620 591 in nominal value, which is EUR 1 369 295 298 in present value. The notified grant aid amount is EUR 129 812 750 in nominal value and EUR 125 046 543 in present value resulting in an aid intensity of 9,13 %, which is prima facie below the maximum scaled down allowable aid intensity of 9,24 % for this investment in the region of Nitra.

(196) 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 ([61]). Slovakia assured the Commission that the acquired assets will be new ([62]). 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. In the present case, section 3.6.1.1 of the RAG applies as the proposed eligible costs for the proposed investment aid are calculated on the basis of investment costs. Slovakia agreed that in case the eligible costs are below the notified aid amount, the notified regional aid measure will be adjusted in order to ensure that the aid does not exceed the maximum State aid intensity for the investment project. The Commission notes that should the GBP [60-85] million 'overspend' element turn out to be ineligible, the notified aid amount should certainly need to be reduced to ensure that the maximum State aid intensity ceiling for the project is not exceeded.

The possibility that the adjusted aid intensity ceiling may be exceeded through infrastructure aid and the exemption from the ALF

(197) As explained in recitals 103, 111, 121, 123, 130 and 139, the Commission is of the preliminary view that Slovakia is likely to grant additional incentives to JLR in the forms of 1) financing the NSP development and 2) an exemption from the obligation to pay an agricultural land exclusion fee related to the NSP.

(198) On the basis of these considerations, the Commission has doubts, at this stage of its assessment, that the basic requirement that the maximum aid intensity ceiling for the notified investment project with the notified eligible investment amount in the Nitra region be respected, is satisfied. This is because the additional incentives possibly granted in the form of expenditure on the NSP and the exemption from the ALF that Slovakia is planning to grant combined with the notified regional aid measure exceed the maximum State aid intensity of 9.24 %. The Commission seeks comments from interested parties on this question ([63]).

([59]) 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.

([60]) See paragraph 86 and 20(c) of the RAG.

([61]) Pursuant 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.

([62]) See RAG, paragraph 94.

([63]) Of course, should these additional infrastructure cost elements be added to the total cost of the investment project, in principle, more aid could be granted under the Nitra region's maximum State aid intensity ceiling. However, under no circumstances could all additional investment cost items be financed from State aid. A full financing would certainly exceed the costs that could be eligible for regional aid for such an 'enlarged' investment project.

(b) *Manifest negative effect: Counter-cohesion effect*

(199) 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, this will 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.

(200) First, the Commission considers that the provision applies to a scenario 2 situation in which both alternative locations are in the EEA.

(201) Slovakia argues that the counterfactual scenario is a site in Mexico. In section 3.3.4.1.(c) above the Commission expresses doubts about the credibility of this scenario. The extensive and detailed comparisons between several locations in CEE, the timing delay and other elements (see recital 181) suggest that the incentive effect scenario is indeed a scenario 2 (location) decision, but that it may have been an intra-EU location decision.

(202) Second, the Commission interprets the anti-cohesion provisions set out in paragraph 121 of the RAG (i.e. 'the investment would have been located in a region with a regional aid intensity which is higher or the same as the target region') to mean that without the aid, the investment would have been more cost-effective or economically more viable in that other, at least equally disadvantaged, location.

(203) The Polish site (Jawor) is located in a region with the same aid intensity ceiling as Nitra ([64]), which is the starting point for the examination of possible anti-cohesion effects under the RAG.

(204) Company internal documents of the beneficiary indicate 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. As explained in recital 70 above, on 15 June 2015, Nitra (Slovakia) had an 'NPV disadvantage' of GBP [80-120] million compared to Jawor in Poland (for the entire lifetime of the project and linked to a GBP [110-150] in per unit operating cost disadvantage). The operating cost disadvantage per unit was GBP [120-180] on 10 July 2015, which, based on the relationship between what JLR calls the 'NPV' and the 'operating cost' disadvantage per unit, means that Nitra's NPV disadvantage was likely to have been higher that the GBP [80-120] million on 15 June. Moreover, as explained in footnote 25, page 53 of the aid application form for Poland of 24 June 2015 shows an NPV gap between Mexico and Poland (Jawor) as GBP 320 million, using NPV factors also used for the Nitra/Mexico NPV analysis on 10 July 2015. Given that the Nitra Mexico NPV gap on 10 July 2015 was GBP 437 million, which is higher than the Mexico Poland NPV gap of GBP 320 million, a full NPV comparison of the investments in Poland and Nitra suggests that the investment was more cost effective in Poland than in Nitra.

(205) Therefore, the Commission is of the preliminary view that, if the Mexico alternative would prove to be non-credible, and if the real counter-factual to Nitra was Jawor (Poland), then it cannot be excluded that the aid package provided to JLR by Slovakia has a manifest negative effect. The Commission is seeking interested parties to comment on this question.

(206) The Commission notes that in case the Mexico alternative proves to be credible, then the anti-cohesion element is not present, as the counter-factual scenario is not within the EEA.

(c) *Manifest negative effect: Closure of activities/relocation*

(207) 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, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements.

(208) The Slovak authorities confirmed that the beneficiary has not closed down the same or similar activity in the EEA in the two years preceding the application for aid, and does not have any concrete plans to do so within two years after completion of the investment. Therefore, the Commission concludes that the measure does not lead to a closure of activities or relocation of activities

([64]) SA.37485 — Regional aid map for Poland, OJ C 210, 4.7.2014, p. 1.

(d) *Conclusion as to the existence of manifest negative effects on competition and trade*

(209) In the light of the assessment in recitals 198 and 205 of this decision, the Commission concludes at this stage that it cannot be excluded the aid has manifest negative effects on competition and trade in the meaning of section 3.7.2 of the RAG as the allowable aid intensity ceiling may have been exceeded and the measure may have a manifest anti-cohesion effect.

3.3.4.4 *Balancing of positive and negative effects of the aid*

(210) Paragraph 112 of the RAG lays down the following: 'For the aid to be compatible, the negative effects of the measure 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. Certain situations can be identified where the negative effects manifestly outweigh any positive effects, meaning that aid cannot be found compatible with the internal market.'

(211) As explained in recital 188, the Commission cannot conclude at this point that the notified regional aid measure satisfies the minimum requirements of the RAG in view of the doubts expressed in connection with the aid package's incentive effect and proportionality. The Commission also concludes at this point that it cannot be excluded that the aid has manifest negative effects (see recital 209).

(212) In the light of these considerations, the Commission has doubts as to whether, in view of the doubts expressed, the positive effects of the aid would outweigh their negative effects.

3.3.4.5 *Transparency*

(213) In view of para.II.2 of the Transparency Communication from the Commission ([65]) Member States must ensure the publication on a comprehensive State aid website, at 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 (SME/large company), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (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 not required to publish the above-mentioned information before 1 July 2016.

(214) The Commission notes that Slovakia confirmed that all requirements concerning transparency set out in para.II.2 of the Transparency Communication will be respected.

### 3.4. **Doubts and grounds for opening**

(218) For the reasons set out above, the Commission, after a preliminary assessment of the aid package granted by Slovakia to JLR, has doubts as to conformity of the package with the provisions of the RAG concerning 1) the eligibility of certain elements that apparently form part of the eligible investment costs (see recital 151), 2) the incentive effect of the aid (recitals 175, 182), 3) the proportionality of the aid (see recital 187). As a result, the Commission cannot conclude at this point that the notified regional aid measure satisfies the minimum requirements of the RAG (see recital 188).

(219) In addition, the Commission cannot exclude that the notified aid may have two manifest negative effects on trade and competition, and this for two reasons. On the one hand, the totality of the aid may exceed the applicable regional aid intensity ceiling (see recital 198) as public expenditure on the infrastructural development (or a part of it) may be regarded as additional State aid in favour of the beneficiary (see recital 130). The same could be argued for the exemption from the agricultural land transformation fee (see recitals 138-139). On the other hand, it cannot be excluded that the measure has an anti-cohesion effect (see recital 209). For all these reasons the Commission raises doubts as to the compatibility of the notified aid measure with the internal market. The Commission also raises doubt as to the compatibility in view of the balancing of positive and negative effects of the aid.

([65]) 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 audio-visual 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.

(220) Consequently, the Commission is under duty to carry out all the required consultations and, therefore, to initiate the procedure under Article 108(2) of the TFEU. This will give the opportunity to interested parties whose interests may be affected by the granting of the aid to comment on the measure. In the light of both the information submitted by the Member State concerned and that provided by interested parties, the Commission will assess the measure and will take its final decision.

(221) The Member State and interested parties are invited to provide in their comments to the opening decision all information necessary to carry out this formal investigation.

(222) On the basis of the evidence submitted concerning the above mentioned factors, the Commission will perform a balancing exercise of the positive and the negative effects of the aid. The overall assessment of the impact of the aid will allow the Commission to take a final decision and close the formal investigation procedure.

(223) In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests Slovakia to submit its comments and to provide all such information as may help to assess the aid, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

(224) The Commission wishes to remind Slovakia that Article 108(3) of the Treaty on the Functioning of the European Union has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

(225) The Commission warns Slovakia that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.

(226) Finally, the Commission notes that Slovakia exceptionally agreed to have the present decision adopted and notified in the English language.

If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
B — 1049 Brussels
Fax No: 32 2 296 12 42

Yours faithfully,

For the Commission

*Margrethe Vestager*

Member of the Commission