Commission Decision (EU) 2019/1127 of 4 October 2018 on the State aid SA.45359 — 2017/C (ex 2016/N) which Slovakia is planning to implement for Jaguar Land Rover Slovakia s.r.o. (notified under document C(2018) 6545) (Only the English version is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/1127

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THE EUROPEAN COMMISSION,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited[(1)] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 12 May 2016, Slovakia notified to the Commission a EUR 125 046 543 regional investment aid in form of a direct grant in favour of Jaguar Land Rover Slovakia s.r.o. (‘the beneficiary’) subject to Commission approval. Jaguar Land Rover Slovakia s.r.o. is part of the Jaguar Land Rover Group[(2)] (‘JLR’).

(2) By letter dated 24 May 2017 (the ‘Opening decision’) the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (‘TFEU’) in respect of the notified State aid and in respect of possible additional non-notified State aid, and invited Slovakia to submit its comments within one month.

(3) The Slovak authorities submitted their comments on the Commission decision to initiate the procedure laid down in Article 108(2) TFEU by letter of 20 July 2017.

(4) The Opening decision was published in the *Official Journal of the European Union*[(3)] on 8 December 2017. The Commission called upon other interested parties to submit their comments within one month.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/1127. (See end of Document for details)*

(5) The only comment the Commission received from other interested parties was submitted by JLR on 19 December 2017. The Commission forwarded the comment to Slovakia on 17 January 2018. Slovakia's comments on the JLR submission were registered on 5 February 2018.

(6) The Commission sent information requests on 9 and 23 February 2018 to which Slovakia replied on 9 March and on 12 and 18 April 2018. The Commission sent a further information request to Slovakia on 11 June 2018 to which Slovakia replied on 3 July 2018.

(7) Meetings took place between the Commission services and the Slovak authorities on 10 October 2017, 27 November 2017 and 1 March 2018.

(8) The Commission received a letter from JLR dated 14 May 2018 to which it replied by letter of 22 May 2018. The Commission received further information from JLR on 2 July 2018.

(9) By letter of 3 July 2018, Slovakia agreed that this Decision will be adopted and notified to Slovakia in the English language.

(10) In the Opening decision, the Commission expressed doubts both on the compatibility of the notified aid and on possible additional non-notified aid. In view that the possible additional non-notified aid could have had an impact on the compatibility of the notified aid, and in particular on proportionality and regarding a manifest negative effect, the Commission, in this Decision, assesses first whether there was additional non-notified aid. That assessment is crucial in defining the scope of the compatibility assessment.

2. DETAILED DESCRIPTION OF THE AID

2.1. Objective of the aid

(11) The Slovak authorities intend to promote regional development by providing regional aid for an investment by the large undertaking JLR for building and tooling a premium aluminium vehicle manufacturing facility in Nitra, which is situated in the Nitra region of Slovakia, 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 1 July 2014 to 31 December 2020[(4)].

2.2. The notified project

(12) The investment project with proposed eligible investment costs of EUR 1 406 621 000 in nominal value (EUR 1 369 295 298 in current value[(5)]) aims at establishing a new car manufacturing plant with an annual capacity of 150 000‘Premium D SUV segment’ vehicles[(6)]. The investment started in December 2015 and is to be completed in 2020. The investment takes place in an industrial park under construction, the Nitra Strategic Park (‘NSP’), on land which, at the time of the creation of the NSP on 8 July 2015, was still predominantly privately owned agricultural land. The project is expected to create 2 834 new direct jobs.

(13) The scope of the notified investment project, as proposed to the Slovak authorities in the formal aid application of 24 November 2015, refers to a production capacity of 150 000 vehicles per annum. The scope of the investment project, as originally proposed in JLR's draft aid application submitted to the Slovak authorities on 25 June 2015, referred to an investment with an annual production capacity of 300 000 vehicles to be implemented in two phases and including the production of two further models which had yet to be decided. Slovakia explained that in the autumn of 2015 JLR decided to reduce the initial scope of the project to a plant with the notified production capacity of 150 000 vehicles per annum. The product to be manufactured in Phase 2 at the site was not yet known at that time, and there was no commitment yet on the envisaged expansion of the investment into Phase 2.

2.3. **The beneficiary**

(14) The recipient of the State aid is Jaguar Land Rover Slovakia s.r.o. As described in the Opening decision, Jaguar Land Rover Slovakia s.r.o. 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 India ('Tata Motors'). The main business activities of Tata Motors are the manufacture and sale of passenger vehicles, commercial vehicles, buses and coaches. The term JLR in this Decision does not include Tata Motors.

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

2.4. **Aid amount and aid intensity**

2.4.1. *The notified aid*

(16) The notified direct grant of EUR 129 812 750 in nominal value or EUR 125 046 543 in current value[8] refers to the eligible expenditure of EUR 1 369 295 298 in current value referred to in recital 12, and thus corresponds to an aid intensity of 9,13 %. The notified regional investment aid is to be granted from the national State budget.

2.4.2. *The possible additional non-notified aid*

(17) In section 3.1.2 of the Opening decision, the Commission considered that Slovakia may have granted, in addition to the notified aid, unlawful aid in the form of infrastructural development, including the sale of land below market price, in the NSP and exemption from the obligation to pay an Agricultural Land Transformation fee ('ALF fee'). The entity made responsible by the Slovak authorities for the implementation of the NSP is MH Invest ('MHI'), a 100 % State-owned company that is controlled, governed and financed by the Ministry of Transport, Construction and Regional Development of Slovakia. MHI is the initial owner of the sites of the NSP.

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The Slovak authorities, through MHI's commissioning of third parties, are carrying out works on the NSP, namely preparatory land remediation works, utilities works, rail and road connections, flood defence and ground water management works. Železnice sloveskej republiky ('Slovak Railways'), also a 100 % State-owned company, is constructing a multimodal transport terminal within the NSP. The total cost of those works and that terminal is estimated at about EUR 500 million.

(18) As stated in section 3.1.3 of the Opening decision, one of the changes to Regulation 58 of the Government of the Slovak Republic of 13 March 2013 on fees for the disappropriation and unauthorised engagement of agricultural land[9] introduced the so-called Exemption H from the ALF fee which applies to land purchased by 100 % State-owned companies that construct strategic industrial parks that are recognised as 'significant investments' within the meaning of Act No 175/1999[10] on significant investments ('Significant Investment Act'). Exemption H entered into force on 31 October 2015. The NSP was recognised as 'significant investment' on 8 July 2015.

(19) The possible additional non-notified aid measures are to be granted from the national State budget.

2.5. **Duration**

(20) The notified measure is to be paid out between 2017 and 2021. The beneficiary is expected to benefit from the other measures which may qualify as non-notified aid as from the moment of the purchase agreement for what concerns the land purchased by JLR and possible exemption from the ALF fee and as from the moment of infrastructural development for infrastructure outside the boundaries of the 185 hectares purchased by JLR from the Slovak authorities ('JLR Site').

3. GROUND FOR INITIATING THE PROCEDURE

(21) The Commission opened the formal investigation on 24 May 2017. It was unable to exclude that JLR was receiving, in addition to the notified aid, non-notified aid in the form of infrastructural development, including the sale of land below market price, in the NSP and an exemption from the obligation to pay an ALF fee. The underlying assessment took account both of the notified and the possible additional non-notified aid measures.

3.1. The possible additional non-notified aid

3.1.1. *Possible aid in the form of infrastructural development, including the transfer of NSP land below market value*

(22) The Commission considered that there was a possibility that the sale to JLR of land in the NSP may have involved certain advantages that could qualify as additional State aid.

(23) MHI, becoming the initial owner of the future site of the NSP, had, by 31 December 2016, already incurred an expenditure of EUR 75 million for the acquisition of NSP land on which the notified JLR project would be located. It was

also incurring a significant amount of additional expenditure for the development of the site itself. At the same time, JLR's contribution in relation to the purchase of the JLR site appeared to be only a fraction of the corresponding acquisition and development costs. The difference between the cost incurred by Slovakia to acquire the land and to develop the NSP on it, and the price to be paid by JLR for the NSP land raised the question whether the sale of NSP land to JLR involved State aid.

(24) Slovakia argued that the development of the NSP could not involve State aid as it falls within the public remit for the reasons referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU[11]. Therefore Slovakia argued that the development of the NSP is not an economic activity, and its public financing does not constitute State aid. In addition, according to Slovakia, JLR would pay a market price for the land it purchases in the NSP which is established on the basis of valuations carried out by independent experts.

(25) The Commission, however, had doubts that the development of the NSP was analogous to the situation referred to in paragraph 17 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU, which is only applicable to measures that do not involve dedicated infrastructure.

(26) The Commission understood that contractual agreements between Slovakia and the beneficiary were to give JLR outright ownership, or option rights for later purchase, of almost all the commercially exploitable land of the NSP.

(27) The Commission considers infrastructure to be dedicated if it is built for a pre-identified undertaking and is tailored to this undertaking's specific needs[12]. In its preliminary view, the Commission considered that the NSP could be regarded as infrastructure dedicated to JLR for the following reasons: (a) a large surface area was reserved to the company under contractual terms; (b) the beneficiary might have been a pre-identified undertaking; and (c) the NSP appeared to have been tailored to the beneficiary's specific needs.

(28) The Commission therefore considered that if the NSP constitutes infrastructure dedicated to JLR, the company would under normal market conditions have had to pay for the costs for developing the site, with the exception of costs relating to truly general infrastructure items and which should be identified in this Decision.

(29) Even assuming that the NSP was not a dedicated infrastructure, the method used to establish the market price to be paid by JLR raised doubts. In particular, the Commission questioned whether the value of specific development works carried out and financed by Slovakia and directly benefitting JLR was properly reflected in the valuations prepared by the independent experts, and whether JLR was to pay a proportionate share of the NSP development cost commensurate with its ownership interest in the park.

3.1.2. *Possible aid in the form of the exemption from a fee, the ALF fee, that is payable when agricultural land is transformed into industrial land*