EUROPEAN COMMISSION

Brussels, 8.2.2010
C(2010)818 final

Subject: **State aid N 541/2009 – Sweden**
State guarantee in favour of Saab Automobile AB

Sir,

(1) I have the honour to inform you that the Commission has decided not to raise objections to the State aid measure mentioned in reference.

I PROCEDURE

(2) On 2 October 2009 Sweden notified a State guarantee measure in favour of Saab Automobile AB (hereinafter: "Saab").

(3) By letter dated 20 October 2009, the European Commission required additional information. Sweden submitted additional information on 18 November, 3 December and 7 December 2009 as well as on 26 January 2010.

II THE MEASURE

II.1. The Beneficiary

(4) The beneficiary of the planned State aid measure is the car manufacturer Saab. The company is incorporated in Sweden and has its registered office and main assembly plant in *Trollhättan*, Sweden; with smaller sites existing for instance in *Nyköping*[1] and in Gothenburg.

[1] Spare parts and accessories.

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(5) Saab is currently 100%-owned by General Motors of Canada Ltd, the latter being wholly owned by General Motors Corporation (hereinafter: "GM")[2].

(6) On 20 February 2009 Saab filed an application for so called "restructuring" under the Swedish Company Reorganisation Act at the District Court of *Vänersborg*. As part of the reorganisation, Saab agreed upon a juridical composition with its creditors resulting in a write down of all debts incurred prior to the reorganisation by 75% and took steps to reduce ongoing costs. The reorganisation procedure came to an end on 20 August 2009 following a decision of the District Court.

(7) On 12 January 2010, GM asked for voluntary liquidation of Saab under Swedish law[3]. The Swedish Companies Registration Office has therefore appointed two liquidators.

(8) On 27 January 2010, a binding agreement was entered into between GM and Dutch automobile manufacturer Spyker Cars N.V. (hereinafter: "Spyker") in view of the sale of Saab.

(9) In the light of this agreement, Saab's liquidation was immediately suspended on 27 January. In the wake of that decision, Saab is no longer subject to a judicial protection regime and operates in the normal manner of Swedish firms.

II.2. The Swedish Government's Aid Package for the Automotive Industry

(10) A dramatic reduction in demand in the second half of 2008 has led to serious problem for car makers. To provide support for the car sector in the present financial crisis with the objective of preserving an industry with the potential to be competitive, the Swedish government has brought forward a series of measures.

(11) As part of this package, the Swedish Parliament had given the Government powers to issue State guarantees to undertakings in the automotive sector, to be used as collateral for loans from the European Investment Bank (hereinafter: "EIB") intended to finance a transition to green technologies.

II.3. The EIB Loan

(12) Saab is undertaking a project concerning research and engineering activities during the period 2009 to 2012 related to (i) automotive fuel efficiency aiming at achieving CO2 emission targets set by the EU Commission and (ii) safety.

(13) In order to fulfil this financing plan, Saab has applied for a EUR 400 million loan from the EIB (hereinafter: "the EIB loan"). The project, indeed, seems to fall within the functions of the bank[4].

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[2] The automobile division of Saab-Scania was incorporated in 13 September 1985, as "Viggen Nitton". In December 1989, General Motors announced it had bought 50% of Saab-Scania's automobile division for US $600 million with an option to acquire the remaining shares within a decade. Saab-Scania announced that the automobile division was sold to General Motors and a new name was given to the company ("Saab Automobile Aktiebolag" (org.nr. 556258-8912)) on 19 January 1990. In 2000, GM purchased the remaining shares of Saab Automobile AB, making it a wholly-owned subsidiary.

[3] According to Swedish legislation liquidation is the process of dissolving a company by converting its assets into cash to the extent necessary, paying off its debts, and distributing any surplus.

[4] The European Clean Transport Facility (ECTF) is a major EIB financing facility to support investments targeting research, development and innovation in the areas of emission reduction and energy efficiency in the European transport industry.

(14) On 21 October 2009, the EIB Board of Directors took a preliminary decision to grant Saab a loan of EUR 400 million[5]. However, at this stage, the EIB has not yet definitely approved the loan request. The EIB is currently conducting a due diligence examination of the deal; a final decision is expected in February 2010. In case of a positive decision, the loan is likely to be paid out in several instalments with a maturity of seven years according to a time scheduling to be set. On the basis of provisional documents, the Commission notes that total cost of the project is estimated by the EIB to be EUR 977,800,000 and the Borrower (Saab) has stated that it intends to finance the project as follows:

Table 1: Financing of Saab's business plan

Source	Amount (EUR million)
Own funds	577.80
EIB funds	400.00
TOTAL COST	977.80

II.4. The State Guarantee

(15) Based on the powers it has received from Parliament, on 11 June 2009 the Swedish Government instructed the Swedish National Debt Office (*Riksgäldskontoret*, hereinafter: "NDO") to start negotiations with Saab on the State guarantee to be issued for the EIB loan.

(16) The NDO is empowered to issue such guarantees. However, the Government must approve the guarantee in each particular case. After the decision of the Government, the NDO will provide the guarantee to Saab. The signing of the guarantee agreement, between the NDO and Saab, constitutes the granting of the legally binding guarantee.

(17) NDO's guarantee will be divided into two separate guarantees.

(18) The first guarantee will cover 82.8% of the loan, i.e. EUR 331.2 million out of EUR 400 million. In return for the guarantee, Saab will pay the Swedish State a premium amounting to 323 basis points ("bps") per annum ("p.a.") for the first two years that the guarantee applies, i.e. 3.23% of the instalments received by Saab. After this period of two years, Saab will pay a premium amounting to 380 bps (3.80%) p.a. for the remainder of the validity of the guarantee. This guarantee is referred to as "guarantee A" in this decision.

(19) The second guarantee will cover the remaining 17.2% of the loan, i.e. EUR 68.8 million out of EUR 400 million. For this, Saab will pay the Swedish State a premium of 1248 bps p.a., i.e. 12.48% of the amount covered by the guarantee. This guarantee is referred to hereinafter as "guarantee B".

(20) The two guarantees will apply *pari passu*, i.e. without any preference or seniority between the two; such that any sum paid out under the global guarantee will be covered pro rata by the two guarantees jointly (i.e. 82.8% will be covered by the first guarantee and 17.2% by the other).

[5] This approval was taken under the expectation that Saab would be acquired by Koenigsegg Group AB, with which GM was negotiating on the sale at that time. However, those negotiations did not lead to a conclusion of an agreement. The parameters of the project and the business plan underlying EIB's assessment remain unchanged under the current deal with Spyker.

(21) In addition to the premium payable for the guarantee, Saab will provide the Swedish government with high-quality collateral covering the full guaranteed amount. This collateral will be callable by the Swedish State if it has to pay out any money under the guarantee.

(22) Before every instalment of the EIB loan, the NDO shall ensure that Saab has pledged adequate collateral for the guarantee and that Saab is able to provide the required co-financing of the project costs.

III THE COMMISSION'S ASSESSMENT

III.1. Existence of State Aid

III.1.1 General remarks

(23) Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter: "TFEU")[6] provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(24) For the sake of clarity, it should be underlined that it is only the guarantee notified by Sweden that is covered by this decision, not the EIB loan.

(25) The Commission has published detailed guidance on the application of the State aid rules of the Treaty to guarantees[7] (hereinafter: "the Guarantee notice"), making it clear that the general criteria of Article 107(1) TFEU equally apply to guarantees. As indicated in the Guarantee notice, the benefit of a State guarantee for the beneficiary is constituted by the fact that the risk associated with the guarantee is carried by the State.

(26) As regards the application of the State aid criteria of Article 107(1) TFEU to guarantees A and B, the Commission considers the following. As the guarantees are based on powers given by Parliament and can be issued only upon express decision by the Government, the decision to grant the guarantees is clearly imputable to the State. The guarantees are granted from State resources since, in the event the Swedish state would actually have to pay out money under the guarantees, the necessary funds would be drawn from the central State budget, which is consequently burdened by the financial risk linked to the guarantees. The guarantees are also selective since the Government has discretion to choose the undertakings that will benefit from such guarantees. Finally, as there is extensive trade in cars and car parts between several operators within the European Union, the advantage granted to Saab by means of the guarantees would be liable to affect competition and trade between the Member States.

[6] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

[7] Commission notice on the application of Article 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).

(27) In order to establish whether the guarantees contain State aid, the Commission must also assess whether they provide an advantage to Saab. As indicated in the Guarantee notice, a State measure is not State aid unless it also provides the beneficiary with an advantage it would not otherwise have been able to obtain on market terms. In this context, in order to determine whether an advantage is being granted through a guarantee, the Commission should base its assessment on the principle of an investor operating in a market economy[8] (hereafter referred to as the "market economy investor principle"). Account should therefore be taken of the possibilities for a beneficiary to obtain equivalent financial resources by having recourse to the capital market. State aid is not involved where a new funding source is made available on conditions which would be acceptable for a private operator under the normal conditions of a market economy.

(28) Sweden takes the view that guarantee A is State aid, but compatible with the internal market in light of the Commission's communication "Temporary framework for State aid measures to support access to finance in the current economic and financial crisis"[9] (hereinafter: "the TF").

(29) However, concerning guarantee B, Sweden argues that it is not State aid under the market economy investor principle precisely because the terms are such as to be acceptable for a private operator under the normal conditions of a market economy.

(30) It therefore appears appropriate to first examine whether the State aid criteria are met in the case of guarantee B, and then to assess guarantee A.

III.1.2 Guarantee B

(31) In section 3.2 of the Guarantee notice the Commission gives detailed guidance on the conditions in which the presence of State aid in an individual guarantee can be ruled out by application of the market economy investor principle. However, when some of these conditions are not met the Member States has to duly substantiate its claim according to which a given guarantee does not contain State aid.

(32) The Commission notes the fact that the guarantee can be properly measured i.e. is linked to a specific financial transaction, for a fixed maximum amount and is limited in time. These aspects are pre-requisite to any finding of absence of State aid as otherwise it would not be possible to calculate a market premium for that guarantee (see the Guarantee notice section 3.2(b)).

(33) Furthermore, a market-oriented price should be paid for Guarantee B (section 3.2(d) of the Guarantee notice). Indeed, risk-carrying should normally be remunerated by an appropriate premium on the guaranteed amount. When the price paid for the guarantee is at least as high as the corresponding guarantee premium benchmark that can be found on the financial markets, the guarantee does not contain aid. The Guarantee notice goes on to indicate that if no corresponding guarantee premium benchmark can be found on the financial markets, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, has to be compared to the market price of a similar non-guaranteed loan. In both cases, in order to

[8] This follows from an extensive ECJ case law, se e.g. case C 278-280/92, Hytasa.

[9] OJ C 16, 2.1.2009, p. 1, as amended by Commission Communication of 25 February 2009 (a consolidated version of the TF was published on 7 April 2009, see OJ C 83, p.1.).

determine the corresponding market price, the characteristics of the guarantee and of the underlying loan should be taken into consideration. This includes: the amount and duration of the transaction; the security given by the borrower and other experience affecting the recovery rate evaluation; the probability of default of the borrower due to its financial position, its sector of activity and prospects; as well as other economic conditions. This analysis should notably allow the borrower to be classified by means of a risk rating.

(34) Sweden has notified a premium of 12.48% of the guaranteed amount per annum. Sweden's view is that this price is market-conform.

(35) On the issue of collateralisation, Sweden has made a commitment to secure full collateral for each tranche of the guarantee. The Swedish authorities have submitted a study ordered from the independent audit firm KPMG[10], itemising and valuating the Saab assets available to be pledged to the State as collateral for the guarantees[11].

(36) The estimated value is based on a prudent valuation at orderly liquidation value. According to this method, the fixed assets[12] available as collateral are estimated at USD […][*] million. Moreover, the shares in the legal entity containing the parts and accessories business[13] estimated at a value of USD […] million are also included in the collaterals. Consequently, as Table 2 demonstrates, the total estimated value of collaterals amounts to EUR […] million.

Table 2: Collaterals offered by Saab in exchange for the State guarantee

Collateral	**Estimated value USD**	***Estimated value EUR[14]***
Machinery and Equipment	[…] million	*[…] million*
Real Estate	[…] million	*[…] million*
Parts and Accessories Business	[…] million	*[…] million*
TOTAL	**[…] million**	***[…] million***

(37) Further to the guidance of the Guarantee notice, the Commission has sought data for the premium for comparable guarantees on commercial markets. Such data has however not been readily available, and Sweden has not provided evidence of a similar guarantee effectively granted on market terms. The Commission has then, following the methodology laid down in the Guarantee notice, sought evidence concerning the total financial cost of similar non-guaranteed debt on the commercial markets. Although relevant transactions are rare given (i) the present financial crisis, (ii) the absence of public rating for the company and (iii) the relatively low implicit credit rating of such a company, available market data provide an indication of the target risk adjusted return on capital (RAROC) that lenders and investors require for providing finance of similar benchmark size and maturity to an undertaking active in

[10] "Assessment of Saab on behalf of Riksgälden" dated 24 September 2009.

[11] Sweden has notified that the pledge of full collateral will be secured for both guarantees A and B.

[12] Machinery, equipment and real estate at Trollhätten and Nyköping plants.

[*] Covered by the obligation of professional secrecy

[13] KPMG assumes that this legal entity is able to function with reasonable profitability even in a scenario where the car business is closed down.

[14] At the ECB exchange rate of 1.45 as of 15 December 2009.

the automobile industry. The RAROC was retrieved by applying the Basel II standard approach applicable to loans.

(38) The Commission combined this data on the target RAROC in the automotive sector with the other relevant parameters associated with this transaction to obtain the risk premium that a private lender would require. These parameters are described below:

– The Commission accepts, based on the evidence provided by Sweden (see above paragraphs (35)-(36)), that the covenant package provides for a high level of collateral.

– The Commission has applied a rating for Saab of Caa.

– Regarding the probability of default, the Commission has used as input the 1983-2008 series of default rates provided in Moody's for the Caa category.[15]

– The Commission has used Moody's historical series to establish an expected recovery rate corresponding to the senior secured ranking of the contemplated guarantee.

(39) As regards the applied rating, the Commission notes that the NDO, using Moody's approach[16], calculated a rating category of Caa on the Moody's rating scale.

(40) As regards the overall situation on the financial markets, the Commission takes note of the fact that over the last quarters, and in particular since the second quarter of 2009, market sentiment has significantly improved. Credit markets, both in the bond market and in the loan market, have eased. As a result, new issuance volumes in the corporate bond market have increased, credit spreads have tightened significantly and the primary market for sub-investment grade issuers has gradually re-opened. As a consequence, for a given credit risk exposure, the risk premium required by market investors has significantly decreased since the second quarter of 2009.

(41) With these elements, the Commission has established a benchmark margin for a similar transaction on the markets. On that basis, the Commission accepts that the fee paid for guarantee B is at least as high as the margin (to which a reference rate like the EURIBOR rate would be added) for a similar non-guaranteed loan, and that guarantee B therefore does not comprise State aid. Indeed, the total cost of the loan for Saab consists of the reference rate (like the EURIBOR rate) plus the aforementioned margin, as well as any operating costs the EIB may charge.

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[15] Corporate Default and Recovery Rates, 1920-2008.

[16] The NDO selected the developed methodology for the "Global Automobile Manufacturer Industry" to assess the rating of Saab. The relevant methodology developed by Moody's is applied to 17 automobile manufacturers and covers a wide range of ratings. Moody's methodology is based on the review of 13 rating sub-factors covering 5 areas (each called a "factor"). Based on such analysis, NDO came to the conclusion that a B to Caa rating (or CCC rating in the S&P scale) was reasonable. The Commission has not found any manifest error in the NDO's application of this methodology and therefore applies the lowest rating of the proposed range, i.e. Caa for Saab in this decision.

III.1.3 Guarantee A

(42) Sweden has notified Guarantee A as State aid but argues that it is compatible with the internal market on the basis of Article 107(3)(b) TFEU in view of the guidance provided in the TF.

(43) The Commission shares Sweden's views that guarantee A constitutes State aid. Indeed, in view of the above-mentioned findings of the present market benchmark premiums for guarantees in the automotive sector, it appears excluded that Saab would have been able to obtain a similar guarantee at the same price on the market. Guarantee A therefore contains State aid within the meaning of Article 107(1) TFEU.

III.2. Compatibility of Guarantee A

(44) The Commission will in the following assess the compatibility of guarantee A against the criteria in section 4.3 of the TF.

(45) For large companies such as Saab, the Member State may grant a reduction of up to 15% of the annual premium for new guarantees in accordance with the safe-harbour provisions in Annex 1 to the TF. This reduction in the premium may be applied for a maximum of two years following the granting of the guarantee. If the duration of the underlying loan exceeds 2 years, Member States may apply for an additional maximum period of 8 years the safe-harbour premiums set out in Annex 1 to the TF without reduction.

(46) For a company with a CCC credit rating, the safe-harbour minimum premium indicated in Annex 1 of the TF is 380 bps, provided that the guarantee has high collateralisation, defined for these purposes as a loss given default below or equal to 30%[17].

(47) The Commission considers that Sweden has provided credible evidence that high-quality assets collateral is available (see points (35)-(36) above) that would allow Sweden to ensure a loss given default of less than 30%, i.e. a high collateralisation of the guarantees within the meaning of the TF. The Commission further notes Sweden's commitment that no instalments will be disbursed unless collateral for the full amount has been secured from the high-quality assets. On this basis, the Commission is satisfied that the guarantees will be highly collateralised within the meaning of the TF.

(48) Under section 4.3.2(d) of the TF the maximum loan must not exceed the total annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors) for 2008. On the basis of the documents provided by Sweden, it appears that Saab's wage bill for 2008 was EUR 368 million. Therefore, the Commission can only take this part of the EIB loan into consideration for the purpose of the guarantee A.

(49) In accordance with point 4.3.2(f) of the TF, guarantee A will not exceed 90% of the part of the EIB loan taken into account, i.e. EUR 368 million. Therefore, guarantee A will cover a sum of EUR 331.2 million (which corresponds to a percentage of 82.8% of the whole EIB loan).

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[17] See footnote 20 to the TF.

(50) The Commission further notes that Sweden explicitly confirmed that the guarantee will be granted before the end of December 2010, i.e. that the signing of the guarantee agreement will take place before 31 December 2010. The condition of point 4.3.2(e) of the TF is thus fulfilled.

(51) According to Annex 1 to the TF, the safe-harbour premium for a highly collateralised guarantee to an undertaking with Saab's rating is 380 bps. As regards the guarantee premium, the Commission records that Sweden will apply a 15% reduction of the safe-harbour premium (323 bps) for a maximum of two years following the granting of the guarantee, and after these two years apply the full safe-harbour premium without reduction for an additional maximum period of five years. This is in line with point 4.3.2(h) of the TF.

(52) The beneficiary must not have been in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter: "the R&R guidelines") on 1 July 2008 (point 4.3.2(i) of the TF).

(53) As regards the state of Saab as of 1 July 2008, the Swedish authorities submit an expert report prepared by the independent audit firm KPMG[18] in order to establish that the company did not fulfil the relevant criteria of the R&R guidelines and hence it could not be regarded as a company in difficulty at that date.

(54) As regards paragraph 10(a) of the guidelines, on 30 June 2008 the ratio of the total adjusted equity to the registered share capital amounted to 228.9%[19]. This ratio has been obtained after two fair upward value adjustments[20] in line with Swedish law[21]. These adjustments are contained in the so-called control balance sheet[22] of 31 May 2008, reviewed and signed by the audit firm Deloitte on 6 June 2008.

(55) Concerning paragraph 10(c) of the guidelines, Saab did not fulfil the criteria under its domestic law for being the subject of collective insolvency proceedings on 1 July 2008[23].

(56) With regard to paragraph 11, it is apparent form the report that although Saab has generated losses over the years[24], GM has supported its subsidiary both in terms of liquidity and capital injections to compensate those losses[25].

(57) The Commission notes that, despite the generated losses and other signs which could normally indicate that a company is in difficulty, Saab's shareholder has constantly

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[18] "Statstödsärende N 541/2009 – Saab Automobile" dated 17 November 2009.

[19] I.e. the total equity of Saab exceeded its registered capital by more than twofold. The total share capital amounted to SEK 632 million and the total adjusted equity to SEK 1,446.5 million.

[20] Inventory in the Parts and Accessories business and shares in subsidiaries.

[21] According to the Swedish Company Act (Chapter 25 § 14 Sec. 1), the Company is permitted to re-value the assets (up-ward) and liabilities (down-ward) if such amendments are conform with normal accounting principles.

[22] The legal status of a control balance sheet is regulated in the Swedish Company Act, ("Aktiebolagslagen", SFS 2005:551) Chapter 25.

[23] By contrast, it shall be noted that on 20 February 2009 Saab filed an application for "restructuring" following a withdrawal of GMs support to Saab (on 15 February 2009, Saab received a notification from GM that GM had decided not to continue to fund Saab). On 1 July 2008, however, GM still fully supported Saab.

[24] E.g.: Net loss of SEK 1.6 billion as of 30 June 2007 and SEK 705 million as of 30 June 2008.

[25] Saab has historically met its cash/liquidity needs by being part of General Motors cash pool.

supported its subsidiary in the form of cash and capital injections[26]. In view of this, the Commission considers that Saab was not in difficulty on 1 July 2008 according to the criteria of the R&R guidelines[27].

(58) Finally, Sweden has expressly committed to ensure that the notified aid will not be cumulated with de minimis aid (point 4.7 of the TF) and to comply with the reporting and monitoring provisions of point 6 of the TF.

(59) The Commission consequently finds that Guarantee A complies with the TF and in particular all the conditions in section 4.3.

IV CONCLUSION

(60) For the reasons indicated above, the Commission finds that Guarantee B does not contain State aid within the meaning of Article 107(1) of the TFEU and that Guarantee A is compatible with the internal market on the basis of Article 107(3)(b) of the TFEU.

The Commission notes that Sweden accepts the decision to be adopted in the English language. If this letter contains confidential information which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:
http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

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

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission

[26] See footnote 25. Moreover, GM carried out a shareholder contribution of SEK 2,073 in May 2008.

[27] In particular, point 13 of the R&R guidelines stipulates that "[a] firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself."