



EUROPEAN COMMISSION

Brussels, 06.07.2010
C(2010)4474 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>	<p style="text-align: center;">PUBLIC VERSION</p> <p style="text-align: center;">WORKING LANGUAGE</p> <p style="text-align: center;">This document is made available for information purposes only.</p>
--	--

**Subject: State aid No C31/2009 – Hungary
LIP – Aid to Audi Hungaria Motor Kft.
Extension of the Procedure C31/2009 pursuant to Article 108(2) of the TFEU**

Sir,

The Commission hereby informs you that it has decided, after further information has been submitted, to extend the scope of the pending procedure C31/2009 pursuant to Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE AND BACKGROUND

- (1) By electronic notification registered on 26 February 2009 at the Commission (SANI 2334), the Hungarian authorities notified their intention to grant regional aid under the Guidelines on national regional aid (hereinafter “RAG”)¹ to Audi Hungaria Motor Kft. for investment projects in its existing plant in Győr in the Western Transdanubia (Nyugat-Dunántúl) region of Hungary.
- (2) By letters of 21 April 2009 (D/51611) and 21 August 2009 (D/53595), the Commission requested supplementary information on the notified aid measure. The Hungarian authorities submitted the requested additional information by letters registered at the Commission on 29 June 2009 (A/15528) and 17 September 2009 (A/20041).

¹ OJ C 54, 04.03.2006, p. 13.

Őexcellenciája Dr MARTONYI János
Külügyminiszter
Bem rakpart 47
H - 1027 BUDAPEST

- (3) The investment project involves investments in land, buildings, machinery, equipment and vehicles and aims to produce new generation petrol and diesel engines and engine components for passenger cars and to a small extent, yacht engines. The total eligible investment costs of the project are HUF 154,092 million (EUR 513.61 million) in nominal value. The total nominal aid amount of the aid is HUF 18,107.66 million (EUR 60.35 million).
- (4) Hungary will grant the aid in the form of a direct grant on the basis of the scheme XR47/2007² which is exempted pursuant to Commission Regulation (EC) No 1628/2006³ and in the form of a tax allowance based on the scheme N651/2006.⁴
- (5) By letter dated 28 October 2009, the Commission informed Hungary that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid (hereinafter "TFEU").
- (6) In the opening decision the Commission carried out the "market share"-test under paragraph 68(a) of the RAG regarding the downstream product, i.e. all individual passenger car segments.⁵ At EEA level, the 25% threshold was exceeded in several segments, and even at global level, the market share for the E-segment was above 25%. The Commission did not follow the Hungarian suggestion that market shares should be calculated on the basis of combined segments (segment A00-C, segment B-D, segment B-E and segment C-D). Also with regard to the "production capacity"-test under paragraph 68(b) of the RAG the Commission has not been convinced of the Hungarian position that only combined segments should be considered.
- (7) In addition, in the context of the determination of the relevant product market the Commission had also doubts as regards the joint treatment of passenger cars and Light Commercial Vehicles.
- (8) The Commission decision to initiate the procedure was published in the Official Journal of the European Union⁶. The Commission invited interested parties to submit their comments on the aid.
- (9) Hungary submitted its comments by letter dated 1 March 2010, registered at the Commission on 2 March 2010 (A/3725). A meeting between the Commission services, the Hungarian authorities and the investor took place on 13 April 2010.
- (10) Further third parties' observations were submitted on 15 and 16 April 2010 (namely from Germany, Volkswagen AG, Audi Hungaria Motor Kft/Audi AG and Győr

² The summary information sheet on the scheme XR47/2007 was published in OJ C 180, 02.08.2007, p. 8.

³ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, OJ L 302, 1.11.2006, p. 29.

⁴ OJ C 152, 6.07.2007, p. 2.

⁵ POLK, a consultancy differentiates the car market along segments A000, A00, A0, A, B, C, D and E, where segment A000 means urban small cars and segment E is the ultra luxury category. From segment A000 to E, the average price, size and the average engine performance of passenger cars gradually increase.

⁶ OJ C 64, 16.03.2010, p. 15.

University). These comments (supporting the line proposed by the Hungarian authorities) were forwarded to Hungary on 21 April 2010.

- (11) Hungary did not comment to these third parties' observations.

2. FACTUAL REASONS FOR EXTENDING THE PROCEDURE

- (12) In its comments on the opening decision Hungary informed the Commission about recent changes to the scope of the investment project. The notification was based on the erroneous expectation that the production of engines to be installed in passenger cars belonging to the E-segment should be covered by the investment project. Due to recent changes of the project the investment would no longer include these engines. If the Commission accepted to calculate the "market share" of the beneficiary Volkswagen-Porsche group solely on the basis of the global market data, the 25% threshold of paragraph 68(a) of the RAG would not be exceeded and the project could be assessed as compatible.
- (13) Already in the notification the Hungarian authorities had advanced the opinion that the geographically relevant market is the global market. The Commission did not explicitly sustain or reject this position and stated in the opening decision that the relevant geographic market for the products concerned is at least EEA-wide. Therefore market shares for car segments were calculated both at the EEA and worldwide market. Finally, the Commission concluded in the decision that as regards the E segment market shares exceeded the 25% threshold not only at EEA level, but also at global level.
- (14) Due to these recent changes of the scope of the investment project and the decisiveness of the question of the appropriate definition of the relevant geographic market, it is considered necessary to extend the initial opening decision, in order to allow all interested third parties to comment on the issue of the relevant geographic market.

3. BRIEF SUMMARY OF THE HUNGARIAN ARGUMENTS

- (15) With regard to the relevant geographic market the Hungarian authorities advanced the opinion, that only the global market should be considered as relevant.⁷ In their opinion the following aspects and arguments are geared to those criteria, which are decisive for the delineation of the relevant geographic market with a view from the production (supply) side: the situation of the automotive industry, production locations, distribution, trade flows, transport costs, globalisation, market integration, trade barriers and the specific situation of component manufacturing.
- (16) In view of the situation of the automotive industry the Hungarian authorities state that the automotive industry is confronted with global developments and lasting changes such as the shift of market growth toward the BRIC/ASEAN states. Further features of the actual situation are rising development costs, shorter development cycles, shorter product life cycles, rising customer segments;

⁷ In order to substantiate their arguments on the relevant geographical market the Hungarian authorities submitted a study "Analyse zur Bestimmung des für die Automobilindustrie geografisch relevanten Marktes" from 25 February 2010 elaborated by [...].

increasingly intensive competition leading to an extensive concentration process (acquisitions of companies, mergers or strategic alliances are supposed to deliver synergy effects) and the global financial and economic crisis which has led to additional sales problems.

- (17) As regards the production locations as decisive criteria for the delineation of the relevant geographical market, the Hungarian authorities say that the Commission itself has regarded the distribution of production locations as a decisive factor for classifying the automotive manufacturers as global players.⁸ Hungary concludes that the number of vehicle production locations worldwide has grown with a constant increase in output of cars. The way location decisions are made in the automotive industry indicates the existence of a global market. The most varied global locations for the production are considered. Intragroup competition in terms of locations and relocations is not a process which is specific to Volkswagen-Group, it concerns all producers.
- (18) With regard to the distribution of the passenger cars the Hungarian authorities state that data provided by POLK and Global Insight show that the ten largest original equipment manufacturers (hereinafter "OEM") sell their vehicles on all economically relevant markets and deploy the most diverse distribution systems. The number of countries in which the OEM conducts sales activities also shows that the external frontier of the EEA does not constitute a barrier for distribution. The sales of European OEM outside the EEA, as well as the extensive distribution of non-European OEM within the EEA, are both considerable.
- (19) As far as the development of the import and export rates, i.e. trade flows, as criterion for the determination of the relevant geographical market are concerned, the Hungarian authorities state that parallel to the developments in the import rate, a rise in the export rates has been posted worldwide. Non-European countries, such as Canada [+5-10%]*, China [+10-15%], the United States [+10-15%], Japan [+20-25%] and India [15-20%], stepped up their export rates considerably; with regard to the EEA, the development is reflected in a rise in the export rate of [15-20%] points. In the EEA, for instance, every fifth car gets imported; as a matter of fact, every third car gets exported. Hungary concludes that the aforementioned sales figures document the steady development of significant global trade flows among the individual nations.
- (20) As regards the criterion of transport costs Hungary states that in relation to the sales price of a vehicle, the average transport costs amount to merely [2.5-5%]. Due to technological developments and increases in efficiency of logistical value flows, transport costs are declining in comparison with previous years. Furthermore, trade flows show a constant growth so that trade costs cannot be considered to impede trade.

⁸ Hungary refers to the following decisions: State aid N 767/07 – Romania – LIP – Ford Craiova, OJ C 238, 17.09.2008, p. 4 (para. 109); State aid N 635/2008 – Italy – LIP – Fiat Sicily, OJ C 219, 12.09.2009, p. 3 (para. 79), State aid N 473/2008 – Spain – LIP – Ford España, OJ C 19, 26.01.2010, p. 5 (para. 81); State aid N671/2008 – Hungary – LIP – Aid to Mercedes-Benz Manufacturing Hungary, OJ C 28, 4.02.2010, p. 2 (para. 88).

* Business secret

- (21) The Hungarian authorities argue that the aspect of globalisation has to be considered as a decisive criterion for the delineation of the relevant geographic market. Hungary points out that in the Commission's decision practice, globalisation is judged primarily based upon two parameters, the global presence and the global trade activity of the automobile manufacturers. For the automotive industry the globalisation of the production process occurs in parallel with the globalisation of the sales process. Hungary mentions that the historical home sites of the 10 OEM are located in six countries on three continents. For the Volkswagen Group foreign sales (i.e. sales outside the home country) and the proportion of foreign production increased during the last years.
- (22) Hungary considers that market integration is also a criterion for the delineation of the relevant geographical market. The automotive manufacturers have been subject to an integration process for years, by means of mergers. Increasingly often, market participants cooperate closely in order to achieve competitive advantages through alliances (transnational or even transcontinental joint ventures and co-operations show the increasing global linkages).
- (23) According to Hungary, also trade barriers should be considered for the delineation of the relevant geographical market. In this context, Hungary refers at first to regulatory trade barriers. In recent decades, such trade barriers "have been lowered significantly, in particular in the framework of the GATT negotiations, and later of the WTO" at the political level. Secondly, Hungary refers to barriers through technical specifications. It is stated that numerous regulations, among others for the global harmonisation of technical specifications, exist for the automotive industry.
- (24) Finally, the Hungarian authorities argue that the fact to be assessed in the given case is a component manufacturing. The mentioned arguments apply in particular to the component production.
- (25) The third parties' observations from Germany, Volkswagen AG, Audi Hungaria Motor Kft/Audi AG largely support the above mentioned arguments of the Hungarian comments on the relevant geographical market.

4. ASSESSMENT

- (26) The Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law⁹ defines the relevant geographic market as the area in which undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. However, it has to be pointed out that the applicability of the above notice to State aid cases is rather limited.¹⁰

⁹ OJ C 372, 9.12.1997, p. 5.

¹⁰ Fn. 1 of the above Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law states "The focus of assessment in state aid cases is the aid recipient and the industry/sector concerned rather than identification of competitive constraints faced by the aid recipient. When consideration of market power and therefore of the relevant market are raised in any

- (27) Paragraph 68(a) of the RAG determines in general terms that the "market(s) concerned" shall be considered. Paragraph 70 of the RAG, however, stipulates that for the purposes of carrying out the tests under paragraph 68 of the RAG, markets should normally be defined at EEA level. That means in other words that only under exceptional circumstances not the EEA but the global market shall be taken into account.
- (28) The Commission doubts that in the given case the arguments put forward by the Hungarian authorities could justify a deviation from the underlying rule that in principle the EEA should be considered as relevant geographic market.
- (29) In decision N 635/2008 – Italy – Fiat Sicily the Commission even defined the passenger car market "*for the purposes of that decision as EEA-wide*".¹¹ In other recent decisions on State aid to the benefit of the automotive industry the Commission did not have to take a decision on the question whether the EEA or the global market should be taken into consideration.¹² In these decisions the tests under paragraph 68 of the RAG were done for both alternatives.
- (30) In particular, in the most recent state aid decision N 671/2008 – Hungary – Aid to Mercedes Benz Manufacturing Hungary¹³ the Commission stated that from a supply side perspective, production in the car sector is at least EEA wide or even global. The major car manufacturers are global players. They have manufacturing facilities and distribution systems in different continents and countries. From a customer perspective, conditions of competition have significantly improved in the EU, in particular as regards technical barriers and distribution systems, although differences in prices and taxation systems are still limiting factors and penetration rates of major competitors differ across Member States and in particular continents. Low transportation costs and the presence of all major manufacturers in almost all Member States and the largest countries worldwide are indicators of an EEA or even worldwide market.
- (31) The quoted decision cannot be interpreted in a way that the Commission has accepted to consider exclusively the worldwide market as relevant geographic market. The decision rather shows that in spite of certain indications in favour of a global market the Commission was not prepared to deviate from the principle that the EEA should normally be decisive as laid down in paragraph 70 of the RAG.
- (32) Furthermore, the case at hand is not comparable to recent State aid decisions in which the Commission accepted the global market as relevant geographic market. For example, in State aid decision N 409/2006 – Aid to HighSi GmbH¹⁴ the

particular case, elements of the approach outlined here might serve as a basis for the assessment of State aid cases".

¹¹ State aid N635/2008 – Italy – LIP – Aid to Fiat Sicily, OJ C 219, 12.09.2009, p. 3 (para. 82).

¹² State aid N767/07 – Romania – LIP – Ford Craiova, OJ C 238, 17.09.2008, p. 4 (para. 108); State aid N473/2008 – Spain – LIP – Ford España, OJ C 19, 26.01.2010, p. 5 (para. 83); State aid N 671/2008 – Hungary – LIP – Aid to Mercedes-Benz Manufacturing Hungary, OJ C 28, 4.02.2010, p. 2 (para. 89).

¹³ State aid N671/2008 – Hungary – LIP – Aid to Mercedes-Benz Manufacturing Hungary, OJ C 28, 4.02.2010, p. 2 (para. 86 et seq.).

¹⁴ State aid N409/2006 – Germany – MSF 2002 – Aid to HighSi GmbH, OJ C 77, 5.04.2007, p. 4 (para. 52 et seq.).

Commission considered that the relevant geographic market for solar modules is worldwide. In this case the Commission could refer to different independent studies in the photovoltaic sector as regards production locations, import data, transport costs, trade barriers, etc. Finally, regarding the photovoltaic sector the Commission's opinion was also in line with previous merger and State aid decisions, what is not the case in the present procedure.

- (33) In State aid decision N810/2006 – AMD Dresden¹⁵ the Commission also assumed that the relevant geographic market for the production of microprocessors is worldwide. The decision mentions that microprocessors for computers are produced and traded throughout the world. Both the producers and the consumers of microprocessors are located worldwide. No state laws or administrative regulations restrict the international trade and transport costs only play a minor role in the total manufacturing costs. Previous State aid and merger decisions concerning the sector confirmed the Commission's view.
- (34) The differences between these cases and the given case are obvious. Not only the volume and the weight of the product is completely different, but also the development of the markets as such. While on the one hand dynamic and relatively young markets were assessed, in the case at hand a traditional and in the long term developed market has to be evaluated.
- (35) Accordingly, at this stage of the procedure the Commission doubts that the global market can be considered as the sole relevant geographical market. Therefore, the Commission has doubts as to whether the notified aid complies with paragraph 68(a) of the RAG.

5. CONCLUSION

- (36) In the light of the foregoing considerations, the Commission has decided to extend the formal investigation procedure laid down in Article 108(2) of the TFEU, and requests Hungary to submit its comments in relation to the relevant geographical market and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter.
- (37) The Commission wishes to remind Hungary that Article 108(3) of the TFEU has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999¹⁶, which provides that all unlawful aid may be recovered from the recipient.
- (38) The Commission warns Hungary 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

¹⁵ State aid N 810/2006 – Germany – MSF 2002 – AMD Dresden, OJ C 160, 14.07.2009, p. 1 (para. 82 et seq.).

¹⁶ OJ L 83, 27.3.1999, p. 1.

parties will be invited to submit their comments within one month of the date of such publication.

- (39) 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 Greffe
B-1049 Brussels
Fax (32-2) 296 12 42

Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-President of the Commission