



2025/2522

19.12.2025

COMMISSION DECISION (EU) 2025/2522

of 23 January 2025

on State aid SA.38330 (2019/C) (ex 2016/FC) that Poland implemented for PCC MCAA Sp. z o. o.

(notified under document C(2025) 402)

(Only the Polish version is authentic)

(Text with EEA relevance)

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), point (a), thereof,

Having called on interested parties to submit their comments pursuant to these provisions ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 14 February 2014, the Commission received a complaint (the ‘complaint’) lodged by CABB GmbH (the ‘Complainant’), alleging that the Republic of Poland (‘Poland’) had granted unlawful State aid to PCC MCAA Sp. z o. o. ⁽²⁾ (‘PCC’) to set up a new establishment to produce monochloroacetic acid (‘MCAA’) in Lower Silesia. The Complainant alleged that that aid is incompatible with the internal market.
- (2) The Commission forwarded the non-confidential version of the complaint to Poland on 28 March 2014. On 23 July 2014, the Polish authorities provided comments on the complaint.
- (3) On 23 September 2014, the Commission sent its preliminary assessment of the alleged State aid to the Complainant. The Complainant provided further comments on 23 October 2014, 13 May 2015, 25 August 2016, and 7 June 2018.
- (4) The Commission requested supplementary information from Poland on 9 February 2015, 2, 11, and 24 March 2015, 23 June 2015, 9 October 2015, 20 November 2015, 4 September 2017, 14 September 2018, and 7 December 2018. Poland submitted further information 5, 16, and 30 March 2015, 20 July 2015, 13 November 2015, 21 December 2015, 12 January 2016, 20 January 2017, 12 July 2017, 8 March 2018, 8, 21 and 28 May 2018, 30 October 2018, 5 November 2018, 13, 14 and 19 March 2019.
- (5) On 25 March 2015, the Commission had a meeting with the Complainant.
- (6) On 27 January 2017, the Commission held a meeting with the Polish authorities.
- (7) By decision of 31 October 2019, the Commission informed the Polish authorities that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (the ‘Treaty’) in respect of the aid (the ‘Opening decision’).

⁽¹⁾ OJ C 144, 30.4.2020, p. 42.

⁽²⁾ At the time, named ‘PCC P4 Sp. z o. o.’, changed to ‘PCC MCAA SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ’ (PCC MCAA Sp. z o. o.) with an entry to KRS (Polish National Court Register) of 28 May 2014.

- (8) The Opening decision was published in the Official Journal of the European Union on 30 April 2020 ⁽³⁾. The Commission called on interested parties to submit their comments within one month.
- (9) The Commission received 26 submissions following publication of the Opening decision. On 13 May 2020, Seda Group Sp. z o. o. submitted comments. On 14 May 2020, comments were submitted by an employee of PCC (submitting comments of 25 PCC employees), the Wołowski District Local Administration, ARAPneumatik L.T.M. Kościelniak Sp. j., Główny Instytut Górnictwa, the Research Network 'Łukasiewicz' – 'PORT' Polish Centre of Technological Development, and the Polish Chamber of Chemical Industry. On 15 May 2020, Rinnen Polska Sp. z o. o. Spedycja Międzynarodowa, Proton SC, the Miękinia Municipal Authority, VTU Engineering GmbH, ABB Sp. z o. o., Bulk Tainer Logistics Limited, PC Logistic Sp. z o. o., and PCC Autochem Sp. z o. o. submitted comments. The Brzeg Dolny Municipal Authority made two submissions on that date. On 18 May 2020, the Commission received comments from a plant protection product technology expert, PCC Exol SA, two submissions from the Board of the Lower Silesia trade union NSZZ branch 'Solidarność', the Politechnika Wrocławska, the Wołów Municipal Authority, PCC SE in Germany, the Marshal's Office of Lower Silesia, and PCC. On 1 July 2020, the Commission forwarded the comments to Poland ⁽⁴⁾; its comments in response were received by letter dated 3 August 2020 (re-submitted in English by letter registered at the Commission on 15 September 2020).
- (10) The Complainant did not submit comments following the publication of the Opening decision.
- (11) On 11 August 2020, the Commission services held a teleconference with the Polish authorities.
- (12) On 16 October 2020, the Commission received further comments from PCC.
- (13) The Commission requested further information from Poland on 18 May and 16 July 2021, 7 and 8 April, and 13 and 16 May, 23 June, and 6 July 2022. Poland submitted information on 16 June and 1 September 2021, 21 March, 4 and 10 May, 14 and 6 June, and 6 July 2022.
- (14) On 29 September 2022 and 9 January 2023 PCC submitted further information to the Commission. On 28 March 2023, the Commission requested information from PCC, which PCC provided on 24 April 2023. On 17 May 2023, the Commission forwarded the non-confidential version of PCC's submission to, and requested further information from, the Polish authorities. The Polish authorities submitted their responses on 28 June and 10 July 2023.
- (15) On 22 September 2023, the Commission requested further information from Poland, which it provided on 30 October 2023.

2. DETAILED DESCRIPTION OF THE PROJECT AND ALLEGED AID

2.1. The aid recipient

- (16) The aid recipient is PCC, an enterprise belonging to PCC SE (the 'PCC group'). PCC qualifies as a large enterprise, and was set up in 2010 to implement the investment of constructing a plant producing ultra-pure MCAA ('UP MCAA').
- (17) The PCC group is an international group active in several sectors, including chemicals, logistics, and energy. The PCC group has 3 300 employees, and sites in 17 countries ⁽⁵⁾.

⁽³⁾ Cf. footnote 1.

⁽⁴⁾ The Commission did not forward the comments submitted by PCC, as they were marked as confidential and covered by legal privilege.

⁽⁵⁾ See Companies of the PCC Group - nearly 1000 chemical products (last accessed 29 July 2024).

2.2. The investment project

- (18) The project concerns an initial investment into a new plant to produce UP MCAA in Brzeg Dolny, Lower Silesia, which is in region PL51 Dolnośląskie (the 'Project'). The eligible costs for the Project consisted of the costs of new material assets, namely the acquisition of land, buildings, and equipment.
- (19) The Project is located in the Wałbrzych Special Economic Zone.
- (20) The aim of the Project was to establish an innovative production facility for UP MCAA, a form of MCAA with a content of up to 90 ppm of dichloroacetic acid ('DCAA'), with a theoretical maximum ('nameplate') annual production capacity of 42 kt.
- (21) MCAA is an intermediate product that is used in numerous organic synthesis processes, including manufacture of plant protection products, fertilisers, plastics, detergents, paints, cosmetics, and personal hygiene products. The primary use of MCAA is the manufacture of carboxymethylcellulose ('CMC'), used, for example, in the manufacture of adhesives, detergents, soaps, emulsion paint thickener, and a food thickener, emulsifier, and stabiliser. It is also used in the production of betaines (amphoteric surfactants used in hair products), such as thioglycolic acid ('TGA'), in the agrochemicals industry, and in various other ways ⁽⁹⁾.

2.3. Objective of the aid measures

- (22) In 2012 and 2013, the Polish authorities awarded PCC two separate aid measures for the Project, one in the form of a direct grant and the other as a tax exemption (the 'aid measures', individually an 'aid measure'). The Project sought to support the development of the region, which was, at the time the aid measures were granted, an area eligible for assistance under Article 107(3), point (a), of the Treaty. Under the regional aid map in force in 2012 and 2013 ('Polish regional aid map 2007-2013') ⁽⁷⁾, the maximum aid intensity for the region concerned was 40 % for large enterprises.

2.4. The aid measures

2.4.1. The first aid measure (the grant)

- (23) On 4 April 2012, the Polish Ministry of Economy awarded aid to PCC in the form of a direct grant in the amount of PLN 66 995 311,50 (EUR 16 124 798,18 ⁽⁸⁾), in discounted value, for an investment project with eligible costs of PLN 223 317 705 (EUR 53 749 327 ⁽⁹⁾), in discounted value (the 'grant').
- (24) The grant was purportedly awarded pursuant to a State aid scheme (the 'grant scheme') that aimed to facilitate the granting of financial aid for investments of high importance to the economy under the Innovative Economy Operational Programme, 2007-2013 (the 'IEOP'). The grant scheme was put into effect as a regional investment aid measure under Article 13 of Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty ('Regulation 800/2008') ⁽¹⁰⁾.
- (25) The national legal basis of the grant scheme was the Ministerial Regulation of 8 May 2009 on financial investments of major economic importance in the context of the Innovative Economy Operational Programme (the 'IEOP Regulation') ⁽¹¹⁾. Section 19 of the IEOP Regulation specified that it would enter into force on the date of its publication. It was published, and entered into force, on 20 May 2009. The grant scheme set out the conditions applicable to contributions from the IEOP, such as number of jobs to be created by a project and the maximum available aid intensity.

⁽⁹⁾ From shampoo to glyphosate or where monochloroacetic acid is used - PCC Group Product Portal (last accessed 29 July 2024).

⁽⁷⁾ Commission Decision C(2006) 4010 of 13 September 2006 in case SA.21529 (N 531/06) – Poland – Regional aid map 2007-2013 (OJ C 256, 24.10.2006, p. 6).

⁽⁸⁾ Calculated by applying an exchange rate of EUR/PLN 4.1548 that was applicable on 4 April 2012, on the date of granting the aid (OJ C 102, 5.4.2012, p. 28).

⁽⁹⁾ Ibid.

⁽¹⁰⁾ OJ L 214, 9.8.2008, p. 3, <http://data.europa.eu/eli/reg/2008/800/oj>.

⁽¹¹⁾ Rozporządzenie Ministra Gospodarki z dnia 8 maja 2009 r. w sprawie udzielania pomocy finansowej dla inwestycji o dużym znaczeniu dla gospodarki w ramach Programu Operacyjnego Innowacyjna Gospodarka, 2007-2013 (Dz. U. z 2009 r. nr 75, poz. 638).

- (26) Under Article 9(1) of Regulation 800/2008, the Member State shall forward to the Commission summary information regarding an aid scheme within 20 working days following the entry into force of an aid scheme.
- (27) By letter of the Ministry of Economy, dated 29 July 2009, the Polish authorities forwarded to the Commission summary information on the grant scheme. The grant scheme was registered at the Commission on 29 July 2009, under number SA.29131 (X 656/2009), for the period 20 May 2009 to 31 December 2013.
- (28) By Ministerial Regulation of 2 March 2010 (the 'IEOP Amending Regulation') ⁽¹²⁾, the Polish authorities amended the IEOP Regulation, to provide, inter alia, for a reduction in the minimum number of jobs required to be created by investments in the manufacturing sector, from 200 to 150, and an increase in the maximum aid intensity available for projects implemented in the manufacturing sector, from 25 % to 30 %.
- (29) Section 3 of the IEOP Amending Regulation specified that it would enter into force on the date of its publication. It was published, and entered into force, on 16 March 2010. Poland did not forward updated summary information on the amended scheme (the 'amended grant scheme') to the Commission.
- (30) On 15 December 2010 ⁽¹³⁾, PCC applied for a grant for the Project under the amended grant scheme. The grant application noted that the eligible costs for the Project would be in the amount of PLN 223 317 705 and requested aid in the amount of PLN 66 995 311,50. In the application form, PCC stated that the grant would enable the Project 'to be fully implemented in the territory of the European Union – Poland'. The Project qualified as a 'major project' within the meaning of Council Regulation (EC) No 1083/2006 ⁽¹⁴⁾ ('Regulation 1083/2006'). As part of its application, PCC provided declarations to the effect that it did not qualify as an undertaking in difficulty. The Polish authorities verified PCC's financial situation when reviewing its application. As clarified by the Polish authorities in the course of the formal investigation, on 2 March 2011, those authorities wrote to PCC, stating that they had decided to award the grant. In that letter, the Polish authorities requested PCC to 'provide full documentation for the confirmation of the aid by the European Commission' ⁽¹⁵⁾.
- (31) On 4 April 2012, the Polish authorities awarded the grant to PCC, through the conclusion of a grant agreement ⁽¹⁶⁾ (the 'Grant Agreement'). The preamble to the Grant Agreement recalled, inter alia, the provisions of the IEOP Regulation (as amended) and Regulation 800/2008. Section 1(1) of the Grant Agreement noted that the Project would be carried out under Sub-Measure 4.5.1 of the IEOP, 'Support for investments in the manufacturing sector'. Section 5(27) of the Grant Agreement stated that, should the beneficiary implement a large project ⁽¹⁷⁾ within the meaning of the IEOP Regulation (as amended by the IEOP Amending Regulation), the grant would be paid on condition that the Commission has authorised, or is deemed to have authorised, the aid, in line with Council Regulation (EC) No 659/1999 ('Regulation 659/1999') ⁽¹⁸⁾. Section 4(3) of the Grant Agreement stated that, should the cost of the Project increase beyond the noted eligible costs of PLN 223 317 705 (EUR 53 749 327), such increase would be ineligible for support and would be borne by PCC.

⁽¹²⁾ Rozporządzenie Ministra Gospodarki z dnia 2 marca 2010 r. zmieniające rozporządzenie z dnia 8 maja 2009 r. w sprawie udzielania pomocy finansowej dla inwestycji o dużym znaczeniu dla gospodarki w ramach Programu Operacyjnego Innowacyjna Gospodarka, 2007-2013 (Dz. U. z 2010 r. nr 40, poz. 231).

⁽¹³⁾ Following an initial aid application of 2 November 2010.

⁽¹⁴⁾ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, 31.7.2006, p. 25, <http://data.europa.eu/eli/reg/2006/1083/oj>).

⁽¹⁵⁾ 'Ponadto, zwracam się z prośbą o przekazanie pełnej dokumentacji dot. Potwierdzenia pomocy przez Komisję Europejską.'

⁽¹⁶⁾ Grant Agreement of 4 April 2012 No POIG.04.05.01-00.028/10-00 for the project 'Innovative installation for the production of ultra-pure monochloroacetic acid (U_P MCAA)' under Sub-Measure 4.5.1 *Support for investments in production sector*, Measure 4.5 *Support for investments with significant impact on the economy – Priority Axis 4 Investments in innovative undertakings under the Innovative Economy Operational Programme 2007-2013 (IEOP 2007-2013)*.

⁽¹⁷⁾ Section 7 of the IEOP Regulation (as amended by the IEOP Amending Regulation) refers to large investment projects as those where the total value of the intended aid from all sources exceeds, inter alia, EUR 30 million where the investment takes place in a region with a maximum aid intensity of 40 %.

⁽¹⁸⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1, <http://data.europa.eu/eli/reg/1999/659/oj>).

- (32) With eligible costs in excess of EUR 50 million, the Project constitutes a large investment project within the meaning of Article 2(12) ⁽¹⁹⁾ of Regulation 800/2008. Under Article 9(4) of that Regulation, Member States were required to provide the Commission with summary information on regional aid to large investment projects, granted on the basis of a scheme, within 20 working days from the day on which the aid was granted. The Polish authorities submitted summary information in respect of the grant to the Commission on 25 June 2012 ⁽²⁰⁾.
- (33) In 2014, as part of its annual ex post monitoring exercise of a sample of aid measures implemented by Member States under Regulation 800/2008, the Commission reviewed the amended grant scheme, and its application in respect of several beneficiaries ⁽²¹⁾. At that time, the Commission did not identify any concerns as regards the compliance of the amended grant scheme with Regulation 800/2008.
- (34) On 25 September 2014, the Commission approved a financial contribution to the Project from the European Regional Development Fund ('ERDF') (the 'Major Project decision'). ⁽²²⁾

2.4.2. *The second aid measure (the tax exemption)*

- (35) During the preliminary examination of the complaint, the Commission discovered that Poland had granted a second aid measure to PCC in respect of the Project (the 'tax exemption'), on the basis of a State aid scheme to facilitate investments in Polish special economic zones ('SEZ') (the 'tax exemption scheme').
- (36) The national legal basis of the tax exemption scheme was the Regulation of the Council of Ministers of 10 December 2008 on public aid for entrepreneurs operating on the basis of a permit for the pursuit of an economic activity in special economic zones (the 'SEZ Regulation') ⁽²³⁾, which entered into force on 30 December 2008, along with the Special Economic Zones Act of 20 October 1994 (the 'SEZ Act') ⁽²⁴⁾, and the Corporate Income Tax Act of 15 February 1992 (the 'CIT Act') ⁽²⁵⁾. As indicated at Articles 2 and 3 to the SEZ Act, SEZ may be established in uninhabited parts of Poland, to accelerate the economic development of part of the country. Pursuant to Articles 12 and 16(1) of the SEZ Act and Article 17(1)(34) of the CIT Act, economic activities carried out in a SEZ pursuant to a permit would be entitled to a corporate income tax exemption.
- (37) The tax exemption scheme was put into effect as a regional investment aid measure under Article 13 of Regulation 800/2008. The Polish authorities submitted the summary information on the scheme to the Commission, as required by Article 9(1) of Regulation 800/2008 (recital (26)), by letter of the Ministry of Economy dated 12 February 2009.
- (38) The tax exemption scheme was registered at the Commission on 12 February 2009, under number SA.27752 (X 193/2009), for the period 1 January 2007 to 31 December 2013.
- (39) On 15 January 2013, Wałbrzyska Specjalna Strefa Ekonomiczna IP Sp. z o. o. (the 'SEZ Manager') published an invitation to apply for a permit to carry out economic activities in the WSSE 'Invest-Park', which would be issued following a negotiated procedure (the 'Invitation to Tender'). The Invitation to Tender indicated that permits would be issued on the basis of the SEZ Act and the SEZ Regulation, and would be subject to the terms and conditions

⁽¹⁹⁾ Article 2(12) states: "large investment project" means an investment in capital assets with eligible costs above EUR 50 million, calculated at prices and exchange rates on the date when the aid is granted'.

⁽²⁰⁾ Registered at the Commission under case number SA.35025 (2012/MF).

⁽²¹⁾ Registered at the Commission under case number SA.29131 (2014/MX).

⁽²²⁾ Commission Decision C(2014) 6943 final, of 25.9.2014, concerning a major project 'Innovative equipment for the production of ultra-pure monochloroacetic acid (U-P MCAA)', forming part of the operational programme "Innovative Economy" for structural assistance from the European Regional Development Fund under the Convergence objective in Poland.

⁽²³⁾ Rozporządzenie Rady Ministrów z dnia 10 grudnia 2008 r. w sprawie pomocy publicznej udzielanej przedsiębiorcom działającym na podstawie zezwolenia na prowadzenie działalności gospodarczej na terenach specjalnych stref ekonomicznych (Dz. U. z 2008 r. nr 232, poz. 1548).

⁽²⁴⁾ Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 14 lutego 2007 r. w sprawie ogłoszenia jednolitego tekstu ustawy o specjalnych strefach ekonomicznych (Dz. U. z 2007 r. nr 42, poz. 274).

⁽²⁵⁾ Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 9 marca 2011 r. w sprawie ogłoszenia jednolitego tekstu ustawy o podatku dochodowym od osób prawnych (Dz. U. z 2011 r. nr 74, poz. 397).

noted in the specifications (the 'Tender Specifications'). The Tender Specifications indicated that the negotiations would be conducted on the basis of, inter alia, the SEZ Act, the Act of 30 April 2004 setting out the rules of procedure for State aid (the 'State aid Act') ⁽²⁶⁾, the SEZ Regulation, Regulation 800/2008, the Guidelines on national regional aid for 2007-2013 (the '2007 Guidelines') ⁽²⁷⁾, and the Regulation of the Council of Ministers of 13 October 2006 on the establishment of regional aid maps ⁽²⁸⁾ (the 'Regional aid map Regulation').

- (40) On 11 February 2013, PCC applied to the SEZ Manager for a permit to carry out the Project in the SEZ, which would entitle it to the tax exemption. In the application form, PCC indicated that the Project's eligible costs would be PLN 200 000 000, while in a business plan that was submitted with the application, it noted that its eligible costs would be at least PLN 200 000 000, and that the maximum eligible costs would be PLN 300 000 000. A financial analysis submitted along with the application indicated investment costs of PLN 301 478 910. PCC also provided further financial information, to demonstrate that it did not qualify as an undertaking in difficulty. In the application, PCC declared that it had received the grant, of a maximum amount of PLN 66.9 million. It indicated it would provide a financial contribution to the Project, of more than 25 % of the eligible costs, in a form that is free from any public support. PCC also declared that it had not started work on the Project before submitting the application, and that it accepted the terms of negotiations and the Tender Specifications, without reservation.
- (41) On 12 February 2013, the negotiations between PCC and the negotiating committee established by the SEZ Manager concerning PCC's application for a permit took place. A record of the proceedings was drawn up (the 'Negotiations Report'), which indicated that it was agreed that PCC would be granted a permit to carry out the Project in the SEZ. The costs for the Project would be more than PLN 200 000 000, and the maximum eligible costs would be PLN 300 000 000. The Negotiations Report noted that PCC had been informed that the conditions for granting State aid were laid down in Polish and Union law, in particular, the State aid Act, the Regional aid map Regulation, the SEZ Regulation, Regulation 800/2008, and the 2007 Guidelines.
- (42) On 19 February 2013, the SEZ Manager issued a permit to PCC to carry out economic activity in the Wałbrzych Special Economic Zone (the 'SEZ permit') ⁽²⁹⁾. This entitled PCC to a corporate tax exemption in connection with the Project. The SEZ permit specified that, to obtain the tax exemption, the Project must, inter alia, incur eligible costs of a minimum of PLN 200 000 000 (EUR 47 985 796) ⁽³⁰⁾ (nominal value) and a maximum of PLN 300 000 000 (EUR 71 978 694) ⁽³¹⁾ (nominal value). The Polish authorities informed the Commission that the maximum eligible costs of the Project in discounted value as of the date of the SEZ permit were PLN 271 513 408 (EUR 65 143 935) ⁽³²⁾.
- (43) The SEZ permit did not specify the amount of aid to which PCC would be entitled as a result of the tax exemption, nor did it note that PCC had received the grant, or its amount.
- (44) As the Project constitutes a large investment project within the meaning of Regulation 800/2008 (recital (30)), the Polish authorities were required, under Article 9(4) of that Regulation, to submit summary information to the Commission within 20 days from the day on which the aid was granted. Poland submitted the summary information on 16 July 2015 ⁽³³⁾, that is, more than two years after the SEZ permit was issued.

⁽²⁶⁾ Ustawa z dnia 30 kwietnia 2004 r. o postępowaniu w sprawach dotyczących pomocy publicznej, (Dz. U. z 2004 r. nr 123, poz. 1291).

⁽²⁷⁾ OJ C 54, 4.3.2006, p.13.

⁽²⁸⁾ Rozporządzenie Rady Ministrów z dnia 13 października 2006 r. w sprawie ustalenia map pomocy regionalnej (Dz. U. z 2006 r. nr 190, poz. 1402).

⁽²⁹⁾ Permit No 255 of 17 February 2013 for the pursuit of an economic activity in the Wałbrzych Special Economic Zone 'Invest Park'.

⁽³⁰⁾ Calculated by applying an exchange rate of EUR/PLN 4.1679 that was applicable on 19 February 2013 (OJ C 49, 20.2.2013, p.8). It is noted that, in this decision, the Commission uses the reference exchange rate published by the European Central Bank for the relevant date. This causes the amounts to slightly differ from those noted by Poland and PCC, and in the Opening decision, which, at times, used different exchange rates.

⁽³¹⁾ Ibid.

⁽³²⁾ In its summary information on the tax exemption, Poland used the exchange rate of PLN/EUR 4.1495, which results in PLN 271 513 408 (EUR 65 432 801), while the Commission uses the exchange rate of PLN/EUR 4.1679, published by the European Central Bank for 19 February 2013 (OJ C 49, 20.2.2013, p. 8), which results in an amount of PLN 271 513 408 (EUR 65 143 935).

⁽³³⁾ Registered at the Commission under case number SA.42750 (2015/MF).

- (45) In that summary information, the Polish authorities indicated that the maximum amount of aid for the Project would be PLN 95 797 682 (EUR 23 086 560) ⁽³⁴⁾, in discounted value. They also indicated that the amount of PLN 66 995 311,50 (EUR 16 124 798,18) (recital (23)) of aid already provided to the Project should be taken into account, meaning that the tax exemption would amount to a maximum of PLN 28 802 370 (EUR 6 910 523) ⁽³⁵⁾, in discounted value – that is, the difference between those two amounts.
- (46) During the Commission's preliminary investigation, the Polish authorities formed the opinion that the tax exemption had been awarded in breach of Article 8(2) of Regulation 800/2008, which requires the beneficiary to apply for aid before starting works on the aided project. Poland considered that PCC started works on the Project on 14 September 2012, despite only applying for the tax exemption on 11 February 2013. Consequently, on 31 March 2016, the Polish Minister for Development and Finance initiated an investigation regarding the unlawfulness of the tax exemption, and, later, began ex-officio proceedings for the annulment of the SEZ permit. By Decision No 290/DI/16 of 30 December 2016, the Minister for Development and Finance annulled the SEZ permit, on the ground that the aid lacked incentive effect.
- (47) On 23 January 2017, PCC requested a review of the revocation decision, claiming that it had merely carried out 'feasibility studies' prior to its application for the SEZ permit, and had not started works. Following that request, the Ministry for Enterprise and Technology reviewed the case, and, on 6 March 2018, issued Decision No 46/DI/18, upholding the revocation.
- (48) On 11 April 2018, PCC lodged an appeal against that decision at the Regional Administrative Court of Warsaw. On 28 November 2018, the Regional Administrative Court annulled the revocation of the SEZ permit ⁽³⁶⁾. On 25 February 2019, the Polish authorities lodged an appeal against that judgment before the Supreme Administrative Court.
- (49) On 22 September 2022, the Supreme Administrative Court dismissed the appeal brought by the Polish authorities, and confirmed the annulment of the 2016 and 2018 decisions of the Polish authorities ⁽³⁷⁾ (the 'Supreme Administrative Court judgment'). The SEZ permit is, therefore, currently in full force and effect ⁽³⁸⁾.

2.5. The complaint

- (50) The Complainant is a chemical manufacturing company, headquartered in Germany, which operates, inter alia, facilities for the production of MCAA in the Union and internationally. The Complainant is a direct competitor of PCC on the MCAA market, and thus qualifies as an 'interested party' within the meaning of Article 1, point (h), of Council Regulation (EU) 2015/1589 ⁽³⁹⁾ ('Regulation 2015/1589') and Article 1, point (h), of Regulation 659/1999, which was in force at the time the complaint was submitted to the Commission.
- (51) The complaint exclusively concerned the grant. The Complainant claims that the grant was awarded unlawfully, and is incompatible with the internal market. In particular, the Complainant submitted that the grant lacked incentive effect, and targeted a market in overcapacity. In that regard, the Complainant claimed that the relevant product market is that for UP MCAA, not MCAA as a whole, and that the relevant geographic market is the EEA, notably as high transport costs mean that exports to the USA are not profitable. The complaint is summarised in detail in the Opening decision, notably at recitals (20) to (30).

⁽³⁴⁾ Poland indicated an exchange rate of PLN/EUR 4.1495 in the summary information.

⁽³⁵⁾ Poland indicated an exchange rate of PLN/EUR 4.1495 in the summary information, which results in PLN 28 802 370 (EUR 6 941 166), while the Commission uses the exchange rate of PLN/EUR 4.1679, published by the European Central Bank for 19 February 2013 (OJ C 49, 20.2.2013, p. 8), which results in PLN 28 802 370,24 (EUR 6 910 523).

⁽³⁶⁾ File Ref. VI SA/Wa 1642/18.

⁽³⁷⁾ File Ref. II GSK 823/19. The Supreme Administrative Court judgment did not make a finding of fact as to when PCC started works on the Project.

⁽³⁸⁾ The Polish authorities clarified that the SEZ permit has been in effect since 28 November 2018, when the Regional Administrative Court annulled its revocation. As PCC did not record income that could benefit from the tax exemption until 2019, the revocation of the SEZ permit did not result in any claim for arrears of the tax exemption from PCC.

⁽³⁹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9, <http://data.europa.eu/eli/reg/2015/1589/oj>).

3. GROUNDS FOR INITIATING THE PROCEDURE

- (52) The Commission initiated the formal investigation procedure on 31 October 2019. In the Opening decision, adopted on that date, it provided its preliminary assessment of the support provided by the Polish authorities to PCC.
- (53) As set out at recitals (57) to (62) of the Opening decision, the Commission concluded that the grant and the tax exemption constituted State aid within the meaning of Article 107(1) of the Treaty, which was not contested by the Polish authorities (recital (62) of the Opening decision). The Commission, then, raised doubts as to the compliance of the aid measures with the relevant block exemption regulations and as to their compatibility with the internal market under the applicable guidelines.

3.1. Compliance of the aid measures with the block exemption regulations

3.1.1. *Compliance of the amended grant scheme*

- (54) The Commission considered that the IEOP Amending Regulation brought substantial changes to the grant scheme, and, as Poland neither submitted updated summary information, nor notified the amended grant scheme pursuant to Article 108(3) of the Treaty, that scheme was applied unlawfully as from 2 March 2010, when the amendments were enacted (recitals (65) to (70) of the Opening decision).

3.1.2. *Compliance of the grant*

- (55) The grant was awarded on the basis of the amended grant scheme. As a result, and given that Article 13(1) of Regulation 800/2008 concerning supplementary regional ad hoc aid did not apply, it was notifiable under Article 108(3) of the Treaty, and, as Poland did not notify it, the Commission considered that it was unlawful (recitals (71) to (73) of the Opening decision).
- (56) On a subsidiary basis, the Commission noted that, even if it should change its preliminary conclusion on the amended grant scheme, it would, nevertheless, consider that the grant does not fall within the scope of Regulation 800/2008, as the aid granting act did not contain the express references required by Article 3(1) of Regulation 800/2008, and Poland did not submit summary information in respect of the grant, as required by Article 9(4) (recital (30)) (recitals (74) to (78) of the Opening decision).

3.1.3. *Compliance of the tax exemption scheme*

- (57) The Commission noted that, while Poland did not submit summary information on the tax exemption scheme within 20 working days, as required by Article 9(1) of Regulation 800/2008, that failure was remedied as from 12 February 2009. The Commission had no indication that other applicable conditions of Regulation 800/2008 had not been met (recital (81) of the Opening decision).

3.1.4. *Compliance of the tax exemption*

- (58) The Commission noted Poland's position that the tax exemption did not comply with Article 8(2) of Regulation 800/2008, as PCC had started works on the Project before it applied for that aid (recital (46)). The Commission preliminarily agreed with that assessment, but noted that the ensuing revocation of the SEZ permit had so far not become effective, as it was contested by PCC and was subject to ongoing national legal proceedings, (recital (82) of the Opening decision).
- (59) Nonetheless, the Commission identified additional doubts as to whether the tax exemption complied with Regulation 800/2008. Firstly, the Commission doubted that Poland had verified whether the Project would have been carried out in the region in the absence of aid, as required by Article 8(3), point (d), of that Regulation, and noted that the exception to that requirement, laid down in Article 8(4), did not apply (recitals (85) to (87) of the Opening decision).

- (60) Secondly, the Commission noted that the SEZ permit entitles PCC to use the tax exemption in relation to eligible costs of up to a maximum of PLN 271.5 million (EUR 65.4 million), in discounted value ⁽⁴⁰⁾, whereas the eligible expenditure identified in the grant application was PLN 223 million (EUR 56.2 million), in discounted value. That increase in costs did not seem to result from an increase in size or scope of the Project (recital (88) of the Opening decision).
- (61) Thirdly, as the SEZ permit did not identify the maximum amount of aid granted, did not note that the grant had been awarded, and did not impose a cumulation ceiling, it did not comply with Article 7(1) of Regulation 800/2008 (recital (89) of the Opening decision).
- (62) Fourthly, the Commission was unable to exclude that the tax exemption would be in addition to the grant, which could lead the aid to exceed the maximum allowable aid intensity under the Polish regional aid map 2007-2013 and Article 13(3) of Regulation 800/2008 (recital (90) of the Opening decision).
- (63) Fifthly, such combined aid amount seemed to exceed the applicable individual notification threshold, resulting in a violation of Article 6(2) of Regulation 800/2008 (recital (90) of the Opening decision).
- (64) Sixthly, Poland did not submit the summary information sheet in respect of the tax exemption until 16 July 2015 (recital (44)), in breach of Article 9(4) of Regulation 800/2008 (recital (91) of the Opening decision).
- (65) Finally, the aid granting act for the tax exemption (i.e. the SEZ permit) did not contain the mandatory express references required by Article 3(2) of Regulation 800/2008 (recital (92) of the Opening decision).
- (66) As a subsidiary consideration, the Commission noted that Article 13(1) of Regulation 800/2008 did not apply (recital (93) of the Opening decision).
- (67) Consequently, the Commission preliminarily concluded that the tax exemption could not benefit from the block exemption under Regulation 800/2008, and was granted unlawfully (recital (93) of the Opening decision).

3.1.5. *Retroactive application of Commission Regulation (EU) No 651/2014*

- (68) The Commission considered whether the grant and the tax exemption could benefit from the retroactive application of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ('Regulation 651/2014') ⁽⁴¹⁾, pursuant to Article 58(1) thereof.
- (69) Article 14(12) of Regulation 651/2014 stated that the aid intensity in gross grant equivalent ('GGE') shall not exceed the maximum aid intensity that was in force in the area concerned at the time the aid was granted. While the grant, alone, respected the ceiling under the Polish regional aid map 2007-2013, it was not clear that it did so when combined with the tax exemption (recital (96) of the Opening decision).

⁽⁴⁰⁾ The SEZ permit indicates a maximum figure of PLN 300 000 000 (nominal). In the summary information sheet concerning the tax exemption, Poland noted that the relevant discounted amount is PLN 271 513 408,70.

⁽⁴¹⁾ OJ L 187, 26.6.2014, p. 1, <http://data.europa.eu/eli/reg/2014/651/oj>.

- (70) In addition, and in line with its previous case practice ⁽⁴²⁾, the Commission considered that Article 14(2), read in conjunction with Article 2, point (27), of Regulation 651/2014, required the aid intensities in the Polish regional aid map 2014-2020 ⁽⁴³⁾ to also be respected. The standard ceiling for large enterprises in PL51 Dolnośląskie was lowered to 25 % GGE for 2014-2020. Applying the updated regional aid ceiling, along with the scaling-down formula applicable to large investment projects, to the eligible costs declared in the grant application, resulted in a maximum allowable aid amount of EUR 12 968 666 (aid intensity of 24.13 %). Poland had granted aid of at least EUR 23 086 560, in discounted value (aid intensity of 38.6 %). Consequently, the grant and tax exemption, together, could not benefit from the retroactive application of Regulation 651/2014 (recital (96) to (99) of the Opening decision).
- (71) As the Commission had preliminarily concluded that Regulation 800/2008 did not apply to the amended grant scheme, and that neither Regulation 800/2008 nor Regulation 651/2014 applied to the grant, or the tax exemption, it considered that the relevant basis for the assessment of their compatibility was the 2007 Guidelines (recitals (100) and (101) of the Opening decision).

3.2. Compatibility under the 2007 Guidelines

- (72) The Commission carried out a preliminary examination of the compatibility of the amended grant scheme and the aid measures under the 2007 Guidelines.

3.2.1. *The amended grant scheme*

- (73) The Commission noted that it could not confirm that the amended grant scheme complied with paragraphs 38 or 74 of the 2007 Guidelines. It, therefore, took the preliminary view that the amended grant scheme could not be declared compatible with the internal market (recitals (102) to (107) of the Opening decision).

3.2.2. *The aid measures*

- (74) The Commission had doubts as to the compliance of the aid measures granted to PCC ⁽⁴⁴⁾ with paragraphs 38, 67, and 71 of the 2007 Guidelines.
- (75) As regards paragraph 38, the Commission noted that the competent Polish authority did not appear to have issued 'a letter of intent, conditional upon Commission approval of the measure, to award aid' before work started on the Project, for either the grant or the tax exemption (recitals (108) to (112) of the Opening decision).
- (76) Concerning paragraph 67, it was not clear to the Commission why PCC provided different eligible costs in the grant and tax exemption applications. The Commission used the amount indicated for the grant (PLN 223 317 710 (EUR 53 749 328), in discounted value) to calculate a maximum aid intensity of 38.6 %. The Commission had doubts that the combined aid measures would respect that ceiling (recitals (113) to (123) of the Opening decision).
- (77) In relation to paragraph 71, the Commission considered that respect for cumulation rules should be ensured by the relevant granting authorities at the moment(s) of granting the aid, and not only when payment takes place, which did not appear to be the case for the tax exemption. The Commission had doubts that the cumulation ceilings would be respected (recitals (124) and (125) of the Opening decision).

⁽⁴²⁾ Commission Decision C(2017) 5050 final, of 20.7.2017, in case SA.38121 (2016/FC) – Slovakia – Investment aid to the Slovak glass sand producer NAJPI a.s. (OJ C 336, 6.10.2017, p. 1). This position was not challenged in the judgment of the General Court of 9 September 2020, *Kerkosand v Commission*, T-745/17, EU:T:2020:400, which annulled the decision in question – see paragraph 81 of that judgment.

⁽⁴³⁾ Commission Decision C(2014) 865 final, of 20.02.2014, in case SA.37485 (2013/N) – Poland – Regional aid map 2014-2020 (OJ C 210, 4.7.2014, p.1).

⁽⁴⁴⁾ The Commission noted that it was not necessary to assess the compatibility of the tax exemption scheme under the 2007 Guidelines, as, given that the tax exemption did not meet all the requirements of the scheme, it must be considered as an ad hoc aid outside of that scheme (footnote 74 of the Opening decision).

- (78) The Commission, therefore, preliminarily concluded that the aid measures combined were not compatible with the internal market on the basis of the 2007 Guidelines. It noted, however, that the grant, by itself, might be compatible, if it could be shown to comply with paragraph 38 (recitals (126) and (127) of the Opening decision).

3.3. **Application of the tests provided in paragraphs 68(a) and (b) of the 2007 Guidelines**

- (79) At recital (129) of the Opening decision, the Commission noted that it could not exclude that the aid for the Project fell under paragraph 68 of the 2007 Guidelines ⁽⁴⁵⁾, and was unable to conclude on the identification on the relevant product and geographic markets (recitals (132) to (146) of the Opening decision). In addition, it could not exclude that the thresholds in paragraphs 68(a) and (b) would be met, and so could not exclude the need to carry out a detailed verification that the aid was necessary to provide an incentive effect for the investment, and that the benefits of the aid outweighed the resulting distortion of competition and effect on trade between Member States (recitals (147) to (160) of the Opening decision).
- (80) The Commission also noted that, even if it did not need to carry out the tests set out in paragraph 68, or if the outcome of those tests did not require an in-depth assessment, it could not establish that the balance of the positive and negative effects of the aid was clearly positive, and that the aid did not lead to unacceptable distortions of competition (recitals (161) and (162) of the Opening decision).

4. **COMMENTS FROM THIRD PARTIES**

- (81) This section summarises the comments submitted to the Commission on the Opening decision by PCC and 24 other third parties.
- (82) PCC made substantive legal submissions, which overlapped, to a large extent, with the initial comments on the Opening decision submitted by Poland. The other third parties, for the most part, made statements concerning the benefits brought to the region by the Project.

4.1. **Comments from PCC**

4.1.1. *Amended grant scheme*

- (83) In respect of the amended grant scheme, PCC noted that the 2007 Guidelines did not provide for a minimum number of jobs to be created by an investment. The reduction, in the IEOP Amending Regulation (recital (28)), of the number of jobs required to be created by an investment, therefore, was a minor amendment and did not affect the compatibility of the amended grant scheme with the 2007 Guidelines.
- (84) PCC disagrees that the amended grant scheme did not require the administering authority, subsequent to the aid application, to confirm in writing that, subject to a detailed verification, the project, in principle, meets the eligibility conditions laid down in the scheme. That requirement is set out in the terms and conditions governing the aid application procedure, and, moreover, PCC did receive such a confirmation, by letter of 3 January 2011. Further, prior to commencing works on the Project, PCC had, in fact, been granted the aid.

4.1.2. *Incentive effect*

4.1.2.1. *Increase in costs*

- (85) PCC explained why, in its applications for the grant and the tax exemption, it noted different eligible costs for the Project (recital (60)).

⁽⁴⁵⁾ As it could not exclude that the total amount of aid from all sources for the Project exceeded 75 % of the maximum amount an investment with expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is granted, that is EUR 30 million.

- (86) PCC explained that, prior to the Project, the PCC group had identified serious failures in the MCAA market, largely due to lack of innovation by the large incumbent manufacturers operating in the market. The PCC group, when considering whether to invest in a new manufacturing establishment, chose to pursue a new facility, based on innovative technology, notably in view of the State aid that would be available to support that. The initial cost estimation for the Project was approximately PLN 223 000 000.
- (87) As the PCC group did not have experience with such complex investments, it hired an external consultant, the Siemens Group ('Siemens'), to confirm the level of capital expenditure and to assist in deciding on specific technical approaches. Following its analysis, Siemens advised that the minimum necessary capital expenditure would need to be increased to approximately PLN 300 000 000. As the return on the investment would, then, have been too low, PCC decided to apply for the tax exemption, in addition to the grant. PCC indicates that, as from the time it was aware of the need to increase expenditure for the Project, it referred to the higher figure in all correspondence with the Polish authorities and the Commission.
- (88) PCC claims that it is only after it received confirmation that it would receive the tax exemption, in February 2013, that PCC decided to implement the Project.

4.1.2.2. Start of works

- (89) PCC disputed Poland's assessment, preliminarily shared by the Commission (recital (58)), that it had started works on the Project before it applied for the tax exemption. PCC stated that construction works began on 5 April 2013 ⁽⁴⁶⁾, and that it made its first firm commitment to order equipment related to the Project on 16 August 2013 ⁽⁴⁷⁾. Prior to those actions, it had only carried out preparatory feasibility studies for the Project, as is standard business practice.
- (90) PCC underlined the innovative nature of the production method that would be deployed following the Project. Since 2008, it has been collaborating with third party consultants to develop the initial concept. The method of production involves several processes that cannot be properly modelled without empirical testing, due, inter alia, to their complexity and the influence of multiple variables. The only way to collect necessary data, therefore, is under laboratory conditions. [...]. Performing tests in an industrial-scale plant, [...], was considered to involve excessive risk. [...] ⁽⁴⁸⁾ [...]. PCC, therefore, on the advice of Siemens, decided to carry out works on a semi-technical scale, using a pilot installation that would offer conditions similar to those in industrial reactors, to test the feasibility of the Project [...].
- (91) PCC explained that the pilot installation, itself, was a set of several small devices, mounted on two steel frames approximately 2 metres high, and occupying a small area (1 metre x 2 metre and 1 metre x 1 metre) in one of the rooms intended to be used as research space. It was not permanently fixed to the ground, and could be easily dismantled and moved elsewhere. Its commissioning did not require any construction works. In fact, all the components of the pilot installation were transferred to Siemens, in Germany, immediately after delivery to PCC.
- (92) The entire cost of the pilot installation was approximately EUR 150 000, which, PCC noted, is a negligible amount of the overall cost of the Project. On 17 October 2012, PCC purchased only a few minor elements of the pilot installation, worth PLN 23 854,19 (EUR 5 814) (including value added tax) ⁽⁴⁹⁾; most of the cost was incurred after the SEZ permit had been issued.
- (93) PCC noted that, had the results of the pilot project been unsatisfactory, it would have been able to withdraw from the Project, having only incurred minor costs of preparatory works. Moreover, PCC had considered that, in that case, it would dispose of the intellectual property rights linked to the pilot project, to reduce or eliminate any potential losses. PCC indicated that it had, therefore, recorded all costs related to the pilot project as a separate item in its analytical accounts, to enable it to link its manufacturing cost with the minimum selling price it would require for that intellectual property.

⁽⁴⁶⁾ As demonstrated by the first entry in the construction log established by PCC in respect of the Project.

⁽⁴⁷⁾ Conclusion of a supply agreement with [...] (*) regarding part of the equipment for MCAA production. [* Confidential information].

⁽⁴⁸⁾ [...].

⁽⁴⁹⁾ Calculated by applying an exchange rate of EUR/PLN 4.1029 that was applicable on 17 October 2012 (OJ C 314, 18.10.2012, p. 2).

- (94) PCC submitted that, notably in accordance with the 2007 Guidelines and Regulation 651/2014, neither the undertaking of feasibility studies nor a pilot installation can be considered as start of works.
- (95) In addition, following the Supreme Administrative Court judgment (recital (49)), PCC noted that the official position of the Polish State was that the SEZ permit should not be annulled for failure to comply with the formal incentive effect requirement. As the Commission, in the Opening decision, did not raise any doubts of its own in that respect, it should, therefore, conclude similarly.

4.1.3. *Compliance with the 2007 Guidelines*

4.1.3.1. Paragraph 68 – In-depth assessment

- (96) PCC submitted that there was no need to carry out the in-depth assessment under paragraph 68 of the 2007 Guidelines, as none of the thresholds set out in this paragraph were met.

4.1.3.1.1. Paragraph 68 – 75 % threshold

- (97) PCC notes that, in order for paragraph 68 of the 2007 Guidelines to apply, the total amount of aid from all sources must exceed 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard regional aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is to be granted (the '75 % threshold'). PCC also notes that it is not disputed that the relevant amount, at the time both the grant and the tax exemption were granted, was EUR 30 million⁽⁵⁰⁾. PCC underlines that the amount of the grant, by itself, is far less than that amount.
- (98) PCC, further, claims that the tax exemption is limited by the operation of law, so that the aid measures, together, cannot reach that amount. PCC indicates that Section 4, paragraph 5, of the SEZ Regulation notes that: 'where the total value of regional aid granted from all sources would exceed 75 % of the maximum value of the aid that can be granted for the implementation of investments with eligible costs equivalent to EUR 100 million, using the standard State aid ceilings applicable to large enterprises in the approved regional aid map on the date of granting the aid, the individual aid project must be notified to the European Commission'.
- (99) PCC, further, notes that, under Section 1 of the SEZ Regulation, State aid could be granted under the tax exemption scheme only in compliance with the conditions of Regulation 800/2008. As such, an amount exceeding the 75 % threshold, which could not benefit from the block exemption under that Regulation, could not have been granted under that scheme. As further evidence of this, PCC notes that Article 17(1)(34) of the CIT Act⁽⁵¹⁾ states that 'the amount of State aid granted by way of [the tax exemption scheme] may not exceed the amount of State aid for an undertaking[,] available in the highest possible amount[,] for areas eligible for aid, in accordance with separate provisions'. Those 'separate provisions' include the SEZ Regulation, including the 75 % threshold. According to PCC, the effect of the SEZ Regulation and the CIT Act is that, when aid reaches the 75 % threshold, the investor loses, by sole operation of law, the entitlement to any further tax exemption linked to projects pursued in a SEZ.
- (100) PCC, further, highlights that the limitation to the thresholds set out in Union law were inserted into Polish legislation as part of a significant reform the special economic zones as part of Poland's accession to the Union. Prior to that, the tax exemptions were limited in time only, and not in amount.
- (101) PCC indicates that, as the 75 % threshold flows directly from a generally applicable provision of law, adopted by a competent authority and duly promulgated, it is fully transparent and accessible to all interested parties. As such, any entrepreneur would be aware that, regardless of the provisions of a particular permit to carry out economic activities in a SEZ, the 75 % threshold applies. Any entrepreneur that would still claim tax exemption above that limit would be unlawfully underestimating the amount of tax due, and the tax authorities would have the right to recover tax arrears, with interest. Deliberately claiming excess amounts may even result in criminal liability.

⁽⁵⁰⁾ 40 % x (75 % x EUR 100 million) = EUR 30 million.

⁽⁵¹⁾ Applicable at the time the SEZ permit was issued to PCC.

- (102) In that regard, PCC notes that undertakings must report on their tax exemption in their annual tax declaration, and are obliged to keep records relating to the tax exemption. The tax authorities have effective legal, procedural, and IT tools to ensure efficient verification of the amount of tax exemption to which an undertaking is entitled, including the right to audit undertakings benefitting from a tax exemption.
- (103) PCC claims that, applying the scaling-down formula, the maximum amount of aid it could receive for the Project is EUR 23 086 560, which is less than the 75 % threshold that would trigger paragraph 68. PCC indicates that the Commission has previously accepted ⁽⁵²⁾ a mere commitment from a Member State that the scaling-down rules under the 2007 Guidelines would be applied, and, as such, it would be disproportionate to conclude that a rule of Polish law, coupled with various procedural safeguards supported by financial and criminal sanctions, would be insufficient to ensure compliance.

4.1.3.1.2. Paragraph 68 – relevant markets

- (104) Notwithstanding that it did not receive aid above the 75 % threshold, PCC argues that the thresholds set out in paragraphs 68(a) and (b) had not been met. To determine this, PCC identified the following relevant product and geographic markets.

4.1.3.1.2.1. Product market

- (105) PCC stated that the product concerned by the Project is MCAA as such, not a specific variation thereof, and agreed with the statements in the Opening decision ⁽⁵³⁾ that tended to support that position. PCC noted that, as part of the Project, the entire range of MCAA purity classes, features, and functions is offered, depending on the needs of buyers, and these are not treated as separate products. DCAA, the basic chemical element of MCAA, occurs in MCAA of each class, and, consequently, MCAA of each class undergoes similar chemical reactions, giving similar results. The choice of a particular class of purity depends on the technology and commercial decisions of the clients; it is not true to say that the development of certain products requires certain purity classes. It is also not necessarily true that the higher purity classes cost more than technical grade MCAA, as prices are determined by reference to customers' needs and profiles.
- (106) PCC noted that, according to the 2007 Guidelines, the relevant product market includes the product and its substitutes, which are recognised as such by the consumer or the producer, through flexibility of the production installations ⁽⁵⁴⁾. The installations within the framework of the Project give PCC almost unlimited flexibility to switch from production of one purity class to another. PCC recalled that the Complainant had also acknowledged that both its plants and Akzo Nobel's plants offer full flexibility as regards the possibility of producing all MCAA purity classes ⁽⁵⁵⁾.
- (107) PCC, further, noted that the 2007 Guidelines ⁽⁵⁶⁾ indicate that, for the purposes of paragraph 68, sales and apparent consumption will be defined at the appropriate level of the Prodcom classification ⁽⁵⁷⁾. The relevant Prodcom classification code not only covers all purity levels of MCAA, but also the other various plural chloroacetic acids, making it much broader ⁽⁵⁸⁾.

⁽⁵²⁾ For example, Commission Decision C(2008) 3507 final, of 6 July 2010, on State aid C 34/2008 (ex N 170/2008) which Germany is planning to implement in favour of Deutsche Solar AG (OJ L 7, 11.1.2011, p. 40, [http://data.europa.eu/eli/dec/2011/4\(1\)/oj](http://data.europa.eu/eli/dec/2011/4(1)/oj)), recital (58).

⁽⁵³⁾ Recitals (26), (134), (137), (139), (140), (149), and (157).

⁽⁵⁴⁾ 2007 Guidelines, paragraph 69.

⁽⁵⁵⁾ As stated by the Complainant during the preliminary examination of the measures, in its submission to the Commission of 7 June 2018 (recital (3)).

⁽⁵⁶⁾ 2007 Guidelines, paragraph 70.

⁽⁵⁷⁾ Council Regulation (EEC) No 3924/91 of 19 December 1991 on the establishment of a Community survey of industrial production (OJ L 374, 31.12.1991, p. 1, <http://data.europa.eu/eli/reg/1991/3924/oj>).

⁽⁵⁸⁾ 20.14.32.20 –Mono-, di-, or tri- chloroacetic acids; propionic, butanoic and pentanoic acids; their salts and esters.

(108) PCC, further, noted that previous Commission decisions defined the MCAA market as one market ⁽⁵⁹⁾.

4.1.3.1.2.2. Geographic market

(109) PCC claims that the relevant geographic market is the MCAA market covering at least the European Economic Area ('EEA'), North America and South America, and that, in line with paragraph 70 of the 2007 Guidelines, the EEA market is not appropriate, and there are readily available statistical in respect of the correct market segmentation ⁽⁶⁰⁾. PCC notes with approval the Commission's identification of a contradiction in the Complainant's claim that the market is the EEA, while the Complainant, itself, referenced Chinese imports to the EEA, and trade statistics report European exports to the USA ⁽⁶¹⁾.

(110) PCC claims that the demand for MCAA in the EEA, North America, and South America mainly relates to products with relatively high purity classes, which are only produced by European producers (and, to a small extent, local North American producers). They are not manufactured by Asian producers.

(111) The North and South American regions are traditionally characterised by a deep deficit in MCAA supply, leading customers to seek MCAA of adequate quality from the European duopoly players, the Complainant and Akzo Nobel. The Complainant is dominant in the MCAA market, regardless of the region, and, in 2006, had shares of 47 % in the EEA, 40 % in North America, and 55 % in South America. Akzo Nobel, meanwhile, had shares of 39 %, 23 %, and 14 % in those markets, respectively ⁽⁶²⁾. The duopolistic structure of the market is, therefore, characteristic, and common to the entire geographic market covering the EEA, North America, and South America ⁽⁶³⁾. Given that the Complainant, itself, has such large shares of the North and South American markets, PCC submits that the Complainant's claims that those regions are separated from the EEA and cannot be viably served by European manufacturers cannot be upheld.

(112) PCC, further, indicated that an argument could even be made that the relevant geographic market is the global market, as there is some supply of MCAA of lesser purity to the EEA, North America, and South America by Asian manufacturers (China and India are net exporters of MCAA). Those Asian manufacturers, however, place most of their focus on territories such as Türkiye and Australia. As such, it considers the correct geographic market is the EEA, and North and South America.

⁽⁵⁹⁾ Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement against Akzo Nobel NV and others – Case No COMP/E-1/.37.773 – MCAA), Summary Decision of 19.01.2005 (OJ L 353, 13.12.2006, p. 12, <http://data.europa.eu/eli/dec/2006/897/oj>) (non-confidential version of the Commission decision in case No COMP/E-1/.37.773 – MCAA https://ec.europa.eu/competition/antitrust/cases/dec_docs/37773/37773_143_1.pdf), and Commission Decision C(2004) 2026 final of 16 June 2004 in case SA.14224 (N 304/2003) – Netherlands – Aid to Akzo Nobel to limit the transport of chlorine (OJ C 81, 2.4.2005, p. 4).

⁽⁶⁰⁾ Paragraph 70 of the 2007 Guidelines states: 'The burden of proof that the situations to which paragraphs 68(a) and (b) refer do not apply, lies with the Member State. For the purpose of applying points (a) and (b), sales and apparent consumption will be defined at the appropriate level of the Prodcom classification, normally in the EEA, 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' (footnotes omitted).

⁽⁶¹⁾ Opening decision, recital (143).

⁽⁶²⁾ PCC claims that this is illustrated by a 2006 report by Tecnon OrbiChem – *Monochloroacetic Acid 2005 2015: A Comprehensive World Survey, Forecast and Analysis* – a copy of which it did not supply, but which was supplied by the Polish authorities in the course of their exchanges with the Commission services (recital (133)).

⁽⁶³⁾ PCC references a 2013 discussion document by Deloitte: '*Chloroacetic acids products – International trade flows*', which it claims illustrates the continued duopoly of the Complainant and Akzo Nobel over the years. PCC did not supply a copy of that report, but the report was supplied by the Polish authorities in the course of their exchanges with the Commission services.

4.1.3.1.3. Paragraph 68(a) – share of product sales

- (113) Under paragraph 68(a) of the 2007 Guidelines, the in-depth assessment of the aid may be required where the aid beneficiary accounts for more than 25 % of sales of the product(s) concerned on the market(s) concerned before the investment, or will account for more than 25 % after the investment.
- (114) PCC recalls that the relevant market is the MCAA market of all purity classes, covering at least the EEA, and North and South America. PCC indicates that it would not achieve a 25 % share of sales in that market after the completion of the Project, and that this is clear even from the information provided by the Commission in the Opening decision, based on independent data ⁽⁶⁴⁾. In fact, that information also shows that PCC would not attain such a share of sales even if the geographic market is limited to the EEA ⁽⁶⁵⁾. PCC submits that the Complainant's own calculations ⁽⁶⁶⁾ are not correct.
- (115) PCC, therefore, claims that an in-depth assessment pursuant to paragraph 68(a) of the 2007 Guidelines is not required in this case.

4.1.3.1.4. Paragraph 68(b) – share of production capacity

- (116) Under paragraph 68(b) of the 2007 Guidelines, an in-depth assessment of the aid may be required where the production capacity created by a project is more than 5 % of the market measured using apparent consumption data (production plus imports minus exports) for the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the EEA's gross domestic product ('GDP').
- (117) PCC disagrees with the methodology used by the Commission in the Opening decision to calculate the market growth rates, as it did not comply with the requirements of the 2007 Guidelines and the data used are not confirmed by other independent data. In any event, PCC argues that the compound annual growth rate ('CAGR') methodology ignores fluctuations occurring during a period and takes account only of the cut-off years. In this case, the application of that methodology, without additional assumptions, may lead to incorrect conclusions on the inherent dynamics of the market. 2011 and 2012 – the years preceding the award of the individual aid measures to PCC – were not ordinary years in a normally developing economic cycle, but were part of a transition period between the financial crisis and recovery. As such, the value of apparent consumption in the cut-off years is not a reliable benchmark for assessing the MCAA market. PCC considers that, given that the reference period was distorted by an unprecedented economic crisis, it is more important to forecast the dynamic growth of the market at the end of that period.
- (118) PCC, therefore, claims that an in-depth assessment pursuant to paragraph 68(b) of the 2007 Guidelines is not required in this case.

4.1.3.2. Balancing test

- (119) PCC recalls the *Smurfit Kappa* case-law ⁽⁶⁷⁾, according to which the Commission may undertake a balancing test in respect of the aid where it is unclear that its positive effects outweigh the negative. In that regard, PCC underlines that the Commission must conduct a diligent and impartial examination of the contested aid measures, so that it has at its disposal, when adopting the final decision, the most complete and reliable information possible for that

⁽⁶⁴⁾ Opening decision, recital (150).

⁽⁶⁵⁾ PCC notes, for the sake of accuracy, that, in the Opening decision, in the context of sales volume after the investment was completed, the Commission only indicates data on sales of MCAA from 2015 (in the amount of 242.9 kt – which would exclude PCC even approaching 25 % of visible MCAA consumption), while the investment was only completed in 2016. Assuming, however, that the level of visible consumption of MCAA in 2016 did not differ significantly from the level indicated by the Commission for 2015, PCC would not, in any case, achieve the level of 25 % visible consumption after the investment.

⁽⁶⁶⁾ Summarised at recital (26) of the Opening decision.

⁽⁶⁷⁾ Judgment of the General Court of 10 July 2012, *Smurfit Kappa Group plc v Commission*, T-304/08, EU:T:2012:351.

purpose. As such, it claims that the Commission cannot find State aid to be incompatible solely on the basis of a negative presumption arising due to a lack of information enabling the contrary to be found. The Commission, therefore, cannot find that the MCAA market was declining or in oversupply due to Poland or another party not producing evidence to the contrary. For the purposes of legal certainty, the Commission must be able to provide reasons for its findings, and not just rely on presumptions.

- (120) PCC adds that, assuming that plausible, specific, and reliable evidence on the MCAA market 2006 – 2011 cannot be produced, it is reasonable and justified to also examine post-2011 data that illustrate the actual development of the MCAA market following that period. The Commission is not restricted, in carrying out the balancing test, to examining the periods prior to investment, and can use ex post information to verify the actual impact of the State aid on the relevant market ⁽⁶⁸⁾.

4.1.3.2.1. Positive effects of the aid

- (121) PCC maintains that the positive effects of the State aid for the Project far outweigh any potential negative impact of that aid.
- (122) PCC reiterates its position that the aid had formal incentive effect. It notes that the aid is proportionate, as it respects the applicable regional aid ceiling, including the scaling-down mechanism.
- (123) Prior to applying for the aid, PCC calculated the investment outlook of the Project, and concluded that, in the absence of the aid measures, the investment would result in a negative net present value ('NPV') of – PLN [1.3-1.5] million, and a financial rate of return ('FRR') of –[6.8-7.9] %. With the aid measures, the Project would achieve an NPV of approximately PLN [62-72] million, and a FRR of [12.7-15] %. Had it not received the aid measures, PCC would have limited the investment to the construction of a simple dissolution installation, at an estimated cost of PLN [48-58] million, with an NPV of approximately PLN [15-18] million and a FRR of [8.6-10.2] %. PCC notes that the actual amount of the State aid resulting from the tax exemption is contingent on its profitability, further demonstrating that it does not go beyond what is necessary to undertake the Project.
- (124) PCC observes that the overwhelmingly positive effect of the aid was verified and confirmed by the Commission, itself, in the course of the procedure to approve a financial contribution to the Project from the ERDF (recital (34)).

4.1.3.2.2. Market structure and trends

- (125) At the time the aid was granted to PCC, the Complainant and Akzo Nobel formed a duopoly over the MCAA market, and were under very little pressure from competitors. The Commission found that they had operated as part of a cartel for MCAA from 1984 to 1999 (the 'Cartel decision') ⁽⁶⁹⁾. By facilitating the entry of a new competitor, the aid would, therefore, bring positive effects to the market. In addition, Akzo Nobel had received State aid in an amount of approximately EUR 64 million – far more than the amount granted to PCC – for the relocation of chlorine and MCAA production facilities in the Netherlands, approved by the Commission in 2004 ⁽⁷⁰⁾. PCC believes that the Complainant filed the complaint against it purely to disrupt its operations, and freeze out a new participant on the MCAA market.

⁽⁶⁸⁾ PCC claims that this approach aligns with paragraphs 38, 41, 42, 45, and 47 of the Communication from the Commission concerning the criteria for an in-depth assessment of regional aid to large investment projects (OJ C 223, 16.9.2009, p. 3).

⁽⁶⁹⁾ Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, Case No COMP/E-1/.37.773 – MCAA (OJ L 353, 13.12.2006, p. 12, <http://data.europa.eu/eli/dec/2006/897/oj>). The Cartel decision involved the Complainant's predecessor companies, Clariant AG and Hoescht AG.

⁽⁷⁰⁾ Commission Decision C(2004) 2026 final of 16 June 2004 in case SA.14224 (N 304/2003) – Netherlands – Aid in favour of Akzo Nobel in order to minimise chlorine transports (OJ C 81, 2.4.2005, p. 4).

- (126) PCC, further, notes that the duopolistic nature of the market means that consumers are often tied to a particular supplier, and do not have other options in case of insufficient production capacity. The production of MCAA is complex, and manufacturing units are frequently subject to unavoidable maintenance breaks. This results in regular supply shortages, especially as the Complainant and Akzo Nobel have limited storage facilities through which they can make provision for such stoppages. PCC's presence, via the Project, helps to alleviate this problem, and to stabilise the market. In fact, PCC indicates that, since the Project has become operational, the Complainant, itself, has requested PCC to supply it with MCAA due to the Complainant's plant's maintenance stoppage.
- (127) PCC, further, claims that MCAA customers prefer the quality of its customer service to that of the incumbent duopolists, as it provides a more open and tailored service, along with an innovative approach.
- (128) Concerning the question of overcapacity, PCC submits that demand for MCAA has been consistently rising, including in relation to the production of betaines (personal care and cleaning agents) and CMC (used as a thickening agent for food, pharmaceutical products, personal care, and fracking applications); PCC indicates, without identifying sources, that those sectors have a CAGR above [3.3-4]-[5.8-7] %. Betaines (a group of surfactants), in particular, are expected to experience a growth in demand, with PCC noting a forecast use of [98-118] kt/yr in the US market. Assuming MCAA consumption in betaines production at approximately [11.4-12.8] %, this would suggest MCAA consumption of [11.5-12.7] kt/yr only for that specific part of the surfactant market. CMC production, meanwhile, is the second largest user of MCAA, and was expected to experience significant growth to 2023 ⁽⁷¹⁾. PCC noted that Union exports of CMC are increasing ⁽⁷²⁾, indicating growing demand for MCAA of Union origin, and running counter to the Complainant's allegations of a declining or stagnant MCAA market.
- (129) PCC underlines that the steady upward trend in the MCAA market is part of a more general pattern for the entire chemicals sector, which, following a strong slump in 2009, shows stable, long-term growth ⁽⁷³⁾. PCC also underlines that the US market, a significant sales market for MCAA producers in the Union ⁽⁷⁴⁾, and it is expected to increase steadily.
- (130) PCC argues that, when the Complainant suggests that supply levels of MCAA exceed demand, it misinterprets the data. The Complainant argues that 200 kt/yr of MCAA was produced in the European market from 2010 to 2016, but only around 144-147 kt/yr was consumed, meaning that the 42 kt/yr produced by PCC following the Project is superfluous (see recitals (26) and (27) of the Opening decision). PCC claims that the simplistic methodology of adding the maximum nameplate capacities of production facilities does not reflect the reality that manufacturing sites are subject to systemic, regular, and unavoidable interruptions in production as a normal part of their maintenance process: actual production capacity is closer to 80-90 % of nameplate capacity ⁽⁷⁵⁾. PCC suggests that the aggregate demand in the MCAA market for Europe and the US would be approximately [255-305] kt/yr, while supply is [215-258] kt/yr – the shortfall of [34-40] kt/yr corresponds to the actual supply capacity – as opposed to nameplate capacity – of the Project.
- (131) PCC observes that the Complainant's own actions contradict its supposed interpretation of the market. In its official marketing reports, the Complainant has repeatedly presented the MCAA as a promising market with dynamic growth, and has also emphasised its inability to meet customer demand (2013 report). In 2018, it also announced that it would be expanding its production and storage capacities ⁽⁷⁶⁾.

⁽⁷¹⁾ PCC cites the Markets & Markets Research Report, indicating an increase of [4-4.6] % (in value terms) of the CMC market 2015-2020, and the Global Market Insights forecast, indicating an increase of above [4-4.2] % CAGR (depending on the use) in 2017-2023.

⁽⁷²⁾ In 2016, approximately 50 kt of CMC were exported from the Union, rising to an expected 100 kt for 2018. PCC did not provide sources for those figures.

⁽⁷³⁾ PCC refers to the Chemdata International 2018 report of the European Chemical Industry Council ('CEFIC') (Facts & Figures of the European chemical industry).

⁽⁷⁴⁾ Approximately 80 % of the MCAA demand in the US is covered by imports from the duopoly of the Complainant and Akzo Nobel; US domestic production is not projected to increase. PCC did not provide sources for those assertions.

⁽⁷⁵⁾ PCC indicates that Siemens and CEFIC corroborate that figure.

⁽⁷⁶⁾ PCC notes that Akzo Nobel had also announced the construction of a new MCAA plant in India.

- (132) In terms of market outlook, PCC notes that Akzo Nobel and the Complainant both announced investments into MCAA in recent years ⁽⁷⁷⁾. PCC claims that this proves that the aid measures have not reduced the incumbents' market capacity. In addition, in August 2020, Nouryon (previously Akzo Nobel) announced that it would expand its MCAA production capacity in the Netherlands, noting, in particular, that MCAA serves high growth sectors, including crop protection products in the Americas, and pharmaceutical products in India and other emerging markets. PCC claims that that investment was driven by the same apparent dynamic market demand that underpinned the Project. PCC also notes that Nouryon's announcement corroborates PCC's own view that the MCAA market consists in at least the EEA and the USA, if not even being a global market.
- (133) PCC highlights that it examined relevant data available at the time it made its decision to invest in the Project. According to the Tecnon Orbichem MCAA report 2008 – 2018 (the 'Tecnon Orbichem report'), the CAGR for MCAA consumption for 2005 – 2015 was forecast at [2-2.4] % for Europe and the Americas, with a possible CAGR of [2.5-3] % – [3-3.6] % globally. In a report prepared in 2010, Kline & Company forecast large increases in the annual European production of CMC ([3-3.6] %) and TGA ([2.5-3] %) – the main applications for MCAA. A 2011 report by SRI Consulting ('2011 SRI Report') ⁽⁷⁸⁾, meanwhile, noted that, in North America, the surfactants market had the largest impact on MCAA consumption, and there was increased demand for CMC in the petrochemical industry and a very good situation in the polyvinyl chloride ('PVC') industry, where TGA is used. It indicated a regular increase in acid consumption in the US for the period 2004-2008, disturbed only by the global economic crisis in 2009. Tecnon Orbichem reported similar findings for the European market, with an increase in MCAA consumption for surfactants ([2.5-3] %-[3-3.6] % per year), CMC ([1.9-2.3] % per year), and TGA ([0.9-1.1]-[1.9-2.3] % per year). SRI market data also showed a strong increase in demand for MCAA in Central and Eastern Europe (CAGR 2002-2010 of [8.2-9.5] %).
- (134) PCC emphasises that the key rationale of the Project was the extension of the existing chlorine value chain within the PCC group into substances with a promising market outlook. MCAA was deemed to fit this strategy, as chlorine is the key raw material for its production, and the MCAA market was considered to be of limited volatility due to its wide diversity in end markets, the key ones of which were trending towards global growth. Consequently, given the duopolistic structure of the MCAA market, the well-used capacities of the duopoly members in the EU and US markets, a constantly increasing demand for MCAA that is largely immune from short and mid-term economy fluctuations, and appropriate internal chlorine supply within the PCC group, the Project was considered to be a legitimate and reasonable investment.

4.1.3.2.3. Regional impacts of the aid

- (135) PCC recalls that the investment is situated in an area eligible for regional aid under Article 107(3), point (a), of the Treaty, which for 2007-2013 had a GDP per capita of only 47.52 % of the EU-25 average. That area remained an 'a' area for the 2014-2021 period, with a GDP per capita of 65.33 % of the EU-25 average. Moreover, the specific area in which the project is located is even more disadvantaged than the area as a whole, and, in the period preceding the investment, had an unemployment rate of 21.6 %, 46 % of which were long-term unemployed.
- (136) The Project has resulted in 150 direct jobs being created, including for highly-qualified engineers and production managers. It also resulted in the creation of an estimated 600 indirect jobs, including for local suppliers. The working conditions at PCC are better than the standard profile in the area, e.g., through access to training and benefits-in-kind.

⁽⁷⁷⁾ PCC recalls that, in footnotes (36) and (37) of the Opening decision, the Commission noted that the Complainant increased the production capacity of its Indian plant by 22 kt in 2008 and of its Chinese plant by 25 kt in 2013, while Akzo Nobel increased capacity in its MCAA plant by 25 kt, 60 kt, and 100 kt in 2002, 2010, and 2012, respectively.

⁽⁷⁸⁾ Chemical European Handbook – SRI Consulting Marketing Research Report Monochloroacetic Acid, July 2011.

- (137) PCC closely cooperates with universities and student communities, including through the provision of internships, workshops, training, partnering for competitions, offering practical training, bonuses for educational results, establishing patronage programmes with local schools, and participating in a wide range of social events.
- (138) PCC indicates that the Project has incentivised collateral investments in the region by other firms, linked to the MCAA facility, notably involving companies within the PCC group, but also some other external companies (e.g., external logistics providers). In addition, the major innovation aims of the Project were a starting point for further research and development ('R&D') activities within PCC, and by PCC in collaboration with a network of scientific establishments and expert R&D firms, for example, [...], creating a knowledge spillover. The Project also provided a springboard for subsequent R&D projects selected for separate EU-funded support.
- (139) In addition, the Project provides a platform for activities designed to mitigate the impact of MCAA manufacturing on the environment, for example, through the low use of energy in its innovative production process.
- (140) The Project has created significant synergies with other PCC plants and regional activities, which is beneficial for the environment and avoids the transport of hazardous materials by road.
- (141) The Project has resulted in significant tax transfers to the public budget, and improvement in the industrial infrastructure in the area, to the benefit of all local businesses.

4.2. **Comments from other third parties** ⁽⁷⁹⁾

- (142) PCC SE, the holding company of the PCC Group, noted that PCC has been [...] since completion of the plant (ramp-up and commercial sales of MCAA began at the end of 2016). The chlorine used by PCC in its production process is supplied by PCC Rokita, which is located at the same site, and it, in turn, provides [...] with the MCAA it needs for producing surfactants. PCC cooperates closely with logistics subsidiaries PCC Autochem Sp. z o. o. and PCC Intermodal SA.
- (143) PCC SE notes that PCC is one of only three companies worldwide that have their own technology to produce top quality MCAA, and the innovative production facility is the only one of its kind in Eastern Europe. PCC receives excellent customer feedback, and has won awards for sustainability (as has PCC Exol). PCC SE describes the positive influence of PCC Rokita in the region, and notes that the Project represents a continuation, consolidation, and strengthening of [...] success. PCC SE asks the Commission to consider the synergies, efficiencies, and positive impact of PCC's investment in Lower Silesia, which would not have taken place without the aid in question.
- (144) PCC SE, further, re-submitted its submission of 14 March 2019, provided in the context of the Commission's preliminary examination of the aid measures, noting that it remained relevant. In that submission, it noted, in particular, the duopolistic nature of the MCAA market, the benefits brought by PCC, and its concern that the Complainant had brought a disingenuous complaint to the Commission in an attempt to instrumentalise State aid rules to pressure a new competitor.
- (145) PCC Autochem Sp. z o. o., which specialises in the road and intermodal transport of liquid chemicals, outlined the benefits it has experienced from cooperating with PCC, including an improvement in worker safety (through, for example, increasing staff training in preparation for transporting PCC's products), increase in competitiveness (through, for example, higher visibility and credibility of the PCC Autochem brand), stability of market power, and development of experience.

⁽⁷⁹⁾ In this Section 4.2, the Commission summarises the comments received from third parties following the Opening decision, irrespective of whether those third parties would qualify as 'interested parties' within the meaning of Article 1, point (h), of Regulation 2015/1589.

- (146) PCC Exol SA, a producer of surfactants for industry, [...]. It highlights that PCC is a reliable and transparent business partner that delivers MCAA of the highest quality and purity, which is particularly important for [...], as they are components of cosmetics and personal care products.
- (147) Twenty-six employees of PCC submitted testimonials, underlining the importance of the Project to the region. They highlighted that PCC provides stable and enriching employment in an area that suffered from lack of jobs. It engages a variety of highly skilled young people and enables them to avail of training opportunities and to develop their career, while also providing security for families in the area. The Project is integral to the economic and social fabric of the region, and, should the aid measures be withdrawn, the consequences for the area could be severe.
- (148) The Board of the Lower Silesia trade union NSZZ branch, 'Solidarność', noted that PCC carried out the Project as required, involving a large amount of financial resources. This would not have been possible without the aid measures. PCC and the Project are important for the local community, leading to increased direct and indirect employment and greater local tax revenues that can be used to develop the region. Loss of the State aid would have disastrous consequences for PCC, the PCC group, and PCC's employees and their families.
- (149) The SEDA Group Sp. z o. o., a Polish construction company that worked with PCC on the Project, noted that it has gained a new customer in PCC, with which it enjoys fruitful cooperation. Its work with PCC has allowed it to increase employment, and provide equipment and staff training.
- (150) ARAPneumatik L.T.M. Kościelniak Sp. j, a supplier of PCC, submitted that the Project has enabled it to increase both sales and employment, as well as having an impact on its local partners. The loss of PCC as a stable customer would be very significant.
- (151) The Central Mining Institute (Główny Instytut Górnictwa) provided analytical and research services to PCC, which facilitated knowledge transfer and had experience both for the Institute and its environmental monitoring plant (Zakład Monitoringu Środowiska GIG). It underlines the innovation of the Project, and that it has contributed to significant results in R&D.
- (152) Proton SC, a supplier of PCC, notes that, through its stable work with PCC, it has been able to develop its activities and increase its turnover.
- (153) ABB Sp. z o. o., which delivered control and measurement equipment to PCC, indicated that its collaboration with PCC provides it with a stable customer, and has allowed it to develop the production of its specialised equipment, increase its sales turnover, and improve the technical knowledge of its staff.
- (154) Rinnen Polska Sp. z o. o. Spedycja Międzynarodowa, a transport company, states that the transport orders awarded to it by PCC result in optimised operations, directly translating into increased profitability, and reduced fuel consumption and emissions. It estimates that its work with PCC has resulted in an increase in its employment by 3.5 new posts, as well as providing indirect benefits to many sectors of the automotive industry, such as suppliers of operating parts.
- (155) VTU Engineering GmbH, part of the VTU Group that designs plants for process industry, noted that it has established long-term cooperation with PCC since it was established, which has allowed for mutual development in the field of science and research. The VTU team handling PCC's projects are based mostly in Austria and Italy, leading to a positive impact in those other areas of its business. The Project increases innovation, and results in a knowledge transfer to Brzeg Dolny.
- (156) The Research Network 'Łukasiewicz' – 'PORT' Polish Centre of Technological Development stressed the positive impact of the Project on the development of the region, including through broadening the labour market, developing cooperation with companies, and stimulating entrepreneurship. The aid measures are required to drive PCC's development, and to transfer its innovation to the market.

- (157) Bulk Tainer Logistics Limited, a tank operator, notes that, since beginning to work with PCC in 2016, it has achieved greater stability in the region, due to its regular transport of MCAA to and from Poland, which allows for a significant increase in the competitiveness of its measures and an increase in the number of local subcontractors. Its brand enjoys better recognition and credibility in the local market. The work with PCC has allowed it to increase jobs, improved experience, and develop its transport technologies.
- (158) The Wołowski District Local Administration noted that the establishment of the Wałbrzych SEZ has led to an inflow of valuable investments, which have had a major impact on the economic and social development of the district. It is satisfied that all of the expected benefits of the Project had been realised, notably a decline in unemployment, through the creation of 170 jobs, 120 of which are occupied by residents of Wołowskie. The investment is also a stimulus to boost entrepreneurship in the region, and has a direct impact on the development of innovative technologies in the field of chemical engineering.
- (159) The Wołów Municipal Authority notes that it has a sub-division of the Wałbrzych SEZ and that it is actively involved in its development, which has had a positive impact on the municipality, employment, and entrepreneurship.
- (160) The Marshal of the Voivodship of Lower Silesia highlights that the Project is located in an area of sustained deprivation, and any investment in the region visibly contributes to improving its conditions. The chemicals sector had been identified in the region as a key industry, with the potential for significant innovation and implementation, and improvement of links between the private sector and research community. The Project aligns with regional and national strategy and Union polices, provides attractive employment, and leads to knowledge transfer to Poland.
- (161) The Municipal Authority of Miękinia, the municipality neighbouring the Project location, confirms the positive impact it has had on the socio-economic development of the region, through the creation of more than 150 new jobs, which has also led to increased diversity and enriched supply of workers, and the generation of additional indirect jobs. The presence of a large-scale workplace in a highly technological field offers huge development opportunities for the local labour market, and encourages investment in Miękinia. Better working conditions improve the quality of life in the community, and help to build a sense of social identity.
- (162) The Brzeg Dolny Municipal Authority expressed concern that the Project's positive effects on employment, innovation, and local tax revenues, economy and entrepreneurship might be lost.
- (163) The Politechnika Wrocławska submits that the Project is of considerable importance for Lower Silesia, through its contribution to the development of R&D and education, its promotion of Lower Silesia as a producer of quality products in the international market, the reduction of unemployment, and the improvement of regional, national, and international cooperation.
- (164) The Polish Chamber of Chemical Industry underlined the importance of the Project for Poland, Europe, and the chemical industry, as it produces excellent quality products in an innovative installation, which is of interest to worldwide recipients of MCAA. It brings a new player to the MCAA market, and creates new and sustainable jobs in the region (and in Germany). Undertaking the investment in Poland avoids a transfer of investment out of Europe, to China or India. The Project eliminates chlorine transport ⁽⁸⁰⁾, thus improving environmental protection. It is clear to the chemical industry that, as the Project was risky, difficult to implement, and very innovative, it could not be fully implemented without public aid. Since PCC entered the MCAA market, the situation thereon improved significantly, both in terms of availability and security of supply, and quality of service. The withdrawal of aid is a serious threat to the Project and PCC.

⁽⁸⁰⁾ As the Project is located beside PCC's chlorine supplier, PCC Rokita SA, another company belonging to the PCC Group.

- (165) PC Logistic Sp. z o. o. notes that working with PCC as a carrier helped it to improve, inter alia, its processes, staff training, and equipment. It has resulted in increased brand recognition and improved market position.
- (166) A citizen, claiming to be an expert in plant protection products technology, highlights the innovativeness of PCC's work, and notes that the Project has enabled it to expand a package of modern chemical products that will have a significant impact on the competitiveness of the European economy. He notes that the 'REACH regulation' ⁽⁸¹⁾ has increased costs for companies, making State aid necessary for companies like PCC to develop new products. [...]. Existing [...] in Poland would be forced to transport it over long distances, raising costs and increasing environmental risks and emissions. This could also lead to significant disturbances on the uneven industrial development of the Union.
- (167) The third parties indicate that the withdrawal of the aid measures would have significant negative consequences for the local economy and population.
- (168) In addition to the third parties that submitted comments to the Commission, attached to PCC's response to the Opening decision were statements from GEA Process Engineering Sp. z o. o. and the Maria Curie-Skłodowska University in Lublin, praising their cooperation with PCC.

5. COMMENTS FROM POLAND

- (169) This section describes Poland's comments on the Opening decision. Those comments include Poland's remarks on the third parties' comments that were submitted to Poland in non-confidential format. This section also includes further information submitted by Poland in response to specific questions from the Commission.

5.1. Implications of confirmation of ERDF co-financing for a major project

- (170) Before addressing the issues raised in the Opening decision, Poland set out its position that the analysis carried out by the Commission prior to issuing the Major Project decision should have already alleviated most of its concerns in relation to the Project. The Commission, Poland says, cannot disregard its own assessment under the Major Project decision. As part of that assessment, the Commission examined the nature and structure of the market concerned. In addition, in line with Article 41(1) of Regulation 1083/2006, that assessment was required to confirm the Project's consistency with cohesion and other policies, including competition policy ⁽⁸²⁾. While Poland admits that the procedure under Regulation 1083/2006 is not the same as the procedure under Article 108(3) of the Treaty, it, nevertheless, considers it reasonable to assume that the Commission's conclusions reached in the Major Project decision should apply to other procedures, including compliance checks on State aid rules.
- (171) Poland also notes that the amended grant scheme was subject to an audit, which concerned its compliance with State aid policy. On 4 April 2017, the Commission ⁽⁸³⁾ informed the Polish authorities of the results of the audit, and did not raise objections as concerned the regularity of the aid granted under that scheme ⁽⁸⁴⁾.

⁽⁸¹⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1, <http://data.europa.eu/eli/reg/2006/1907/oj>).

⁽⁸²⁾ Article 41(1) of Regulation 1083/2006 stated as follows: 'The Commission shall appraise the major project, if necessary consulting outside experts, including the EIB, in the light of the factors referred to in Article 40, its consistency with the priorities of the operational programme or programmes concerned, its contribution to achieving the goals of those priorities and its consistency with other Union policies.'

⁽⁸³⁾ Services of the Directorate-General for Regional and Urban Policy.

⁽⁸⁴⁾ Letter from the Commission (DG REGIO) of 4 April 2014 – Programme: Innovative Economy Operational Programme CCI: 2007PL161PO001, Final conclusions on mission no 2013/PL/REGIO/C4/1502/1 (Final Audit Report attached).

- (172) In those circumstances, Poland considers that a negative decision concerning the grant would be contrary to the principles of protection of legitimate expectations and legal certainty, as regards both Poland and PCC. The Commission's assessment of the relevant market and the competitive situation approved by the Commission under the procedure leading to the Major Project decision should also be binding on it when assessing the tax exemption.

5.2. Compliance of the aid with Regulation 800/2008

- (173) The Polish authorities provided comments on the compliance of the aid measures with Regulation 800/2008.

5.2.1. *The amended grant scheme*

- (174) Poland disagrees with the Commission's preliminary conclusion that the amended grant scheme was applied unlawfully as from 2 March 2010, when the IEOP Amending Regulation was enacted, as it disputes that it should have provided an updated summary information sheet in respect of that scheme, in line with Article 9(1) of Regulation 800/2008. It indicates that the only change introduced by the IEOP Amending Regulation that was of relevance to Regulation 800/2008 was the increase of the maximum permissible aid intensity from 25 % to 30 %, and that this did not exceed the maximum set out in the Polish regional aid map 2007-2013.
- (175) Poland notes that, in the Opening decision, the Commission suggests that the amendment to the grant scheme should be viewed similarly to an alteration to existing aid within the meaning of Regulation 659/1999. Article 4(1) of Commission Regulation (EC) No 794/2004⁽⁸⁵⁾ specifies that an alteration to existing aid is a change other than modifications of a purely formal or administrative nature that cannot affect the evaluation of the compatibility of the aid measure.
- (176) Poland recalls, however, that aid schemes covered by a block exemption are not 'existing aid' within the meaning of Regulation 659/1999, and are not assessed for compatibility on an ex ante basis. As such, the need for, and objective of, providing the summary information sheet should only be considered in terms of compliance with Regulation 800/2008. This differs from an alteration to existing aid, where compatibility has previously been assessed, so any amendment would be required to be confirmed as remaining within the criteria for compatibility.
- (177) According to the Polish authorities, the Union Courts have not decided on the question of the application of Article 9(1) of Regulation 800/2008. Advocate General Wahl, however, indicated that its purpose was to enable the Commission to carry out, at short notice, effective monitoring of compliance by the Member State concerned with the conditions for exemption⁽⁸⁶⁾. Poland underlines that the amended grant scheme met the conditions for exemption, as the increase in aid intensity did not exceed the maximum allowed. In addition, the information previously published about the grant scheme in the Official Journal of the European Union remained valid. In any event, Poland notes that the amended grant scheme was monitored by the Commission, and no concerns were raised concerning its compliance with Regulation 800/2008 (recital (33)).

5.2.2. *The grant*

- (178) In light of its position set out at recitals (174) to (177), Poland does not consider that the grant is unlawful by virtue of having been granted under an unlawful scheme. Poland also contends that the aid granting act contained the obligatory references required by Article 3(2), as recital 7 of the preamble to the Grant Agreement refers to Regulation 800/2008 and its publication reference. The Grant Agreement also refers to the IEOP Regulation, which contains an express reference to Regulation 800/2008, in particular, Chapter I and Article 13 thereof. Furthermore, Poland states that the Grant Agreement contains a copy of the application for the grant, which also contains a reference to Regulation 800/2008 and Article 13 thereof.

⁽⁸⁵⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 2015/1589 laying down detailed rules for the application of Article 108 of the TFEU (OJ L 140, 30.4.2004, p. 1, <http://data.europa.eu/eli/reg/2004/794/oj>).

⁽⁸⁶⁾ Opinion of Advocate General Wahl of 17 March 2016, *Dilly's Wellnesshotel GmbH*, C-493/14, EU:C:2016:174, paragraphs 64 – 66.

- (179) Concerning the submission of summary information regarding individual aid for a large investment project, required by Article 9(4) of Regulation 800/2008, Poland notes that it was sent to the Commission on 21 June 2012. Poland suggests that any defect related to its late submission should be rectified as from the date the information was received by the Commission. No aid was made available to PCC prior to the information being submitted, notably as its final right to receive the aid was contingent upon the Commission approving the ERDF co-financing.

5.2.3. *The tax exemption*

5.2.3.1. *Difference in eligible costs*

- (180) Poland denies that, in submitting different eligible costs for the Project in the context of the grant and tax exemption applications, PCC misled the granting authorities.
- (181) Firstly, Poland indicates that the rules on eligibility of expenditure under operational programmes, such as the IEOP, are stricter than State aid rules on eligible cost (which applied to the tax exemption). Some of the costs eligible for State aid support, therefore, may not be classified as eligible costs for Union funding.
- (182) Secondly, Poland echoed PCC's submission (recitals (86) and (87)) that the application for the grant was made on the basis of projections available at that date. The initial estimation of approximately PLN 223 million (EUR 54 million) (discounted value) was revised in subsequent years following verification of the technological and financial aspects of the Project by Siemens Group. Their analysis ⁽⁸⁷⁾, a copy of which was provided by Poland, resulted in the costs of the Project being increased to approximately PLN 300 million (EUR 72 million) (nominal value), which would have resulted in a lower than required return on investment. Since procedures for disbursement of IEOP funds made it impossible to increase the amount of grant funding for the Project ⁽⁸⁸⁾, there was no need to update the eligible costs noted in the context of the grant. The updated amount of eligible costs was, instead, declared in the tax exemption application.
- (183) Poland, moreover, states that it is business practice in the industry that investment cost estimations evolve over time. According to the recommendation ⁽⁸⁹⁾ of the Association for the Advancement of Cost Engineering ('AACE International'), the investment cost estimation process distinguishes at least five levels of estimation accuracy, from the fifth class (lowest level of accuracy, at the start of investment planning), to the first class (highest level of accuracy, at the end of investment planning). Poland notes that the technological and financial verification of the Project carried out by Siemens involved the transition from the fourth class (studies or feasibility studies), to the third class (budgeting, authorisation, or control). The increase between the fourth and third classes was fully in line with market standards.

⁽⁸⁷⁾ Siemens' final report indicated that the project costs would likely (i.e. with a probability of 80 %) amount to approximately EUR 70 340 000 (EUR 77 290 000, including a provision for contingencies, 'based on the 80 % quantile of the probability distribution of the overall investment costs'). The final report was provided to PCC in May 2013, but Poland indicated that Siemens had been communicating its findings to PCC in 2012, while the report was being drawn up.

⁽⁸⁸⁾ Poland notes that, in accordance with Section 4(3) of the Grant Agreement, any expenditure in excess of the total amount of eligible costs (i.e. above PLN 223 million (EUR 54 million) (in discounted value)), including those resulting from increased project costs after the agreement, constitutes ineligible expenditure that increases the beneficiary's own contribution. Therefore, the agreement allowed an increase in project implementation costs, but not in aid amount. The grant amount noted in the Grant Agreement is the maximum amount, as is apparent from Section 5(1) thereof, but, if the eligible costs of the Project had been lower than originally assumed, the grant amount would be reduced accordingly.

⁽⁸⁹⁾ See AACE International Recommended Practice No. 18R-97, 'Cost estimate classification system – as applied in engineering, procurement, and construction for the process industries', TCM Framework: 7.3 – Cost Estimating and Budgeting 2005; 18R-97: Cost Estimate Classification System - As Applied in Engineering, Procurement, and Construction for the Process Industries (costengineering.eu) (Last accessed 29 July 2024).

- (184) Poland underlines that the fact that PCC acquired the right to the grant did not mean that it had assumed a definite obligation to implement the Project, which would make it irreversible; should it have declined to proceed, the only consequence would have been the refusal of the assistance. It was, therefore, entitled to seek further aid, in light of the increased cost estimates. The fact that the grant, alone, would have been insufficient for PCC to proceed with the Project is evident from the documents it submitted with its application for the tax exemption.

5.2.3.2. Incentive effect

- (185) Poland notes that the Supreme Administrative Court judgment (recital (49)) is final, and settles the dispute in favour of PCC. The SEZ permit is, therefore, valid and in effect.

- (186) Poland also notes that, in applying for the SEZ permit, PCC was required to demonstrate that the tax exemption satisfied the conditions set out in Article 8(3) of Regulation 800/2008.

5.2.3.3. Maximum aid amount and cumulation

- (187) Poland denies that the fact that the SEZ permit does not mention the maximum amount of aid granted and does not refer to the grant means that aid would be granted in excess of the permissible limitations.

- (188) Poland explains that the SEZ permit is not a standalone act, and that the scope of aid and conditions governing its use are set out in the SEZ Act and the SEZ Regulation. The SEZ Regulation established maximum aid intensities⁽⁹⁰⁾, the maximum permissible aid amount for large investment projects⁽⁹¹⁾, and requirements that the tax exemption, along with any other aid, must not exceed the maximum levels of support allowed under regional aid⁽⁹²⁾. It also provided for restrictions on aid cumulation.

- (189) Poland, further, explains that the Negotiations Report also forms an integral part of the aid granting act. That report identifies the maximum aid allowed for the Project, by indicating the maximum amount of project costs and referring to the Regional aid map Regulation. The amount of available aid is determined by multiplying the maximum level of aid intensity and the amount of eligible costs, which will be compared against the State aid already obtained (the grant), using discounted figures. The available amount is the upper limit of the sum of all benefits obtained in the form of regional aid for the Project; if other forms of assistance are obtained for an investment implemented in the SEZ, the cumulation rules for aid from different sources should be observed.

⁽⁹⁰⁾ Sections 4(1) of the SEZ Regulation reads as follows:

‘1. The maximum regional investment aid intensity, calculated as the ratio of the gross grant equivalent to the eligible costs (...) is (...) 40% - in (...) Dolnośląskie (...).’

⁽⁹¹⁾ Sections 4(3) and (4) of the SEZ Regulation read as follows:

‘3. In the case of regional aid granted to an entrepreneur for the implementation of a large investment project, the maximum amount of aid is determined according to the formula:

$$I = R \times (\text{EUR } 50 \text{ million} + 0.5 \times B + 0.34 \times C),$$

where individual symbols mean:

I - the maximum value of aid for a large investment project,

R - aid intensity for the area of investment location, determined in accordance with paragraph 1,

B - the amount of eligible costs for aid above the equivalent of EUR 50 million, not exceeding the equivalent of EUR 100 million,

C - the amount of costs eligible for aid, exceeding the equivalent of EUR 100 million.

4. A large investment project should be understood as a new investment undertaken over a period of 3 years by one or more entrepreneurs, in the case of which fixed assets are linked together in an economically indivisible manner and the costs eligible for aid exceed the equivalent of EUR 50 million and have been calculated at the exchange rate announced by the National Bank of Poland on the basis of prices and exchange rates on the date of granting the permit.’

⁽⁹²⁾ Section 3(8) of the SEZ Regulation reads as follows:

‘The [aid in the form of a tax exemption] referred to in par. 1 may be granted together with other aid for new investments or creation of new jobs, regardless of its source and form, provided that the total value of this aid does not exceed the allowable amount of aid specified in Section 4.’

- (190) In addition, Poland notes that, in applying for the tax exemption, PCC accepted the terms of the negotiations and the specifications of the essential terms of the negotiations. Those specifications note the legal bases that apply to the negotiations, including the SEZ Act, the State aid Act, the SEZ Regulation, the 2007 Guidelines, and Regulation 800/2008. The Invitation to Tender, published in advance of the application, noted that any permit granted would be subject to the SEZ Act and the SEZ Regulation.
- (191) The SEZ permit notes the minimum and maximum amount of eligible costs, stated in nominal values, as PLN 200 million (approximately EUR 48 million) and PLN 300 million (approximately EUR 72 million), respectively. According to the SEZ Act ⁽⁹³⁾, a permit must define the range of eligible expenses, while the aid is limited by specifying the maximum amount of eligible costs (to safeguard against price fluctuations, exchange rates, or other factors that may contribute to the total amount increasing or decreasing). The maximum amount of eligible costs, in discounted value, was PLN 271 513 408 (EUR 65 143 935) ⁽⁹⁴⁾. Taking this into account, along with the grant, the upper limit of State aid that could be obtained under the SEZ permit could be established. That amount never exceeds the allowable aid intensities.
- (192) Poland, moreover, notes that, on the basis of income received by PCC 2018-2022, it has obtained aid in the form of the tax exemption in the amount of PLN 18 386 294 (EUR 4 411 405) ⁽⁹⁵⁾, which is far below the maximum that would be permissible.
- (193) Poland, therefore, considers that the tax exemption fulfils the conditions of Articles 6(2) and 7(1) of Regulation 800/2008.

5.2.3.4. Information and express reference

- (194) While Poland acknowledges that it submitted summary information on the tax exemption very late (16 July 2015), it considers that the submission nonetheless remedied any irregularity such that the tax exemption complies with Article 9(4) of Regulation 800/2008. Poland notes, as an additional consideration, that the decision to award the tax exemption to PCC was published on the SEZ Manager's website immediately after the SEZ permit was issued.
- (195) Concerning the question of whether the SEZ permit contained the express references required by Article 3(2) of Regulation 800/2008, Poland recalled that the SEZ permit is not a standalone act. Poland indicated that the Negotiations Report included references to the SEZ Act, the SEZ Regulation, and Regulation 800/2008, including the relevant publication details and reference to the Official Journal of the European Union.

5.3. Compatibility of the aid

- (196) The Polish authorities provided comments on the compatibility of the aid under the 2007 Guidelines.

5.3.1. The amended grant scheme

- (197) Poland disagrees with the Commission's opinion, noted at recital (103) of the Opening decision, that the amended grant scheme did not make express reference to the second condition laid down in paragraph 38 of the 2007 Guidelines.
- (198) Poland notes that aid was granted to projects that received the highest score according to pre-defined criteria, with the competition rules published alongside the announcements for calls for proposals. Applications were first checked for compliance with formal criteria, then underwent a substantive assessment. The applicants were informed whether their projects met the formal criteria, and those that did underwent substantive assessment. Those that received a positive result, and sufficiently high score, were selected for funding. Applicants were given written instructions. Poland provided a copy of the competition rules, indicating the parts thereof where this

⁽⁹³⁾ Article 16.

⁽⁹⁴⁾ European Central Bank exchange rate of 19 February 2013: PLN/EUR 4.1679 (OJ C 49, 20.2.2013, p. 8).

⁽⁹⁵⁾ Discounted at the time of authorisation and using the European Central Bank exchange rate applicable at the time the tax exemption was granted on 19 February 2013 (EUR/PLN 4.1679).

procedure is described. Poland claims that, unlike other language versions of the 2007 Guidelines ⁽⁹⁶⁾, the Polish version does not require that written confirmation that a project, in principle, meets the eligibility criteria must be provided prior to start of works.

- (199) Poland also disagrees with the Commission's opinion, noted at recital (104) of the Opening decision, that the amended grant scheme does not fulfil the conditions for cumulation control, set out at paragraph 74 of the 2007 Guidelines.
- (200) Poland claims that a horizontal approach is adopted under Polish law, and that all aid schemes are governed by a uniform set of rules, set out in the State aid Act, and its implementing rules. The State aid Act requires aid applicants to provide, in their aid applications, information on State aid received. Poland claims that Section 6 of the State aid Act indicates that the information submitted by applicants is subsequently verified by granting authorities against data in the Scheduling, Registration, and Monitoring System for Public Aid. The extent to which aid can be cumulated is individually defined under each aid scheme. Poland notes that the Grant Agreement refers to the IEOP Regulation, including Section 12 thereof on cumulation of aid from different sources.

5.3.2. *The aid measures*

- (201) Poland provided its position on the compatibility of the aid measures with the 2007 Guidelines.

5.3.2.1. *Incentive effect*

- (202) At recital (112) of the Opening decision, the Commission questioned whether the grant, viewed as an ad hoc aid outside of a scheme, complied with the incentive effect requirement set out at paragraph 38 of the 2007 Guidelines. In that regard, Poland noted that, on 2 March 2011, it had provided PCC with a letter of intent to award it the grant, and provided a copy thereof.
- (203) Concerning the tax exemption, following the Supreme Administrative Court judgment, Poland no longer argued that PCC did not apply for the tax exemption before starting work on the Project. The SEZ permit was issued on 19 February 2013. PCC claims that it started work on the Project on 5 April 2013.

5.3.2.2. *Aid intensity*

- (204) Concerning the Commission's doubts that the combined aid measures remained within the permissible aid intensity limits, in accordance with paragraph 67 of the 2007 Guidelines (see recitals (113) to (123) of the Opening decision), Poland referred to its arguments noted at recitals (180) to (184), and (187) to (191).
- (205) As regards the tax exemption, Poland noted that the SEZ Regulation provides that aid is limited to the maximum permissible amount under the regional aid map ⁽⁹⁷⁾, that entitlement to aid shall apply only until the maxima are attained ⁽⁹⁸⁾, and that aid beyond the 75 % threshold must be notified to the Commission ⁽⁹⁹⁾. Similar restrictions exist in the CIT Act ⁽¹⁰⁰⁾. Poland also notes that PCC declared that it had received the grant when it applied for the tax exemption, meaning that this would be taken into account when calculating the maximum permissible aid amount.
- (206) Poland, therefore, considers that the maximum amount of aid that was granted to PCC via the aid measures was EUR 23 086 560 (PLN 95 797 682 ⁽¹⁰¹⁾) in discounted value, which is within the permissible aid intensity limits.

⁽⁹⁶⁾ For example, English, French, and Spanish.

⁽⁹⁷⁾ Section 3(8).

⁽⁹⁸⁾ Section 5(1).

⁽⁹⁹⁾ Section 4(5).

⁽¹⁰⁰⁾ Section 17(1)(34).

⁽¹⁰¹⁾ Poland indicates the exchange rate of EUR/PLN 4.1495 in the summary information submitted in respect of the tax exemption. As noted at footnote 28, the Commission considers it more appropriate to use the exchange rate of EUR/PLN 4.1679, which was the rate published by the European Central Bank for 19 February 2013, the date on which the SEZ permit was issued.

5.3.2.3. Cumulation control

- (207) Poland explained that cumulation of aid in the form of a tax exemption with other forms of aid is monitored and controlled by the competent tax authorities. Since 2015, annual tax returns are submitted in electronic format ⁽¹⁰²⁾. Beneficiaries of a tax exemption issued for economic activities carried out in a SEZ must include an Annex CIT/8S with their tax return. That Annex CIT/8S includes specific information concerning the SEZ tax exemption, such as the eligible costs incurred for the relevant investment, the amount of aid already used under the tax exemption, and the amount of any other aid received for the investment. Having access to that information in electronic format means that the tax authorities can easily determine the amount of State aid to which a taxpayer is entitled, having regard to the eligible costs actually incurred and the amount of aid already received. Taxpayers are required to keep records for the duration of the State aid recovery limitation period. The National Revenue Administration authorities periodically verify that the information submitted in a selection of Annexes CIT/8S is correct, to ensure compliance with the CIT Act. Sanctions may apply in the case of non-compliance. Poland, therefore, submits that the tax and fiscal control authorities have the means to effectively verify that aid is not claimed in excess of entitlement, and periodically carry out checks to that effect.

5.3.2.4. In-depth assessment

- (208) Concerning the potential application of paragraph 68 of the 2007 Guidelines, Poland, firstly, noted that, as it considered that the aid measures did not exceed the 75 % threshold (recitals (204) to (206)), that paragraph could not apply.
- (209) Secondly, in any event, in considering whether paragraphs 68(a) or (b) applied to the aid measures, Poland shared PCC's views (recitals (105) to (112)), and concluded that the product market is the overall market for MCAA, regardless of purity grade, and the geographic market is at least the EEA, and North and South America ⁽¹⁰³⁾. Poland also shared PCC's conclusion (recitals (113) to (118)) that paragraphs 68(a) and 68(b) are not applicable to the aid measures.

5.3.2.5. Balancing test

- (210) Poland argues that the positive effects of the aid measures outweigh their negative effects. Like PCC (recital (124)), Poland highlights that the positive effects of the aid were verified and confirmed by the Commission through its approval of the financial contribution to the Project from the ERDF.
- (211) Poland emphasises that the Project has brought 160 direct jobs, including jobs for highly qualified professionals, as well as indirect jobs, to a highly disadvantaged area. Not only is the area eligible for regional aid under Article 107(3)(a) of the Treaty, but the Wołowski Powiat (District), where the Project is based, is significantly more disadvantaged than the area as a whole. Working conditions at PCC are significantly better than those standard to the region.
- (212) The investment has resulted in the implementation of new processes and organisational solutions, as well as further research into MCAA technologies and production applications. The results of PCC's R&D activities, which would have been carried out without the aid, have also been made available as part of its intensive cooperation with local education institutions, graduates, and students.
- (213) Poland also notes that the Project has created synergies with other PCC Rokita plants and regional activities, and, notably, has allowed for safer and more environmentally-friendly chlorine transport ⁽¹⁰⁴⁾, due to the proximity of the supply plant. The innovative process employed by PCC improves energy efficiency, and would not have been possible without the aid.

⁽¹⁰²⁾ Article 27(1c) of the CIT Act.

⁽¹⁰³⁾ Poland notes that PCC has consistently stated that this is the relevant product market, noting, for example, that the business plan that it submitted as part of the tax exemption application was on the basis of that market.

⁽¹⁰⁴⁾ Poland notes that the Commission had previously approved State aid to Akzo Nobel, noting that the limitation of chlorine transport was a condition for granting the aid (footnote 70).

- (214) Poland noted that the submissions made to the Commission by third parties (recitals (142) to (167)) tended to confirm the views of the Polish authorities on the effects of the Project.
- (215) Poland, further, shares PCC's views (recitals (125) and (126)) that the Project has resulted in improved competition and security of supply, due to the entry of a new competitor to a duopolistic market.
- (216) Poland indicates that the MCAA market is, and has been, growing. In the Cartel decision, the Commission noted growth in both volume and value terms 1996-1998, presenting it as growing at a steady average rate. Like PCC (recital (129)), Poland claims that that steady upward trend is seen in the chemicals industry as a whole, save for a slump in 2009, notably in light of the growing US market that has limited local supply. Poland also echoes PCC's comments (recital (131)) in noting that the Complainant's actions do not seem to reflect its claims of overcapacity in the market.
- (217) Poland provided a number of reports that were available at the time the aid was granted, to illustrate the market conditions at that time. Those reports provided a combination of established data and projections.
- (218) Firstly, the 2011 SRI Report, available to the Commission at the time of the Opening decision, provided consumption figures for 2007 and 2010, as well as projections for 2015.

Table 1:

2011 SRI Report, figures for consumption of MCAA in kt/year (2007 – 2015) ⁽¹⁰⁵⁾

Region	2007	2010	2015 (projections)	Absolute increase 2010-2015
US	61,1	56,4	[61-73]	+ [5,5-6,5]
Western Europe	159,6	148	[150-180]	+ [11-13]
Central and Eastern Europe	19	21	[24-28]	+ [3-3,5]
TOTAL Europe	178,6	169	[180-210]	+ [14-16,5]
TOTAL Europe + US	239,7	225,4	[240-280]	+ [18-22]
North America (US, Canada, Mexico)		67,4	[70-82]	+ [7-8,5]
TOTAL Europe + North America		236,4	[230-280]	+ [20-24]
Central and South America		22,5	[25-30]	+ [3-3,5]
Total Europe + Americas		258,9	[280-330]	+ [22-27]
World (Europe + Americas + Middle East + Japan + Other Asia + Oceania)		716,4	[870-1 010]	+ [150-180]

⁽¹⁰⁵⁾ The Commission notes that Poland's submission incorrectly recorded certain figures from this table, but the figures noted at Table 1 are those indicated in the 2011 SRI Report.

- (219) Following the Opening decision, Poland provided the Tecnon Orbichem Report to the Commission, which contained data for 2007, as well as projections for 2010, 2014, and 2015.

Table 2:

Tecnon Orbichem Report, figures for consumption of MCAA in kt/year (2007 – 2015)

Region	2007	2010	2014	2015	Absolute increase 2010-2014	Absolute increase 2010-2015
North America (US, Mexico, Canada)	76,8	82,9	[90-108]	[90-108]	+ [8,2-9,5]	+ [11-12]
South America	17,7	20,7	[24-28,2]	[24-28,2]	+ [3-3,6]	+ [4,2-4,7]
Europe	183,9	185,4	[190-228]	[190-228]	+ [11,2-12,5]	+ [14-15,2]
Europe + North America	260,7	268,3	[280-315]	[280-315]	+ [17-21]	+ [22-26]
Europe + Americas	278,4	289	[300-360]	[300-360]	+ [23-25]	+ [30-33]
World	609	672	[750-880]	[750-880]	+ [90-105]	+ [110-132]

- (220) Poland also provided a report of May 2011 prepared for PCC by Roland Berger Strategy Consultants, which predicted that the combined growth rate for MCAA demand 2010-2015 in Europe and North America could be [1.9-2.3]-[3-3.6] % ⁽¹⁰⁶⁾. In addition, Poland provided a report prepared for PCC in June 2010 by KlineGroup, which predicted that there would be strong annual growth in consumption volume, of an average of [1.9-2.3] % and up to [3-3.6] %, in Europe and North America, for the main products for which MCAA is used.
- (221) Poland notes that the data provided indicate that the MCAA market was growing in the relevant period, and that its growth exceeded the average annual growth rate in the EEA. The MCAA market was not in absolute decline (i.e. it did not have a negative growth rate), and Poland submits that it was not in relative decline, as the market grew significantly more than the EEA GDP for the period 2010-2015.
- (222) Poland, moreover, suggests that, as the first year of operation of the Project would be 2016, it would be appropriate to take 2010-2016 as a basis for assessing MCAA market capacity (or even longer). Poland suggests that, assuming an annual growth rate of [2-2.4] % for the Europe and Americas market for that period, growth would be almost equivalent to the capacity added by the Project.
- (223) Poland, further, notes that the Complainant and Akzo Nobel (now Nouryon) made decisions to invest in the MCAA market ⁽¹⁰⁷⁾, confirming PCC's forecasts on the increase of MCAA consumption after 2016. It is, therefore, not correct to say that private investment had been diverted from the market as a result of the aid to PCC, or that the capacity created by the Project crowded out the market.

⁽¹⁰⁶⁾ It did not specify whether this would be by volume or by value.

⁽¹⁰⁷⁾ Poland noted that the Complainant, through joint ventures, invested in 22 kt in India (2008) and 25 kt in China (2013). Akzo Nobel invested in 45 kt in the Netherlands (2006-2014) and 75 kt in China (2002-2012).

- (224) Poland, moreover, agrees with PCC's claim (recital (130)) that the Complainant's approach of simply adding nameplate capacities to claim that the MCAA market is oversupplied is incorrect, and that the Europe and US market actually has a supply shortfall of approximately the amount of capacity created by the Project. Poland clarified that, while the nameplate capacity of the Project was 42 kt/yr, its actual capacity would be at most [34 – 40] kt/yr ⁽¹⁰⁸⁾, of which approximately [...].

6. ASSESSMENT OF THE AID MEASURES

6.1. Assessment of the existence of aid within the meaning of Article 107(1) of the Treaty

- (225) The Commission concluded, at recital (62) of the Opening decision, that the aid measures constitute State aid within the meaning of Article 107(1) of the Treaty (recital (53)). This was not contested by the Polish authorities.
- (226) The Commission, therefore, confirms that the aid measures constitute State aid within the meaning of Article 107(1) of the Treaty.

6.2. Compatibility of the aid

- (227) The Commission considers it appropriate to begin its final assessment with an examination of the compatibility of the aid measures on the basis of the 2007 Guidelines.
- (228) In the Opening decision, the Commission raised doubts as to the compatibility of the aid measures, viewed as ad hoc aids, with paragraphs 38, 67, and 71 of the 2007 Guidelines (recitals (74) to (78)). The Commission also raised doubts as to whether it was required to apply the tests set out in paragraph 68 of the Guidelines to the aid measures, or whether the results of those tests would lead to the need to conduct an in-depth assessment (recital (79)). Moreover, the Commission noted that, even if it did not need to carry out those tests, or if the outcome of those tests did not require an in-depth assessment, it could not establish that the balance of the effects of the aid measures was clearly positive (recital (80)).
- (229) The Commission considers it appropriate to begin its final assessment with an examination of the compatibility of the aid measures on the basis of those paragraphs.

6.2.1. *Compatibility of the aid measures with paragraph 38 of the 2007 Guidelines*

- (230) Paragraph 38 ⁽¹⁰⁹⁾ of the 2007 Guidelines provides that, in the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional upon Commission approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid.

6.2.1.1. Start of works

- (231) In order to determine whether the aid measures complied with paragraph 38 of the 2007 Guidelines, it must, first, be determined when PCC began works on the Project.

⁽¹⁰⁸⁾ Prior to the investment, PCC estimated that it would reach that level of production from 2016 onwards.

⁽¹⁰⁹⁾ Paragraph 38 reads as follows: 'It is important to ensure that regional aid produces a real incentive effect to undertake investments which would not otherwise be made in the assisted areas. Therefore aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project. An express reference to both conditions must also be included in all aid schemes. In the case of ad hoc aid, the competent authority must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before work starts on the project. If work begins before the conditions laid down in this paragraph are fulfilled, the whole project will not be eligible for aid' (footnotes omitted).

- (232) The Commission notes the dispute between PCC and Poland as regards the start of works (recitals (46) to (48)). The Commission, moreover, notes the position expressed in the Supreme Administrative Court judgment (recital (49)), taken after the events described in recitals (46) to (48). The Commission recalls, in that context, that it has exclusive competence for assessing the compatibility of aid measures with the internal market ⁽¹¹⁰⁾, and must make its own assessment. The Commission may have regard to the position taken in the Supreme Administrative Court judgment.
- (233) For the purposes of paragraph 38 of the 2007 Guidelines, 'start of work' means either the start of construction work or the first firm commitment to order equipment, excluding preliminary feasibility studies ⁽¹¹¹⁾.
- (234) PCC claims that, prior to applying for the tax exemption, it had only undertaken preliminary feasibility studies. The Commission notes that PCC explained that, due to the innovative and complex nature of the Project, it decided to establish a pilot installation to test the feasibility of the Project, prior to committing to undertake it (recital (90)). That pilot installation occupied a small area, was not permanently fixed, could easily be dismantled, did not require construction works, and was, in fact, transferred to Siemens immediately upon receipt (recital (91)). The entire cost of the pilot project was EUR 150 000, of which EUR 5 814 (PLN 23 854,19) was incurred in October 2012 (recital (92)). Had the results of the pilot project been unsatisfactory, PCC would have been able to withdraw from the Project and recoup its costs (recital (93)). During the course of its investigation, the Commission has not received any information that would call into question the veracity of PCC's submissions.
- (235) In those circumstances, the Commission considers that work on the pilot installation should not be considered as constituting start of works. In particular, the Commission notes the fact that, while the pilot installation was required to test the feasibility of the Project and to identify a suitable catalyst, it was not an integral part of the Project. The pilot installation occupied a small area, was not permanently fixed, and was transferred to Siemens' premises in Germany, upon receipt. The Commission notes that PCC had a plan for disposing of the intellectual property relating to the pilot installation, should it have decided not to proceed with the Project (recital (93)). Moreover, the cost of the pilot installation was only marginal when compared to the costs of the overall Project. The Commission does not consider that undertaking the pilot installation committed PCC to proceed with the entire investment. The pilot installation, therefore, should be considered as constituting a preliminary feasibility study for the Project, which does not trigger the 'start of work' for the purposes of paragraph 38 of the 2007 Guidelines.
- (236) The Commission notes that PCC has provided evidence that it began construction work on 5 April 2013, and made its first firm commitment to order equipment related to the Project on 16 August 2013 (recital (89)). None of the information gathered as part of the in-depth investigations indicates that PCC had taken on, apart from the pilot installation, any other commitments related to the Project that preceded the submission of the aid application. The Commission, therefore, considers that the 'start of work' for the Project occurred on 5 April 2013.

6.2.1.2. Paragraph 38: the grant

- (237) At recital (112) of the Opening decision, the Commission noted that the condition laid down in paragraph 38 of the 2007 Guidelines did not appear to be met by the grant, viewed as an ad hoc aid.
- (238) The Commission notes that PCC submitted its application for the grant on 15 December 2010. As established in the course of the formal investigation, on 2 March 2011, the Polish authorities wrote to PCC, informing it that they intended to award it the grant (recital (202)). In that letter, the Polish authorities requested PCC to provide documentation for the 'confirmation of the aid by the European Commission' (recital (30)). On 12 April 2012, the Polish authorities concluded the Grant Agreement with PCC, which indicated that for 'large projects' the payment of the grant would be subject to the Commission's approval, or deemed approval, pursuant to Regulation 659/1999 (recital (31)). The Grant Agreement also made reference, inter alia, to the IEOP Regulation (as amended) and Regulation 800/2008 (recital (31)).

⁽¹¹⁰⁾ See, for example, judgment of the Court of Justice of 5 October 2006, *Transalpine Ölleitung in Österreich*, C-368/04, EU:C:2006:644, paragraph 68.

⁽¹¹¹⁾ Footnote 40 of the 2007 Guidelines.

- (239) The Commission, therefore, considers, that, prior to the start of works on the Project, the Polish authorities had not only issued a letter of intent to award the grant to PCC, but had issued the granting act, itself.
- (240) In the letter of 2 March 2011, the Polish authorities had indicated that the aid needed to be confirmed by the Commission. The Grant Agreement recalled the IEOP Regulation (as amended), which indicated that, should be Project receive more than EUR 30 million aid, it should be notified to the Commission (recital (31)). This implied that, should the Project receive less than that amount of aid, it did not need to be notified. This corresponds with the requirements of Article 6(2) of Regulation 800/2008, to which the Grant Agreement also referred (recital (31)). In those circumstances, the Commission considers that the Polish authorities had indicated to PCC that the grant was awarded subject to Commission approval, insofar as that was required by Union law. The Polish authorities therefore complied with paragraph 38 of the 2007 Guidelines in that regard.
- (241) In any event, the Commission notes that, according to Union case-law, in order to assess the existence of a letter of intent within the meaning of paragraph 38 of the 2007 Guidelines, it is for the Commission to assess the circumstances of each individual case in order to determine whether the prospect of the grant of the aid was sufficiently probable for the criterion relating to the incentive to be satisfied. In particular, the Commission must take into account the precise form and nature of the acts emanating from the competent national authorities and other relevant circumstances in order to assess the existence of the incentive element ⁽¹¹²⁾.
- (242) Applying that reasoning, the Commission considers that the key issue for determining whether the requirements of paragraph 38 of the 2007 Guidelines are met in this case is whether it can be concluded that PCC did not start works on the Project until it believed that it was reasonably probable that it would receive the grant. In that regard, the Commission notes that PCC started works on the Project on 5 April 2013 (recital (236)), almost a full year after it had received, not only a letter of intent, but the actual aid granting instrument, from the Polish authorities (recital (239)).
- (243) The Commission, therefore, concludes that the Polish authorities had issued a letter of intent to award the grant to PCC, as required by paragraph 38, prior to start of works on 5 April 2013.
- (244) The Commission, therefore, concludes that the grant fulfils the conditions of paragraph 38 of the 2007 Guidelines.

6.2.1.3. Paragraph 38: the tax exemption

- (245) At recitals (109) to (111) of the Opening decision, the Commission noted that the condition laid down in paragraph 38 of the 2007 Guidelines did not appear to be met by the tax exemption, viewed as an ad hoc aid.
- (246) The Commission recalls that, at the time of the Opening decision, Poland considered that PCC had started works on the Project prior to applying for the tax exemption (recitals (46) and (47)), and the Commission preliminarily agreed with that conclusion (recital (57)).
- (247) The Commission, having examined the information provided, has concluded that works started on the Project on 5 April 2013 (recital (236)).
- (248) PCC applied for a permit to carry out economic activities in the SEZ, in order to receive the tax exemption, on 11 February 2013 (recital (40)). On 12 February 2013, the SEZ Manager agreed to grant PCC the SEZ permit, as evidenced in the Negotiations Report (recital (41)). On 19 February 2013, the SEZ Manager issued the SEZ permit, which granted the tax exemption to PCC (recital (42)).

⁽¹¹²⁾ Judgment of the General Court of 13 September 2013, *Fri-El Acerra Srl v Commission*, EU:T:2013:430, paragraphs 82 and 83.

- (249) In those circumstances, the Polish authorities had not only issued a letter of intent (and confirmed PCC's eligibility for the aid) to award the tax exemption to PCC before it started work on the Project, but had issued the granting act, itself.
- (250) The Commission notes that neither the Negotiations Report nor the SEZ Permit indicated that the Polish authorities' intention to award the aid was conditional on the Commission's approval of the aid. The Commission, however, notes the Polish authorities' position that the SEZ Permit is not a standalone act, and that various legal bases are incorporated therein by reference (recitals (188) to (190)).
- (251) In that regard, the Commission recalls that the Invitation to Tender to which PCC responded by applying for the tax exemption indicated that the SEZ permit would be issued on the basis of the SEZ Act and the SEZ Regulation. When it submitted its application, PCC accepted the terms of the negotiations and the Tender Specifications, without reservation (recital (40)). The Tender Specifications noted that the negotiations would be conducted on the basis of, inter alia, the SEZ Act and the SEZ Regulation. Moreover, the Negotiations Report confirms that PCC was informed that the SEZ permit would be issued subject to, inter alia, the SEZ Regulation and Regulation 800/2008 (recital (41)).
- (252) The Commission, therefore, agrees that the SEZ permit was not a standalone act, and that the noted legal acts – in particular, the SEZ Act and the SEZ Regulation – were incorporated into it, by reference. The provisions of those acts, therefore, applied to the tax exemption awarded to PCC.
- (253) In that regard, the Commission notes that Section 4(5) of the SEZ Regulation specifies that, where aid to a large investment project exceeds 75 % of the maximum aid that can be granted for investments with eligible costs equivalent to EUR 100 million, applying the standard aid ceilings applicable to large enterprises in the approved regional aid map at the date of granting the aid, it must be notified to the Commission. This implied that, should the Project receive less than that amount of aid, it did not need to be notified. This corresponds to the requirement to notify aid to large investment projects set out in Article 6(2) of Regulation 800/2008. In those circumstances, the Commission considers that the SEZ permit was issued subject to Commission approval, insofar such approval was required by Union law.
- (254) The Commission recalls, moreover, that the key issue determining whether the requirements of paragraph 38 of the 2007 Guidelines are met is whether it can be concluded that PCC did not start works on the Project until it believed that it was reasonably probable that it would receive the tax exemption (recital (242)). In that regard, the Commission notes that, when PCC started works on the Project on 5 April 2013 (recital (236)), it had not only received a letter of intent to grant the aid, but the actual aid granting instrument, from the Polish authorities (recital (249)).
- (255) The Commission, therefore, concludes that the Polish authorities had issued a letter of intent the award the tax exemption to PCC, as required by paragraph 38, prior to start of works on 5 April 2013
- (256) The Commission, therefore, concludes that the tax exemption fulfils the conditions required under paragraph 38 of the 2007 Guidelines.

6.2.1.4. Paragraph 38: the aid measures

- (257) In conclusion, the Commission considers that the aid measures (both the grant and tax exemption) awarded to PCC fulfil the conditions required under paragraph 38 of the 2007 Guidelines (recitals (244) and (256)).

6.2.2. Compatibility of the aid measures with paragraph 67 of the 2007 Guidelines

(258) Paragraph 67 ⁽¹¹³⁾ of the 2007 Guidelines provides for an adjusted regional aid ceiling for large investment projects. To determine whether the aid measures comply with that ceiling, it is, first, necessary to establish the amount of eligible costs that should be taken into account for calculating the aid intensity, then, second, to verify whether the aid measures respect that ceiling.

6.2.2.1. Eligible costs

(259) In the Opening decision, the Commission had noted that it was not clear why PCC provided different eligible costs for the Project in the grant and tax exemption applications, and considered that the amount indicated in the grant application was appropriate (recital (76)).

(260) The Commission notes the explanations provided by Poland (recitals (180) to (184)) and PCC (recitals (85) to (88)) as to why the eligible costs upon the basis of which PCC applied for the grant differed from those noted in the application for the tax exemption. Essentially, Poland and PCC submit that, between applying for the grant and applying for the tax exemption, PCC received advice from a third party that led it to increase its estimated costs. As the Project would not be sufficiently profitable for it to be undertaken in light of that increase, PCC requested more aid, in the form of the tax exemption.

(261) The Commission recalls that PCC started works on the Project on 5 April 2013 (recital (236)), and applied for the tax exemption on 11 February 2013 (recital (40)). As PCC had not started works when it applied for the tax exemption, it was available to it to request further aid for the Project.

(262) The Commission acknowledges that, when PCC applied for the grant, it had stated that the grant would be sufficient for it to carry out the Project in Poland (recital (30)). In addition, the Commission notes that, when it signed the Grant Agreement on 4 April 2012, PCC accepted that any increase in cost of the Project would be ineligible for support and would be borne by PCC (recital (31)).

(263) In that regard, the Commission agrees with Poland (recital (184)), that the acquisition of the right to the grant by PCC did not oblige it to carry out the Project. Moreover, the Commission does not consider that the Grant Agreement prevented PCC from seeking any other State aid at all in the case of increased costs, but, rather, indicated that, under the terms of the Grant Agreement, no further aid would be forthcoming from the IEOP, in such a case.

(264) Poland submitted a copy of the report provided by Siemens to PCC (recital (182)), which indicated that the cost of the Project should be increased to [EUR 66 340 000-80 340 000] ([EUR 72 290 000-87 500 000], if a provision for contingencies were to be included) ⁽¹¹⁴⁾. The Commission notes, in that regard, that Poland explained that it is

⁽¹¹³⁾ Paragraph 67 reads as follows: 'Regional investment aid for large investment projects is subject to an adjusted regional aid ceiling (61), on the basis of the following scale:

Eligible expenditure	Adjusted aid ceiling
Up to EUR 50 million	100% of regional ceiling
For the part between EUR 50 million and EUR 100 million	50% of regional ceiling
For the part exceeding EUR 100 million	34% of regional ceiling

Thus, the allowable aid amount for a large investment project will be calculated according to the following formula: maximum aid amount = $R \times (50 + 0,50 \times B + 0,34 \times C)$, where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million. This is calculated on the basis of the official exchange rates prevailing on the date of the grant of aid, or in the case of aid subject to individual notification, on the date of notification.'

Footnote (61): 'The starting point for the calculation of the adjusted aid ceiling is always the maximum aid intensity allowed for aid for large enterprises in accordance with section 4.1.2 above. No SME bonuses may be granted to large investment projects.'

⁽¹¹⁴⁾ Siemens report, page 15, provides the figure in EUR.

industry practice to revise cost estimations for such projects over time (recital (183)). The Commission observes that the financial analysis submitted by PCC along with the application for the tax exemption indicated investment costs of PLN 301 478 910 (recital (40)). That application, and its supporting business plan, indicated eligible costs of a maximum of PLN 300 000 000 (recital (40)). While those amounts are not identical, they remain within the same order of magnitude (disregarding the provision for contingencies in the Siemens report ⁽¹¹⁵⁾); the Commission also notes that they were expressed in different currencies, which might have led to discrepancies, depending on the exchange rates used. Hence, the maximum amount applied for and awarded in the SEZ permit ⁽¹¹⁶⁾ is substantiated by the Siemens report and by the financial analysis submitted with the application for the tax exemption.

- (265) The Commission, accordingly, considers that it is the amount indicated in the SEZ permit that should be taken into account when assessing whether the combined, maximum amount of aid awarded to PCC complied with the applicable ceiling.

6.2.2.2. Maximum aid amount

- (266) Having established the eligible costs, the maximum aid amount available for the Project must be determined, using the formula laid down in paragraph 67 of the 2007 Guidelines: maximum aid amount = $R \times (50 + 0,50 \times B + 0,34 \times C)$, where R is the unadjusted regional aid ceiling, B is the eligible expenditure between EUR 50 million and EUR 100 million, and C is the eligible expenditure above EUR 100 million.

- (267) Taking the maximum eligible cost amount of PLN 271 513 408 (EUR 65 143 935) (discounted), the formula must be applied as follows: $40 \% \times (50 \text{ million} + 0,5 \times 15\,143\,935 + 0,34 \times 0)$. This results in a maximum aid amount of EUR 23 028 787 (PLN 95 981 681) ⁽¹¹⁷⁾. Expressed as an aid intensity, that is 35 % of eligible costs.

- (268) The Commission must establish whether the aid measures respected that ceiling. As regards the grant, it clearly remains below that ceiling. The SEZ permit, itself, does not mention the previous aid measure, and does not contain any provisions that would prevent the total amount of regional investment aid for the Project (in the form of the tax exemption and the grant) from exceeding the ceiling in question.

- (269) The Commission notes, however, that PCC had declared that it had received the grant when it applied for the tax exemption (recital (40)). As a result, the Polish authorities were aware that PCC had already benefitted from the grant when they decided to award it the tax exemption.

- (270) Furthermore, the SEZ permit is not a standalone act, and various other legal provisions are incorporated into it by reference, in particular, the SEZ Regulation (recital (252)). In that regard, the Commission notes that the SEZ Regulation established maximum aid intensities, the maximum permissible aid amount for large investment projects, and requirements that the tax exemption, along with any other aid, must not exceed the maximum levels of support under regional aid (recital (188)). The limitations on aid in those provisions of the SEZ Regulation align with the limitations on aid set out in the 2007 Guidelines. The Commission, therefore, considers that those provisions, which are incorporated into the SEZ permit, should operate to ensure that the maximum amount of aid granted under the SEZ permit does not exceed the maximum permitted by the 2007 Guidelines.

⁽¹¹⁵⁾ As noted at footnote 87, Siemens considered that the costs of the Project had [...] [EUR 66 340 000-80 340 000] – a contingency amount [...], in view of the potential margin of error.

⁽¹¹⁶⁾ That is, PLN 300 000 000 (EUR 71 978 694) (in nominal value) or PLN 271 513 408 (EUR 65 143 935) (in discounted value) (recital (42)).

⁽¹¹⁷⁾ Calculated by applying the European Central Bank exchange rate of EUR/PLN 4.1679, applicable on 19 February 2013 (OJ C 49, 20.2.2013, p. 8).

- (271) In those circumstances, the Commission finds that the amount of aid PCC may receive in the form of the tax exemption should be understood as the maximum amount of aid available to the Project on the basis of the eligible costs set out in the SEZ permit (recital (267)), minus the amount received in the form of the grant (recital (31)).
- (272) In light of this finding, corroborated by the Polish authorities, the total amount of regional investment aid granted for the Project by way of the grant and the tax exemption does not exceed the maximum permissible aid amount under the 2007 Guidelines.

6.2.2.3. Conclusion: Paragraph 67

- (273) In light of the considerations set out at recitals (259) to (272), the Commission concludes that the aid measure fulfil the conditions of paragraph 67 of the 2007 Guidelines.

6.2.3. *Compatibility of the aid measures with paragraph 71 of the 2007 Guidelines*

- (274) Paragraph 71 ⁽¹¹⁸⁾ of the 2007 Guidelines specifies that, where aid is granted concurrently under several regional schemes or in combination with ad hoc aid, the aid intensity ceilings apply to the total aid.
- (275) In light of the findings at recitals (271) and (272), the Commission notes that the grant and the tax exemption, together, were awarded to PCC only insofar as they did not exceed the maximum permissible aid intensities under the 2007 Guidelines. The cumulation of aid in the form of a tax exemption with other forms of aid is monitored and controlled by the competent tax authorities, which have the means to effectively verify that excess aid is not claimed and to impose sanctions in case of non-compliance (recital (207)). As a subsidiary remark, the Commission notes that, to date, PCC has received far less than the maximum possible amount of aid in the form of a tax exemption (recital (192)), indicating no particular concerns as regards the monitoring of cumulation of aid to PCC.
- (276) The Commission, therefore, concludes that the aid measures fulfil the conditions of paragraph 71 of the 2007 Guidelines.

6.2.4. *Compatibility with the 2007 Guidelines*

- (277) The Commission concludes, therefore, that the aid measures fulfil the conditions of paragraphs 38, 67, and 71 of the 2007 Guidelines (recitals (257), (273), and (276)). The Commission recalls that, in the Opening decision, it raised doubts as to the compliance of the aid measures with those paragraphs, only (recital (228)). As it did not raise doubts as to the aid measures' compliance with the other provisions of those guidelines, it implicitly acknowledged that it did not have doubts in that regard ⁽¹¹⁹⁾. For the avoidance of doubt, however, the Commission notes that it considers that the aid measures fulfil the other requirements of the 2007 Guidelines, as follows:
- (a) in line with paragraph 9, the aid measures are not granted to an undertaking in difficulty (recitals (30) and (40));
 - (b) in line with paragraph 10, the aid measures contributed to a coherent regional strategy. In particular, the grant was awarded pursuant to the IEOP (recital (31)), while the tax exemption was awarded pursuant to the policy of using the SEZ to accelerate development (recital (36)). Further, the aid measures would not result in unacceptable distortions of competition (recital (311));

⁽¹¹⁸⁾ Paragraph 71 reads as follows: 'The aid intensity ceilings laid down in sections 4.1 and 4.3 above apply to the total aid: — where assistance is granted concurrently under several regional schemes or in combination with ad hoc aid; — whether the aid comes from local, regional, national or Community sources.'

⁽¹¹⁹⁾ In addition, no comments were received from third parties during the formal investigation that suggested that the Commission should have doubts as to the compliance of the aid measures with other provisions of the 2007 Guidelines.

- (c) in line with paragraph 34, the aid measures concern an initial investment (recital (18));
- (d) in line with paragraph 36, the aid amount is calculated by reference to material investment costs (recitals (18) and (267));
- (e) in line with paragraph 37, the aid takes the form of a grant and a tax exemption (recitals (23) and (35));
- (f) in line with paragraph 39, PCC provided a financial contribution of more than 25 % of the eligible costs of the Project, in a form free of any public support (recital (40));
- (g) in line with paragraph 40, the aid intensity of the aid measures is calculated in terms of GGE (recitals (267) and (272)); and
- (h) in line with paragraph 54, the assets acquired would be new (recital (18)).

(278) The Commission, therefore, concludes that the aid measures comply with the per se compatibility requirements of the 2007 Guidelines.

6.2.5. *Application of paragraph 68 of the 2007 Guidelines*

(279) Having concluded that the aid measures fulfil the per se requirements of the 2007 Guidelines (recital (278)), the Commission must now assess whether an in-depth assessment of the aid measures is required under paragraph 68 of those guidelines.

(280) Paragraph 68 ⁽¹²⁰⁾ of the 2007 Guidelines provides that, where the total amount of aid from all sources exceeds the 75 % threshold (recital (97)), the Commission must apply the tests set out in paragraphs 68(a) and (b). Should the aid fulfil the conditions set out in paragraph 68(a) or (b), the aid can only be approved after an in-depth assessment.

(281) The 75 % threshold applicable in this case is EUR 30 million. As noted by PCC, this is not disputed (recital (97)). The maximum amount of aid awarded to PCC in respect of the Project was EUR 23 028 787 (PLN 95 981 681) (recitals (267) to (272)). The total amount of aid from all sources to the Project, therefore, does not exceed the 75 % threshold.

(282) The Commission, therefore, concludes that paragraph 68 does not apply, without it being necessary to carry out the tests set out at paragraphs 68(a) and (b) of the 2007 Guidelines. It is not necessary, therefore, to carry out an in-depth assessment of the aid to PCC, in accordance with the criteria set out in paragraph 68.

6.2.6. *Balancing test*

(283) The Commission has, therefore, concluded that the aid measures fulfil the conditions of paragraphs 38 (recital (257)), 67 (recital (273)), and 71 (recital (276)) of the 2007 Guidelines. Therefore, they meet the per se requirements for compatibility of those guidelines. Moreover, the Commission has concluded that the aid measures do not trigger the need to conduct an in-depth assessment pursuant to paragraph 68 of the 2007 Guidelines (recital (282)).

⁽¹²⁰⁾ Paragraph 68 reads as follows:

'Where the total amount of aid from all sources exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large enterprises in the approved regional aid map on the date the aid is to be granted, and where

- (a) the aid beneficiary accounts for more than 25 % of the sales of the product(s) concerned on the market(s) concerned before the investment or will account for more than 25 % after the investment, or
- (b) the production capacity created by the project is more than 5 % of the market measured using apparent consumption data ... for the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area's GDP,

the Commission will approve regional investment aid only after a detailed verification, following the opening of the procedure provided for in Article 88(2) of the Treaty, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effect on trade between Member State' (footnotes omitted).

- (284) Regardless of the outcome of the tests under paragraph 68, to conclude on the compatibility of the aid measures under the 2007 Guidelines, the Commission must determine whether the positive effects of the aid outweigh the negative, where it has doubts in that regard ⁽¹²¹⁾.
- (285) The Commission notes that Poland awarded the grant in April 2012 and the tax exemption in February 2013. It is, therefore, appropriate to analyse the factual circumstances and available data as they stood at that time.

6.2.6.1. Regional benefits

- (286) The Commission notes that the Project brings a substantial positive contribution to regional development, which is the purpose of regional State aid such as the aid measures under examination. In particular, the Commission notes the following benefits of the Project, which could have been foreseen at the time the aid measures were awarded:
- (a) the Project is situated in an 'a' area, which, for 2007-2013, had a GDP per capita of only 47.52 % of the EU-25 average. Moreover, the specific area in which the Project is located is even more disadvantaged than the area as a whole, and, in the period preceding the investment, had an unemployment rate of 21.6 %, 46 % of which were long-term unemployed (recital (135));
 - (b) the Project results in the creation of approximately 150 direct jobs, including positions for highly qualified professionals, as well as the creation of indirect jobs and business opportunities for suppliers and collaborators (recitals (148) to (157), (165), (168), and (211)). PCC's working conditions notably include training opportunities for staff (recital (147)). PCC cooperates with universities and student communities (recital (137));
 - (c) PCC's research and development activities bring innovation to the area and the industry, knowledge spillovers, and the implementation of new processes and organisational solutions being implemented, including in MCAA technology. The results of PCC's research activities have been made available as part of an intensive cooperation with local educational institutes, graduates and students (recitals (138), (151), (155), (158), (160), (163), (164), (166), and (212));
 - (d) the investment in the Project incentivises collateral investments and entrepreneurship in the region by other firms (recitals (138), (158), (159), (161), and (162));
 - (e) the investment creates significant synergies with other plants in the PCC Group, which helps to reduce electricity consumption and CO₂ emissions, and avoid the transport of hazardous materials by road (recitals (139), (154), (164), (166), and (213)); and
 - (f) the Project results in significant tax transfers to the public budget, improvement in the industrial infrastructure in the area, benefit to local businesses, reduction in unemployment, and improvement of regional, national, and international cooperation (recitals (141), (148), (159), (162), and (163)).

6.2.6.2. Potential negative effects: overcapacity

- (287) The Commission notes that the Complainant claims that the Project targeted a market in overcapacity (recital (51)).
- (288) To assess whether the Project targeted a market in overcapacity, and, if so, the impact that would have on the balancing test, the relevant product and geographic markets must, first, be established.

6.2.6.2.1. Relevant product market

- (289) The Commission notes that the Complainant claims that the relevant product market is the market for UP MCAA (recital (51), and recitals (135) and (136) of the Opening decision), while Poland and PCC claim that it is the market for MCAA, as a whole (recitals (105) to (108), and (209)).

⁽¹²¹⁾ Judgment of the General Court of 10 July 2012, *Smurfit Kappa v Commission*, T-304/08, EU:T:2012:351, paragraphs 89 to 91.

- (290) The Commission recalls that paragraph 69 of the 2007 Guidelines states 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)’ (emphasis added). The Commission, therefore, considers that, if either the consumer or the producer considers the various purity classes of MCAA to be substitutable, they should be considered to form part of the same product market.
- (291) The Commission notes, firstly, that the various market reports provided by Poland (recitals (217) to (219)) do not distinguish between purity classes, but, rather, treat the MCAA market as a whole. Moreover, the market information provided by the Complainant during the preliminary examination phase (see recital (26) of the Opening decision) does not distinguish between purity classes, but refers to the MCAA market, as a whole. In its previous case practice, the Commission found that there does not appear to be sufficient indications that different purity classes justify segmentation of the product market and considered the MCAA market as a whole ⁽¹²²⁾.
- (292) Concerning the demand side, the Commission notes that the Complainant submits that there are at least two distinct markets for MCAA products: one for the two highest levels of purity, and one for the two lowest levels of purity (recital (136) of the Opening decision), while PCC claims that the use of MCAA purity grade depends on choices made by the clients, rather than limitations related to its characteristics, price, and intended use (recital (105)). The Commission notes that the general uses of MCAA (recital (21)) are largely the same, irrespective of purity. For some specific uses of MCAA, customers may prefer a higher purity grade.
- (293) In any event, concerning the supply side, the Commission notes that the Complainant, Nouryon (formerly Akzo Nobel), and PCC all have full flexibility through their production installations to produce MCAA of all purity classes (recital (106)). It appears, therefore, that, from the supply side, the different purity grades of MCAA should be considered as substitutes. As a result, the Commission concludes that, in light of the high degree of supply side substitutability, and the absence of significant indicators of a lack of demand-side substitutability, it is not appropriate to further divide the market for MCAA, and that the relevant product market is that of MCAA, regardless of purity grade.

6.2.6.2.2. Relevant geographic market

- (294) The Commission notes that the Complainant claims that the EEA is the relevant geographic market (recital (51)), while Poland and PCC claim that it is at least the area covering the EEA, North America, and South America (recitals (109) to (112), and (209)).
- (295) The Commission notes that its previous case-practice is inconclusive in this regard. While in its decision concerning a merger between Akzo and Nobel Industries of 1994 ⁽¹²³⁾, the Commission found it appropriate to examine the Western European market for MCAA, in 2020, the Commission noted that that market may no longer be relevant and left the definition of the geographic market for MCAA open ⁽¹²⁴⁾.
- (296) In the first place, the Commission notes that the Complainant, itself, which is based in the Union, seems to be a major exporter to at least the North and South American markets (recital (111)). This appears to contradict its claim that the market is limited to the EEA.

⁽¹²²⁾ Commission Decision C(2004) 4876 final of 19 January 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement, Case No COMP/E-1/37.773 – MCAA (OJ L 353, 13.12.2006, p. 12, <http://data.europa.eu/eli/dec/2006/897/oj>); Commission Decision of 10.01.1994 in Case No. IV/M.390 – AKZO / Nobel Industries, paragraph 12; Commission Decision C(2020) 4294 final, of 23.06.2020, in Case M.9756 – Nouryon / CP Kelco, paragraph 42.

⁽¹²³⁾ Commission Decision of 10.01.1994 in Case No. IV/M.390 – AKZO / Nobel Industries, paragraph 13.

⁽¹²⁴⁾ Commission Decision C(2020) 4294 final, of 23.06.2020, in Case M.9756 – Nouryon / CP Kelco, paragraphs 50 – 52.

- (297) The Commission notes that there appears to be strong trade in MCAA between Europe and the USA. The 2011 SRI Report notes that ⁽¹²⁵⁾, in 2010, 43 % of US consumption of MCAA came from imports, of which Germany supplied 69 % and the Netherlands supplied 24 % ⁽¹²⁶⁾. There is also evidence that there is significant trade between Europe and the rest of North America. The 2011 SRI Report indicates that Canada – which did not have any domestic producers of MCAA – imports from Sweden, the Netherlands, and Germany ⁽¹²⁷⁾, while Mexico has also traditionally imported from Germany ⁽¹²⁸⁾. In addition, Central and South American countries also appear to import significant amounts of MCAA from Europe. For example, in 2010, 34 % of Argentinian imports were from Germany, while Brazil and Colombia also imported MCAA ⁽¹²⁹⁾.
- (298) As Poland and PCC indicate (recitals (112) and (209)), there may also be some merit to arguing that the geographic market is even broader than Europe and the Americas. For example, the 2011 SRI Report notes that, in 2006, most imports to Western Europe were from Japan (41 %) and India (39 %), while, since 2008, almost all imports were from India; such imports to Western Europe, however, remain quite marginal. In 2010, much of the Western European exports were directed to the USA, Argentina, and South Africa ⁽¹³⁰⁾. The Tecnon Orbichem report, meanwhile, seems to suggest that the MCAA market is a global market ⁽¹³¹⁾. As noted by PCC and Poland (recitals (112) and (209)), Asian manufacturers may focus their attentions outside of the European and American markets. It is clear, however, that there appears to be stable trade between at least Europe and the Americas in MCAA.
- (299) The Commission concludes that the market for MCAA is not limited to the EEA. The Commission notes, however, that, it does not need to conclude on the precise relevant geographic market (beyond the fact that such relevant market is broader than the EEA), in order to carry out its assessment, because the degree to which the relevant geographic market extends beyond the EEA does not have a material impact on the results of the Commission's analysis of the relevant market trends (recitals (301) to (305)).

6.2.6.2.3. Market trends

- (300) In its complaint, the Complainant argued that the market for MCAA suffers from overcapacity, and that the Project would add to that overcapacity.
- (301) The Commission, first, notes that the data provided by the Complainant (see Opening decision, recital (26)) do not support the claim of structural overcapacity on the MCAA market in the years preceding PCC's investment decision. Rather, the figures presented show a market with relatively stable demand (subject to the immediate effects of the financial crisis of 2008), a relatively high and stable level of exports from the Union to third countries, and imports at very low levels. Production levels in Europe remained stable in proportion to overall capacity. The Commission notes that the fact that demand remains below absolute production capacity is not, as such, an indication of structural overcapacity, notably in light of the fact, as stressed by PCC and Poland, that effective capacity is lower than nameplate capacity (recitals (130) and (224)) ⁽¹³²⁾. Similarly, the circumstance that European demand, as such, was lower than effective production or capacity is not a sign of structural overcapacity, given that a significant part of the European production was exported annually, at a relatively stable level. The Commission, therefore, does not consider that the data provided by the Complainant are evidence of a market in overcapacity at the time when PCC undertook its investment.
- (302) With regard to the claim that the Project would add to overcapacity, the Commission, first, notes that, as mentioned above, the market was not characterised by structural overcapacity prior to the investment. The Commission, however, assessed whether the investment could create overcapacity.

⁽¹²⁵⁾ Page 16.

⁽¹²⁶⁾ The Complainant is located in Germany, while Nouryon (formerly Akzo Nobel) is located in the Netherlands.

⁽¹²⁷⁾ Page 18.

⁽¹²⁸⁾ Page 20. For the period 2001-2006, 70 % of Mexican imports came from Germany, though by 2010 58 % of imports were from India.

⁽¹²⁹⁾ 2011 SRI Report, page 21.

⁽¹³⁰⁾ Page 25.

⁽¹³¹⁾ Page 59.

⁽¹³²⁾ This is corroborated by the Tecnon Orbichem Report, which indicates that effective capacity could be assumed to be 90-95 % of nameplate capacity, or less.

- (303) The Commission recalls that the Project was designed to have a nameplate annual production capacity of 42 kt (recital (18)). Its actual production capacity, however, is estimated to be [34 – 40] kt/yr (recitals (130) and (224)). It is correct that, local demand and exports remaining equal, this would add substantial capacity to the market. As highlighted by PCC and Poland, however, the addition of capacity must be assessed in the light of prospective market demand at the time of the investment ⁽¹³³⁾.
- (304) The independent reports supplied by Poland, which were available at the time the aid measures were granted, provide forecasts for 2015. The 2011 SRI Report indicates that, between 2010 and 2015, there would be an absolute increase in annual MCAA consumption in all key markets, namely an increase of [14-16.5] kt in Europe alone, [18-22] kt in Europe and the USA combined, [20-24] kt in Europe and North America combined, [22-27] kt in Europe and the Americas, in total, and [150-180] kt in the world (recital (218)). This translates into an expected positive CAGR for 2010-2015, based on volume, of [1.4-1.6] % for Europe, [1.4-1.6] % for Europe and the USA, [1.4-1.6] % for Europe and North America, [1.4-1.6] % for Europe and the Americas, and [3.2-3.7] % for the world.
- (305) The Tecnon Orbichem Report, meanwhile, shows forecast data for the years 2010 to 2015, which indicate an increase in MCAA consumption, by volume, per annum of [14-15.2] kt in Europe, [22-26] kt in Europe and North America, [30-33] kt in Europe and the Americas, and [90-105] kt in the world (recital (219)). This translates into an expected positive CAGR for 2010-2015 of [1.3-1.5] % for Europe, [1.4-1.6] % for Europe and North America, [1.7-1.9] % for Europe and the Americas, and [2.6-2.8] % for the world. That same report indicates a positive CAGR over the five years 2010-2014 of [1.2-1.4] % for Europe, [1.4-1.6] % for Europe and North America, [1.6-1.9] % for Europe and the Americas, and [2.7-3] % for the world.
- (306) The Commission notes that market growth projections at the time the aid measures were awarded were necessarily based on estimates. The Commission recalls that, even though the reports noted at recitals (304) and (305) already predicted market growth, other reports were even more optimistic, in that regard. Reports prepared for PCC at the time of the investment decision, for example, indicated an even higher growth expectation of [1.9-2.3]-[3-3.6] % for the MCAA market in Europe and North America for 2010-2015, as well as similar growth rates for the markets for its downstream products (recital (220)).
- (307) The Commission also notes that, at the time PCC undertook the Project, the MCAA market was seen as attractive for investment, since both the Complainant and Akzo Nobel announced investments in increasing their production capacity in the years preceding and following the start of works on the Project (recitals (132) and (223)). This, therefore, confirms that the markets for MCAA and its downstream products were expected to grow and to absorb the production capacity that was added to the market (recitals (129), (131), (133), (133), and (217) to (220)).
- (308) Consequently, in light of the considerations set out at recitals (301) to (307), the Commission considers that, regardless of which geographic market is assessed, demand for MCAA was expected to grow in the years following the investment. When the aid measures were awarded to PCC, therefore, the MCAA market was not in absolute decline or structural overcapacity, and, in view of the forecast of market growth, supported by evidence, was not expected to be in absolute decline or structural overcapacity for the future, also taking into account the capacity created by the Project.
- (309) Finally, in the balancing of the positive and negative effects of the aid, the Commission notes that the Complainant and Akzo Nobel had significant market shares, regardless of the region concerned. The 2011 SRI Report indicates that, in 2010, the Complainant and Akzo Nobel made up approximately 97 % of the production capacity in Europe, 74 % of Europe and North America, and 73 % of Europe and the Americas. The dominance of those two market players was also recognised in the Tecnon Orbichem report, which described Akzo Nobel as the 'globally

⁽¹³³⁾ The Commission notes that, in the Chemdata International 2018 report of the European Chemical Industry Council ('CEFIC') (Facts & Figures of the European chemical industry) (footnote 73), it is stated that '[i]n 2009, sales revenue [in the chemicals industry] lost more than one fifth of its original value of 2008. The year 2010 was the year of the recovery, and the chemicals sector has been following a gradual upturn...'

leading player', and the Complainant as the 'second largest player'. That report indicated that, for the period 2012-2013 (when the aid measures to the Project were awarded), the Complainant and Akzo Nobel were projected to have combined shares of 92 % of the European market, 73 % of the European and North American market, and 71 % of the market for Europe, North America and South America. The Commission notes that the Complainant and Akzo Nobel had historically ⁽¹³⁴⁾ operated a cartel in the MCAA market (recital (125)). The Project enabled PCC to enter the MCAA market, which had previously been dominated by the duopoly of the Complainant and Akzo Nobel. PCC's entry to the market, therefore, had a real potential to improve competition conditions for MCAA customers (recitals (125), (126), and (215)).

6.2.6.3. Results of the balancing test

- (310) The Commission, therefore, notes that, at the time PCC undertook and was granted aid for the Project, the MCAA market was not in absolute decline, and was projected to grow in the short term. This is reflected in independent reports contemporaneous to the period when the aid measures were granted, and is evidenced by the fact that other market players were investing in additional production capacity at the time. The Project not only brought significant benefits to the region, but also improved market conditions by allowing a new entrant to the duopolistic MCAA market. The Commission notes that the incumbent duopolists had previously operated a cartel in the MCAA market.
- (311) The Commission, therefore, concludes that the positive effects of the aid measures outweigh the negative effects that those measures might have on competition and trade, and that the aid measures would not result in unacceptable distortions of competition.

6.2.7. Conclusion on compatibility with the 2007 Guidelines

- (312) The Commission concludes that the aid measures comply with the per se compatibility criteria of the 2007 Guidelines and do not trigger the need for an in-depth assessment pursuant to paragraph 68 of those guidelines (recital (283)). The Commission also concludes that the positive effects of the aid outweigh the negative (recital (311)). The Commission, therefore, concludes that the aid measures are compatible with the internal market on the basis of Article 107(3), point (a), of the Treaty, as interpreted by the 2007 Guidelines.
- (313) As the Commission concludes that the aid measures are compatible under the 2007 Guidelines, there is no need to assess whether they meet the criteria laid down in other bases for compatibility, such as Regulation 800/2008.

7. CONCLUSION

- (314) The Commission finds that the grant and the tax exemption granted by Poland to PCC in respect of the Project are compatible with the internal market on the basis of Article 107(3), point (a), of the Treaty, as interpreted by the 2007 Guidelines.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Poland has implemented for PCC, amounting to a maximum of PLN 95 981 681 (EUR 23 028 787), in discounted value, is compatible with the internal market within the meaning of Article 107(3), point (a), of the Treaty on the Functioning of the European Union.

⁽¹³⁴⁾Article 1 of the Cartel decision indicates that companies in the Akzo Nobel group had taken part in the cartel between 1 January 1984 and 7 May 1999, Hoescht AG had taken part between 1 January 1984 and 31 June 1997, and Clariant AG had taken part between 1 July 1997 and 7 May 1999 (Hoescht and Clariant being predecessor companies of the Complainant).

Article 2

This Decision is addressed to the Republic of Poland.

Done at Brussels, 23 January 2025.

For the Commission
Teresa RIBERA
Executive Vice-President
