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Subject: State aid SA 34118 – Germany – LIP – Aid to Porsche Leipzig

Sir,

The Commission wishes to inform Germany that, having examined the information supplied by your authorities on the aid measure 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 (hereinafter "TFEU").

1. PROCEDURE

- (1) By electronic notification registered on 20 December 2011 at the Commission (SANI 6554), the German authorities notified their intention to grant regional aid under the Regional aid Guidelines (hereinafter "RAG")¹ to Porsche Leipzig GmbH and to Dr. Ing. H.c. F. Porsche Aktiengesellschaft (Porsche AG) for an investment project in Leipzig, in the region of Saxony, Germany.
- (2) By letters of 16 February (2012/015699), 26 April 2012 (2012/044175) and 12 June 2012 (2012/061187), the Commission requested supplementary information on the notified aid measure which was submitted by letters registered at the Commission on 13 March (2012/027874), 7 May 2012 (2012/047944) and 20 June 2012 (2012/065431).

¹ Guidelines on national regional aid for 2007-2013, OJ C 54, 4.03.2006, p. 13.

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2. DESCRIPTION OF THE PROJECT AND THE AID MEASURE

- (3) The German authorities intend to promote regional development by providing regional aid in the form of a direct grant and an investment premium to Porsche Leipzig GmbH and to Dr. Ing. H.c. F. Porsche Aktiengesellschaft (Porsche AG) for the production of a new car model. The investment will take place in Leipzig, a NUTS II region in Saxony, an assisted area pursuant to Article 107(3)(c) of the TFEU with a standard regional aid ceiling for large enterprises of 20% gross grant equivalent (GGE).²

2.1. The beneficiary

- (4) The recipients of the aid will be the Porsche Leipzig GmbH and Dr. Ing. H.c. F. Porsche Aktiengesellschaft (Porsche AG)³, both subsidiaries belonging to the Porsche Group, (hereinafter: "Porsche Group") which has its headquarters in Stuttgart, Germany. In 2010 the Porsche Group employed a workforce of around 850 people in Leipzig.
- (5) The supervisory boards of the Volkswagen Group and the Porsche Group agreed on the foundation of an integrated car group (hereinafter: "VW-PO-Group"). The VW-PO Group manufactures cars ranging from small cars to luxury and commercial vehicles in more than 40 factories in about 20 countries in Europe, America, Asia and Africa. In 2011, it produced more than 7.9 million vehicles and employed a workforce of about 400 000 people. The German authorities confirmed that the submitted market data include all vehicles manufactured or sold by the VW-PO-Group.

2.2. The investment project

- (6) The investment project aims at an extension of the existing production plant in order to manufacture a new passenger car model "Porsche Macan". This model is a sport utility vehicle / cross-over type passenger car, which belongs to the POLK segment category B (midsize/medium class passenger cars), and to the ISH Global Insight segment SUV D (Standard Sport Utility Vehicle).⁴
- (7) The project involves investments in buildings, machinery, equipment and intangible assets. The project comprises also investments into car body construction and a paint shop, both dedicated to the production of the new model. Since for the time being the existing plant in Leipzig is only used for the assembly of cars the investments will lead to an upgrading of the site to a fully developed production plant.

² Leipzig is a so-called "Statistical effect region"; see Germany's regional aid map in Commission decision of 8 November 2006 on State aid case N 459/06 - Regional State aid map for Germany 2007-2013 (OJ C 295, 5.12.2006, p. 4).

³ The Dr. Ing. H.c. F. Porsche Aktiengesellschaft owns real estate property of the Leipzig plant.

⁴ During the preliminary examination the German authorities' opinion was that – if segmentation should be deemed necessary by the Commission at all – only the classification according to POLK should be applied to the given case. In line with precedents, the Commission services consider the ISH Global Insight classification more appropriate for these types of cars.

- (8) The production capacity created by the project shall amount to [...]* vehicles per year. Technically a maximum capacity of [40,000-100,000] vehicles would be possible. Calculated on the basis of 235 working days this corresponds to [...] vehicles per day. Full capacity is envisaged to be reached in March 2014.
- (9) The overall investment project started in April 2011. Completion is planned for March 2014.
- (10) The beneficiary applied for a direct grant in March 2011. Also in March 2011 the development bank "Sächsische Aufbaubank" confirmed that the beneficiary will in principal be entitled to obtain a direct grant as incentive for the realisation of the investment. The investment premium is granted – in the present case, subject to Commission approval - under a fiscal measure that establishes a legal right to aid in accordance with objective criteria and without further exercise of discretion by the Member State. Therefore, the beneficiary did not need to apply for the investment premium before start of works.

2.3. Costs of the investment project

- (11) The total eligible investment costs of the project are EUR 550.08 million in nominal value. In present value⁵ this amount is EUR 521.56 million. Table I provides a breakdown of the total eligible costs of the project by year and category.

Table I: Eligible investment costs (nominal in EUR million)

<i>Mio. € (rounded)</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>Total</i>
<i>Building</i>	[...]	[...]	[...]	[...]	[...]
<i>External Equipment</i>	[...]	[...]	[...]	[...]	[...]
<i>Machinery/Equipment</i>	[...]	[...]	[...]	[...]	[...]
<i>Intangible assets</i>	[...]	[...]	[...]	[...]	[...]
<i>Total</i>	[...]	[...]	[...]	[...]	<i>550.08</i>

- (12) The German authorities confirm that no aid will be requested for used or existing equipment, and that such equipment is not included in the eligible expenses of the project. Germany confirmed that intangible assets are obtained from third parties at market price.

* Business Secret.

⁵ The present values in this decision are calculated on the basis of a base rate of 2.05%, applicable on the date of the notification, on top of which 100 basis points need to be added according to the Commission Communication on the revision of the method for setting the reference and discount rates (OJ C, 19.1.2008, p.6).

- (13) Both the direct grant and the investment premium are granted under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after the completion of the investment project.

2.4. Financing of the investment

- (14) The German authorities confirm that the beneficiary's own contribution, free of any public support, exceeds 25 per cent of the eligible costs.

2.5. Regional aid ceiling

- (15) Leipzig is situated in the State of Saxony. It is an assisted area pursuant to Article 107(3)(c) of the TFEU and has a standard regional aid ceiling for large enterprises of 20% gross grant equivalent (GGE).⁶

2.6. Legal basis

- (16) The national legal basis for the financial support is the following:
- a. an investment premium on the basis of the "Investitionszulagengesetz 2010"⁷;
 - b. a direct grant pursuant to the "Koordinierungsrahmen der Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) 2009"⁸.

2.7. Aid amount

- (17) The total aid amount of EUR 43.67 million in net present value will be paid out between 2011 and 2015.
- (18) The German authorities confirm that neither the approved maximum aid amount in present value nor the approved aid intensity (in present value) will be exceeded if the amount of eligible expenditure deviates from the estimated amount.
- (19) The German authorities also confirm that the aid for the project will not be cumulated with aid received for the same eligible costs from other local, regional, national or Community sources.

2.8. Contribution to regional development

- (20) The German authorities indicate in particular that the investment project will lead to the creation of 1040 additional jobs and 30 additional training positions.

⁶ Cf. footnote 2.

⁷ The summary of the scheme "Investitionszulagengesetz 2010" was registered at the Commission under X 167/08 (OJ C 280, 20.11.2009, p. 5).

⁸ The summary of the scheme "Koordinierungsrahmen der Gemeinschaftsaufgabe - Verbesserung der regionalen Wirtschaftsstruktur" was registered at the Commission under XR 31/07 (OJ C 102, 5.5.2007, p. 11).

2.9. General provisions

- (21) The German authorities have committed to submit to the Commission:
- within two months of granting the aid, a copy of the relevant acts concerning this aid measure;
 - within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. ASSESSMENT OF THE AID MEASURE AND COMPATIBILITY

3.1. Existence of aid

- (22) The financial support will be given by the German authorities in the form of a direct grant and an investment premium. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.
- (23) As the aid is granted to two above-mentioned subsidiaries of a single group of companies, the Porsche Group, the measure is selective.
- (24) The financial support in the form of a direct grant and an investment premium will relieve the beneficiaries from costs which they would normally have had to bear themselves. Therefore, they benefit from an economic advantage over their competitors.
- (25) The financial support in the form of a direct grant and an investment premium by the German authorities will be given for an investment resulting in the production of vehicles. Since this product is subject to trade between Member States, the support given is likely to affect trade between Member States.
- (26) The favouring of the Porsche Group's production by the aid means that competition is distorted or is threatened to be distorted.
- (27) Consequently, the Commission considers that the aid in the form of a direct grant and an investment premium given to the above-mentioned subsidiaries of the Porsche-Group constitutes State aid within the meaning of Article 107(1) of the TFEU.

3.2. Legality of the aid measure

- (28) By notifying the planned aid measure before putting it into effect, the German authorities respected their obligation under Article 108(3) of the TFEU and the individual notification requirement expressed in Article 7(e) of the Block

Exemption Regulation for regional aid,⁹ and in Article 6(2) of the General Block Exemption Regulation.¹⁰

3.3. Compatibility of the aid measure

- (29) As the measure relates to regional investment aid, the Commission assessed it on the basis of the RAG. The measure was notified as aid which exceeds the thresholds defined in points 64 and 67 of the RAG. Therefore, the Commission took into account the provisions of the RAG and, specifically, the provisions of section 4.3 of the RAG relating to large investment projects.

3.3.1. Compatibility with the general provisions of the RAG

- (30) There is no indication that the Porsche-Group in general or the Porsche Leipzig GmbH and Dr. Ing. H.c. F. Porsche Aktiengesellschaft (Porsche AG) in particular would be in financial difficulty as the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty¹¹ are not fulfilled. Therefore, the aid beneficiaries are eligible for regional aid.
- (31) The aid is granted in application of block-exempted schemes which respect the standard compatibility criteria of the RAG.
- (32) In particular, the project leads to an extension of an existing establishment and thus comprises an initial investment within the meaning of point 34 of the RAG:
- (33) The costs eligible for investment aid (see Table I above) are defined in line with the RAG, and the rules on cumulation are respected.
- (34) The beneficiaries also have the obligation to maintain the investment in the region for a minimum of five years after completion of the project. The beneficiaries provide a financial contribution of at least 25% of the eligible costs in a form which is free of any public support.
- (35) As the aid is granted under regional aid schemes, point 10 of the RAG requiring additional elements to be taken into account for the assessment of ad hoc aid is not pertinent at this stage of investigation.
- (36) In view of these considerations, the Commission considers at this stage that the standard compatibility criteria are met.

⁹ 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.

¹⁰ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Article 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3.

¹¹ OJ C 244, 1.10.2004, p. 2.

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

3.3.2.1. Single investment project (point 60 of the RAG)

- (37) The RAG aim at ensuring that a Member State does not divide a single large investment project artificially into smaller part projects in order to avoid the application of the rules governing investment aid for large investment projects. Pursuant to point 60 of the RAG, such part projects constitute a single investment project if they are implemented within a three year time period and if they concern fixed assets that are combined in an economically indivisible way.
- (38) The information available to the Commission does not reveal any further related project for which state aid was/shall be granted within the relevant three year period.

3.3.2.2. Aid intensity (point 67 of the RAG)

- (39) The planned total eligible expenditure in present value for the project is EUR 521,559,981.66 in present value (discounted to the date of notification). According to the scaling down mechanism laid down in point 67 of the RAG, this leads to a maximum allowable aid intensity of 8.37% GGE (Gross Grant Equivalent) for the project.
- (40) Since the intensity of the proposed aid (EUR 43.666,078.75 in present value) does not exceed the maximum allowable aid intensity, the proposed aid intensity for the project complies with the RAG.

3.3.2.3. Application of the filters for in-depth assessment laid down in points 68(a) and (b) of the RAG

- (41) The Commission's approval of regional aid to large investment projects falling under point 68 of the RAG within the preliminary examination depends on the beneficiary's market share, before and after the investment; and on the capacity created by the investment, as well as on whether the market in question is underperforming or not. To carry out the relevant tests under points 68(a) and (b), the Commission has first to establish appropriate product and geographic market definitions.

Product concerned

- (42) As a result of the investment, the passenger cars which will be produced belong to the POLK segment category B (midsize/medium class passenger cars), and to the ISH Global Insight segment SUV D (Standard Sport Utility Vehicle). Vehicles belonging to other segments and other products cannot be manufactured on the site.

Relevant product market

- (43) Point 69 of the RAG provides that the relevant product market includes the product concerned and its substitutes considered to be such either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).

- (44) The Commission has doubts as regards the general argument put forward by the German authorities that no segmentation at all might take place. Given the significant differences between all existing passenger cars as regards their price, size or engine performance for example, it is doubtful whether only one homogenous and not segmented overall passenger car market exists.
- (45) The Commission recognised in its merger decisions that, although the car market has traditionally been segmented on the basis of a number of objective criteria like engine size or length of car, the boundaries between segments are blurred by other factors. Therefore, until now merger decisions left open the question of whether, for the purposes of the competitive analysis, the passenger car segment should be considered as one product market or should be further subdivided.
- (46) The Commission also notes that Prodcom codes¹² are not relevant for a further segmentation because there are too many overlaps and the classification is not generally used in the industry to assess markets. In addition, several other classifications could in principle be considered that are used for different purposes, such as for example, the ones used by the European Association of Manufacturers (ACEA).
- (47) There are a number of service providers analysing the car market. Among the most renowned ones are ISH Global Insight and POLK. Member States and beneficiaries usually provide information based on segmentation by one of these consultancies. ISH Global Insight proposes a narrow segmentation of passenger cars (27 segments) and POLK differentiates the car market along 8 segments (A000, A00, A0, A, B, C, D and E), whereby segment A000 means urban small cars and segment E is the ultra-luxury category. From segment A000 to E, the average price, size and engine performance of passenger cars gradually increase. As regards sport utility vehicles, only ISH Global Insight provides a special segmentation for this type of cars.
- (48) During the preliminary examination the German authorities' opinion was that – if segmentation should be deemed necessary by the Commission at all – only the classification according to POLK should be applied to the given case because the VW-PO-Group operates all its long-term strategic planning and analyses on the conceptual base of POLK. Due to the lack of substitutes, the relevant product market would only consist of POLK segment category B.
- (49) The Commission considers at this stage that - as far as sport utility vehicles are concerned - due to their different nature in comparison to "normal" passenger cars as regards price, size and engine performance, etc. the ISH Global Insight classification would be more appropriate and should therefore be applied to the project at hand. For the same reasons, in recent other cases concerning sport utility vehicles the Commission referred to the ISH Global Insight classification and not to POLK.¹³

¹² 34.10.12.00, 34.10.13.00, 34.30.11.00 and 34.30.12.00

¹³ Cf. Commission Decision C(2011)6479 final of 20.09.2011 (N 559/2010 – United Kingdom – LIP – Jaguar Cars), OJ C 22, 27.1.2012, p. 2.

- (50) In its decisional practice regarding the definition of the relevant product market for cars, the Commission so far never accepted combined market segments or even the overall combination of all passenger cars as the only relevant product market. It relied rather on an approach of plausible alternative market definitions, defining individual car segments (including the narrowest segmentation for which data are available) in addition to combined segments as plausible relevant product markets¹⁴. The issue of whether or not the relevant product market can be defined as a combined car segment ranging across segments is, amongst others, the subject matter of a formal investigation the Commission is carrying out in case C31/2009¹⁵, regarding Hungarian regional aid for an investment project of the AUDI Hungaria Motor Kft, a subsidiary of the Volkswagen-Porsche Group.
- (51) Therefore, at this stage the Commission is not in a position to confirm without doubts that, on the basis of the arguments brought forward by Germany, either the overall passenger car market without any segmentation, solely the POLK segment category B or solely the IHS Global Insight SUV-D category, can be considered as the relevant product market concerned by the investment. For these reasons, the Commission leaves the precise definition of the relevant product market open and will at this stage consider alternative market definitions related to the overall passenger car market as well as the narrowest segmentation for which data are available, i.e. POLK segment category B and ISH Global Insight segment SUV D.

Relevant geographical market

- (52) Point 70 of the RAG provides that for the purposes of carrying out the tests under point 68 of the RAG, markets should normally be defined at the EEA level or, if such information is not available or relevant, on the basis of any other generally accepted market segmentation for which statistical data are readily available.
- (53) The German authorities suggest that the geographically relevant market for cars is the global market, because the large, internationally active car manufacturers (OEMs) are in global competition. According to Germany at least a combined geographic market EEA and North America should be considered as relevant geographic market.
- (54) Germany further argues that the ten largest OEMs have manufacturing sites and developing their distribution systems all over the world. The VW-Porsche Group's production sites and sales areas are located in Europe, North America,

¹⁴ Decision N 635/2008 – Italy -- LIP – Fiat Sicily, adopted on 29. 4. 2009, OJ C 219, 12.9.2009, p. 3, para 76, clearly states that in addition to combined segments, the individual segment to which the model in question was assigned should also be considered as one possible relevant market. Decision SA.27913 - C 31/2009 – Hungary - LIP - Aid to Audi Hungaria Motor Kft, adopted on 28.10.2009, OJ C 64, 16.03.2010, p. 15; para. 84 also indicates that each of the segments between A00 to E is a plausible relevant market, and the decision examines the market shares in each of these segments. But see also cases N 473/2008 Ford Espana (17.6.2009 (OJ C 19, 26.1.2010, p.5), and N 767/2007 Ford Craiova (OJ C 238, 17.9.2008, p. 4.)

¹⁵ SA.27913 - C 31/2009 - HUN - LIP - Aid to Audi Hungaria Motor Kft: Decision of 28.10.2009 (C(2009)8131), OJ C 64, 16.03.2010, p. 15; Extension decision of 6.7.2010 (C(2010)4474), OJ C 243, 10.09.2010, p.4.; see also SA30340 – C/2011 (ex.N38/2010) – LIP – Fiat Powertrain Technologies Poland, Decision of 9.2.2011, OJ C 151, 21.5.2011, p. 5.

South America, Africa and Asia. The sites of the large OEMS also compete internally for decisions regarding locations, which are not limited to regions.

- (55) In addition, Germany argues that as transport costs are decreasing, export and import levels of vehicles are continuously increasing. Germany argues that there is an increasing level of market integration at the global level through mergers, as well as the formation of joint ventures and cooperations.
- (56) The Commission notes that the trade flows of the cars of the IHS Global Insight SUV-D segment between the EEA and North America are significant. The EEA exports above 20% of its total IHS Global Insight SUV-D segment production to North America. The European exports amount for 8% of the North American consumption of IHS Global Insight SUV –D segment.
- (57) In addition, to support the argument of broader geographic market, Germany informed that the envisaged sales of Porsche to China will shortly represent [...] % of total sales.
- (58) The Commission notes that the question of whether the relevant geographic market in car sector cases is wider than the EEA is currently being examined in two pending formal investigations¹⁶. The Commission also notes that the period concerned by sales of the notified investment project (after 2014) is different from the period concerned by sales of the projects concerned by these pending formal investigations.
- (59) In line with recent decisions regarding state aid for the car sector, the Commission is of the opinion that, from a supply side perspective, production in the car sector is at least EEA wide.
- (60) From a customer perspective, which is mainly relevant at retail level, conditions of competition have significantly improved in the EU, in particular as regards technical barriers and distribution systems. However, differences in prices and taxation systems are still limiting factors and penetration rates of major competitors differ across Member States and in particular continents.
- (61) In light of the above, for the purpose of the assessment of the present case, the Commission considers that the relevant geographical market for the products concerned is at least EEA-wide. However, the Commission is not in a position to exclude without doubts, on the basis of the arguments brought forward by Germany, that the geographical market in the car sector for the market segments concerned by the investment is limited to the EEA market.

Market share (point 68(a) of the RAG)

- (62) The test laid down in point 68(a) of the RAG requires the Commission to check whether the beneficiary's market share exceeds 25% either before or after the completion of the investment.

¹⁶ SA.27913 - C 31/2009 - HUN - LIP - Aid to Audi Hungaria Motor Kft: Decision of 28.10.2009 (C(2009)8131), OJ C 64, 16.03.2010, p. 15; Extension decision of 6 July 2010 (C(2010)4474), OJ C 243, 10.09.2010, p.4.; Decision of 13.7.2011 (C(2011)4935) in SA.32169 - C/2011 – DE – LIP – Aid to Volkswagen Sachsen, , OJ C 361,10.12.2011, p. 17.

- (63) The beneficiary's market share is assessed at group level in the relevant product and geographical markets. As the investment project started in 2011 and full production is foreseen to be reached in 2014, the Commission will examine the market share of the VW-PO-Group (including all the brands belonging to the respective group) on the relevant markets between 2010 and 2015.
- (64) Considering significant differences in production costs and prices of different passenger cars, and difficulties in obtaining reliable price estimates, volume data are commonly used in the sector to define markets and market evolutions. The German authorities provided the following market share data:

Table II: Overall passenger car market - Market shares VW-PO-Group / EEA

Market share VW/PO	2010	2011	2012	2013	2014	2015
All Segments	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%

Source: POLK 09/2011

- (65) On the basis of the above figures, the market share of the VW-PO-Group in the overall passenger car market in the EEA does not account for more than 25% of that market in all years between 2010 and 2015. The aid beneficiary therefore does not exceed the threshold laid down in paragraph 68(a) of the RAG if the overall passenger car market in the EEA were deemed the relevant product and geographical market.

Table III: POLK B-Segment - Market shares VW-PO-Group / EEA

Market share VW/PO	2010	2011	2012	2013	2014	2015
B-Segment	[>25]%	[>25]%	[>25]%	[>25]%	[>25]%	[>25]%

Source: POLK 09/2011

- (66) On the basis of the above figures, the market share of the VW-PO-Group in the B segment in the EEA accounts for more than 25% of that market in all years between 2010 and 2015. The aid beneficiary therefore exceeds the 25% threshold laid down in paragraph 68(a) of the RAG if the B segment in the EEA were deemed the relevant product and geographical market.

Table IV: POLK B-Segment - Market shares VW-PO-Group / EEA and NA

Market share VW/PO	2010	2011	2012	2013	2014	2015
B-Segment	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%

- (67) On the basis of the above figures, the market share of the VW-PO-Group in the B segment in the combined EEA and North American markets accounts for less than 25% of that market in all years between 2010 and 2015. The aid beneficiary therefore does not exceed the 25% threshold laid down in paragraph 68(a) of the RAG if the B segment in the combined EEA and North American markets were deemed the relevant product and geographical market.

Table V: Global Insight SUV-D - Market shares VW-PO-Group / EEA

Market share VW/PO	2010	2011	2012	2013	2014	2015
SUV-D	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%

Source: IHS Global Insight 02/2012

- (68) On the basis of the above figures, the market share of the VW-PO-Group in the SUV-D segment in the EEA market does not account for more than 25% of that market in all years between 2010 and 2015. The aid beneficiary therefore does not exceed the 25% threshold laid down in paragraph 68(a) of the RAG if the SUV-D segment in the EEA were deemed the relevant product and geographical market.

Table VI: Global Insight SUV-D - Market shares VW-PO-Group / EEA and NA

Market share VW/PO	2010	2011	2012	2013	2014	2015
SUV-D	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%	[<25]%

Source: Global Insight 02/2012

- (69) On the basis of the above figures, the market share of the VW-PO-Group in the SUV-D segment in the combined EEA and North American markets accounts for substantially less than 25% of that market in the years between 2010 and 2015. The aid beneficiary therefore does not exceed the 25% threshold laid down in paragraph 68(a) of the RAG if the SUV-D segment in the combined EEA and North American markets were deemed the relevant product and geographical market.

Production capacity in an underperforming market-point 68(b) of the RAG

- (70) The Commission also has to apply to the investment project the tests laid down in point 68(b) of the RAG. It needs to verify whether the capacity created by the project exceeds 5% of the size of the market measured using apparent consumption data of the product concerned, and, in that case, whether the average annual growth rate of its apparent consumption over the five years preceding the start of the investment is above the average annual growth rate of the EEA's GDP over the same time period.
- (71) Consequently the Commission verified whether the capacity created by the Porsche investment project is less than 5% of the size of the relevant market.

Germany indicated that the total capacity to be created by the project is [40,000-100,000] units/a:

- POLK B segment EEA: Apparent consumption of motor vehicles from the B segment in the EEA amounted to 2 280 040 units in 2010. It follows that the capacity created by the Porsche project is below 5% of the market concerned (namely [...]%).
- IHS Global Insight SUV-D segment EEA: Apparent consumption of motor vehicles from the SUV-D segment in the EEA amounted to 284 189 units in 2010. It follows that the capacity created by the Porsche project is above 5% of the market concerned (namely [...]%).

(72) The figures above show that the total capacity increase clearly exceeds the 5% threshold set by point 68(b) of the RAG if the IHS Global Insight SUV-D segment in the EEA market is considered as the relevant product and geographical market. The Commission must therefore assess whether that market is underperforming, based on the average annual growth rate (CAGR) of the apparent consumption of the product concerned in the EEA. Germany submitted the following information about this factor:

EEA	2010	2005	CAGR
SUV-D	284 189	297 292	-0.9%

Since the average annual growth in the SUV-D segment in the EEA was clearly below the average annual growth of GDP in the EEA in the same period (1.63%), it can be concluded that the relevant market was underperforming and even in decline over the last five years preceding the investment.

Conclusion

- (73) The above analysis revealed that if the EEA is considered as the relevant geographical market:
- the threshold of 25% laid down in point 68 (a) of the RAG is exceeded in respect of the VW-PO-Group's market shares in the POLK B segment of that market;
 - the threshold of 5% capacity increase in an underperforming market laid down in point 68 (b) of the RAG is exceeded in so far as the IHS Global Insight SUV-D segment of that market is concerned.

4. DOUBTS AND GROUNDS FOR OPENING

- (74) For the reasons set out above, the Commission, after a preliminary assessment of the measure, has doubts as to whether the notified aid can be considered not to exceed the thresholds laid down in point 68 of the RAG.
- (75) The Commission notes the disagreement with the German authorities as regards the definition of the relevant product market. At this stage, the Commission has doubts as to whether the product market can be defined as being the overall

passenger car market without any segmentation, solely the POLK segment category B or solely the IHS Global Insight segment category SUV-D.

- (76) The Commission notes further the disagreement with the German authorities as regards the definition of the relevant geographical market. At this stage, the Commission has doubts as to whether the geographical market can be defined as being wider than the EEA market.
- (77) 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 third 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 third parties, the Commission will assess the measure and will take its final decision.
- (78) In the event that the comments received in reply to the opening of the formal investigation do not allow the Commission to conclude without any doubt that the thresholds laid down in point 68(a) and (b) tests are not exceeded, the Commission will carry out an in-depth assessment of the investment project on the basis of the Commission Communication on the Criteria for an In-Depth Assessment of Regional Aid to Large Investment Projects.¹⁷
- (79) The Member State and interested parties are invited to provide in their comments to the opening decision all information necessary to carry out this in-depth assessment and to submit the appropriate information and documentation, as indicated in the Communication.
- (80) 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.

5. DECISION

- (81) In light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the TFEU, requests Germany to submit its comments and to provide all such information as may help to assess the aid measure, 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.
- (82) The Commission wishes to remind Germany that Article 108(3) of the TFEU 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.

¹⁷ Communication from the Commission concerning the criteria for an in-depth assessment of regional aid to large investment projects, OJ C 223, 16.09.2009, p.3.

(83) The Commission warns Germany 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.

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

Joaquín ALMUNIA
Vice President