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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Emil Frey Holding AG
Badenerstraße 600
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Switzerland

Subject: **Case M.10745 - EMIL FREY / FCA CENTRAL AND EASTERN EUROPE / FIAT CHRYSLER AUTOMOBILES CR / FIAT CHRYSLER AUTOMOBILES SR**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 27 June 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which (i) Emil Frey Automobil SR s.r.o (Slovakia), (ii) Emil Frey Automobil ČR s.r.o. (Czech Republic) and (iii) Emil Frey Automobil Holding Kft. (Hungary), subsidiaries of the Email Frey Group* (Switzerland) (together "Emil Frey"), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of (i) Fiat

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and 'common market' by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

* Should read: "Emil Frey Group".

Chrysler Automobiles SR, s.r.o. (Slovakia), (ii) Fiat Chrysler Automobiles ČR s.r.o. (Czech Republic), and (iii) FCA Central and Eastern Europe Ltd. (Hungary) (together the "Target Companies") by way of purchase of shares (the "Transaction").[3] Emil Frey is designated hereinafter as the "Notifying Party" and, together with the Target Companies, as the "Parties".

1. THE PARTIES

(2) Emil Frey Automobil s.r.o (Slovakia), (ii) Emil Frey Automobil s.r.o. (Czech Republic) and (iii) Emil Frey Automobil Holding Kft. (Hungary), are all controlled by Emil Frey Holding AG (Switzerland). Emil Frey Holding AG and its subsidiaries together constitute the Emil Frey Group ("Emil Frey Group").

(3) Emil Frey Group is a worldwide player in car distribution. Emil Frey is already importer and distributor of the Stellantis brands Citroën, DS, Peugeot, Opel in the Czech Republic and in Slovakia; and of the Stellantis brands Citroën, Peugeot, and DS in Hungary.

(4) The Target Companies are currently controlled by FCA Italy S.p.A., belonging to the Stellantis group.

(5) The Target Companies' core business is the wholesale distribution of new vehicles, accessories, spare parts and aftersales support of the Stellantis brands Alfa Romeo, Fiat, Fiat Professional, Jeep and Abarth in the Czech Republic, Hungary and Slovakia.

2. THE OPERATION

(6) The concentration consists in the acquisition of sole control by Emil Frey over the Target Companies through the acquisition of 100% of the share capital and voting rights from FCA Italy S.p.A. (Italy). The Transaction will be implemented by way of a share purchase agreement signed 1 April 2022. In light of the above, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

(7) The concentration represents a combination, under one roof, of the wholesale distribution of all Stellantis brands currently distributed in the relevant Member States via different (exclusive) channels. Emil Frey is already importer and distributor of the Stellantis brands Citroën, DS, Peugeot, Opel in the Czech Republic and in Slovakia; and of the Stellantis brands Citroën, Peugeot, DS in Hungary. The brands currently distributed by the Target Companies (Alfa Romeo, Fiat, Fiat Professional, Jeep and Abarth) are also part of the Stellantis brands. As the result of the Proposed Transaction, the Stellantis brands will be distributed by the same company. The combination corresponds to Stellantis' Europe-wide strategy to align the market distribution models across the Stellantis brands. Therefore, for the Czech Republic, Hungary, and Slovakia, Stellantis intends to transfer the remaining Stellantis brands distribution from a wholly owned subsidiary to ownership under an independent importer, *i.e.*, Emil Frey Group, which is already representing other Stellantis brands in these markets.

[3] Publication in the Official Journal of the European Union No C 255, 4.7.2022, p. 11.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Emil Frey Group: […]; the Target Companies: […]).[4] Both of them have an EU-wide turnover in excess of EUR 250 million (Emil Frey Group: […]; the Target Companies: […]), but not each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(9) The Transaction concerns primarily the wholesale and, to a lesser extent, the retail distribution of light commercial vehicles ("LCVs") in Czech Republic (wholesale and retail), Hungary (only wholesale) and Slovakia (only wholesale).

(10) On the market of the wholesale distribution of new LCVs, the Parties distribute the following brands per country:

(a) Emil Frey

- The Czech Republic: Peugeot, Citroën, Opel, DS, […]
- Hungary: Peugeot, Citroën, DS, […]
- Slovakia: Peugeot, Citroën, Opel, DS

(b) The Target Companies

- The Czech Republic: Fiat Professional and Jeep
- Hungary: Fiat Professional and Jeep
- Slovakia: Fiat Professional and Jeep

(11) On the market for the retail distribution of new passenger cars ("PCs") and/or LCVs, Emil Frey distributes the following brands per country:[5]

- The Czech Republic: Kia, Subaru, Suzuki, Toyota

(12) The Transaction gives rise to a number of horizontal overlaps and vertical relationships between Emil Frey and the Target Companies, and in particular:[6]

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4 Turnover calculated in accordance with Article 5 of the Merger Regulation.

5 Emil Frey has very limited PC and LCV retail activities also in Hungary. As the Parties' activities do not lead to vertically affected markets between wholesale and retail distribution of PC and/or LCV in Hungary, this vertical relationship is not further assessed in this decision. For the avoidance of doubt, Emil Frey is not active in PC and LCV retail distribution in Slovakia. The Target Companies are not active at the retail level.

6 The Parties' activities further overlap in the markets for wholesale distribution of non-original equipment spare parts for PCs and LCVs in the Czech Republic, Hungary and Slovakia, although with minimal market shares. As the Parties' activities do not lead to affected markets in wholesale

(a) horizontal overlaps on the potential markets for (i) wholesale and (ii) retail distribution of new PCs and/or LCVs (including the narrower potential markets for (a) wholesale distribution of new PCs and LCVs and (b) wholesale distribution of new LCVs (or PCs) only) in the Czech Republic, Hungary and Slovakia; and

(b) a vertical relationship between the Parties' activities on the narrower market for wholesale distribution of new LCVs (upstream) and Emil Frey's activities on the narrower market for retail sale of new LCVs (downstream) in the Czech Republic and Hungary.

4.1. Wholesale distribution of new PCs and/or LCVs

4.1.1. Product market definition

(13) At the wholesale level, distributors or importers distribute vehicles to retailers. The wholesale function is often carried out by subsidiaries of the vehicle manufacturers themselves or by independent distributors, although the latter have to ensure consistency with the central marketing strategies developed by the manufacturers.[7]

(14) The Commission has in previous decisions[8] defined a separate product market for the wholesale distribution of PCs and LCVs. Although the Commission has distinguished in some precedents between the wholesale distribution of PCs, on the one hand, and LCVs, on the other hand, it has ultimately left open the precise product market definition.[9] In any case, the Commission has found that, at the wholesale level of distribution, a further segmentation within PCs and LCVs based on types of vehicles (*i.e.* distinguishing between PC segments A, B, C, etc. and Small LCVs, Medium LCVs, etc.) would not be appropriate since manufacturers distribute model ranges which cover vehicles across the different categories and both importers and retailers of a given brand offer typically all or a wide range of the vehicles offered by that brand.[10]

(15) The Notifying Party agrees with the Commission's previous segmentation.[11]

(16) The majority of competitors responding to the Commission's market investigation agree that, at the wholesale level of distribution, a distinction of PCs based on price, quality/features and intended use (e.g. mini cars, small cars, etc.) is not necessary.[12] The majority of competitors also agree that a further segmentation for LCVs according to the gross weight rating is not appropriate.[13]

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distribution of non-original equipment spare parts for PCs and LCVs, these markets are not further assessed in this decision.

7 Case COMP/M.8449 – *Peugeot/Opel*, para. 28. See also cases COMP/M.6403 – Volkswagen/KPI Polska/Skoda Auto Polska/VW Bank Polska/VW Leasing Polska (2011); COMP/M.5250 – Porsche/Volkswagen (2008); COMP/M.2832 – General Motors/Daewoo (2002).

8 Case COMP/M.9730 – *FCA/PSA*, paras 1630 et seq. See also cases COMP/M.5250 – *Porsche/Volkswagen*; and COMP/M.2832 – *General Motors/Daewoo Motors*.

9 Cases COMP/M.6403 - Volks*wagen/KPI Polska/Skoda Auto Polska/VW Bank Polska/VW Leasing Polska*; COMP/M.182 - *Inchcape/IEP*, para 7; COMP/M.2832 – *General Motors/Daewoo Motors*.

10 Case COMP/M.9730 – *FCA/PSA*, para. 1630.

11 Form CO, para. 54.

12 Non-confidential responses to Questionnaire 1 (competitors), question 7.

13 Non-confidential responses to Questionnaire 1 (competitors), question 8.

(17) In any event, for the purpose of this decision the Commission considers that the exact product market definition between (i) wholesale distribution of both PCs and LCVs and (ii) wholesale distribution of PCs, on the one hand, and LCVs, on the other hand, can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible product market definition.

(18) For the purpose of this decision, the Commission will analyse the effects of the Transaction on the basis of a product market limited to the wholesale distribution for LCVs only, as this is the only potential product market in which affected markets would arise.

4.1.2. Geographic market definition

(19) The Commission has previously left open whether the market or markets for wholesale distribution of new PCs and/or LCVs is EEA-wide or national in scope[14].

(20) The Notifying Party submits that the market for wholesale distribution of new PCs and/or LCVs is at least national in scope.[15]

(21) The result of the market investigation seems to indicate national markets for the wholesale distribution of new PCs and/or LCVs in the Czech Republic, Hungary and Slovakia. While the vast majority of both competitors and customers expressing a view agreed that customer preferences do not differ significantly across Member States,[16] the majority of competitors and customers expressing a view also pointed to the existence of significant price differences between the Member States.[17] Moreover, the vast majority of competitors expressing a view indicated to sell only or almost only to retailers located in the Member State for which they have been appointed as distributor.[18] Similarly, customers unanimously confirmed to purchase only from wholesalers located in the same Member State.[19] Finally, the vast majority of competitors indicated to operate under national distribution agreements with respective OEMs, even if certain functions of the wholesalers may be centralized at European level, such as procurement and logistics, warehousing, and back-office functions including HR, IT, financing and others.[20]

(22) In any event, for the purpose of this decision the Commission considers that the exact geographic market definition between (i) EEA-wide and (ii) national markets can be left open, as the Transaction does not give rise to serious doubts as to its

14 See case COMP/M.9730 – *FCA/PSA*, paras 1628 and 1632. See also cases COMP/M.8449 *Peugeot/Opel*, para. 33; COMP/M.6958 *CD&R/We buy any car*; COMP/M.5250 *Porsche/Volkswagen*; COMP/M.182 *Inchape/IEP*.

15 Form CO, para. 83.

16 Non-confidential responses to Questionnaire 1 (competitors), question 12 and non-confidential responses to Questionnaire 2 (customers (retailers and B2B)), question 11.

17 Non-confidential responses to Questionnaire 1 (competitors), question 11 and non-confidential responses to Questionnaire 2 (customers (retailers and B2B)), question 10.

18 Non-confidential responses to Questionnaire 1 (competitors), question 10.

19 Non-confidential responses to Questionnaire 2 (customers (retailers and B2B)), question 9.

20 Non-confidential responses to Questionnaire 1 (competitors), question 13.

compatibility with the internal market under any plausible geographic market definition.

(23) For the purpose of this decision, the Commission will analyse the effects of the Transaction on a national level, as affected markets would arise only at national level.

4.2. Retail distribution of new PCs and/or LCVs

4.2.1. Product market definition

(24) At the retail level, vehicles are sold to final customers by independent or vertically integrated retailers.[21]

(25) The Commission has previously considered a distinction between the retail distribution of PCs and LCVs. Similarly to the wholesale distribution, it found that further sub-segmentation is not appropriate.[22]

(26) The Notifying Party agrees with the Commission's previous segmentation.[23] The market investigation did not produce any evidence invalidating the Commission's decisional practice.

(27) The Commission considers that for the purposes of this decision, the exact market definition can be left open between retail distribution of both PCs and LCVs or separately for each of PCs and LCVs as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

(28) For the purpose of this decision, the Commission will analyse the effects of the Transaction on the basis of the narrowest possible product market definition, i.e., retail distribution for LCVs only, as this is the only potential product market in which (vertically) affected markets would arise.

4.2.2. Geographic market definition

(29) The Commission has so far left open whether the retail distribution markets are EEA-wide, national or local in scope.[24]

(30) The Notifying Party submits that the market for retail distribution of new PCs and/or LCVs is at least national in scope.[25]

(31) The result of the market investigation seems to indicate national markets for the retail distribution of new PCs and/or LCVs in the Czech Republic, Hungary and Slovakia. A majority of competitors having expressed a view stated that end-

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21 Case COMP/M.8449 – *Peugeot/Opel*, para. 34.

22 Cases COMP/M.9730 – *FCA/PSA*, paras 1627 and 1630; and COMP/M.8449 – *Peugeot/Opel*, para. 36. See also cases COMP/M.7747 – PGA/MSA; COMP/M.6403 – Volkswagen/KPI Polska/Skoda Auto Polska/VW Bank Polska/VW Leasing Polska.

23 Form CO, para. 57.

24 See case COMP/M.9730 – *FCA/PSA*, paras 1628 and 1632. See also cases COMP/M.8449 *Peugeot/Opel*, para. 37; COMP/M.6958 *CD&R/We buy any car*; COMP/M.5250 *Porsche/Volkswagen*; COMP/M.182 *Inchape/IEP*.

25 Form CO, para. 84.

customer preferences differ significantly between Member States, driven, e.g., by local purchase power differences or national brand preferences.[26] One customer stated in this regard that "*[c]ustomer needs and preferences vary significantly from country to country*" due to geographic and climate conditions requiring different vehicle equipment standards, national preferences for car body shapes, or national brand preferences.[27]

(32) The Commission considers that for the purposes of this decision, the exact market definition can be left open between EEA-wide, national or local markets, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

(33) For the purpose of this decision, the Commission will analyse the effects of the Transaction both on a national and on a local basis, as (vertically) affected markets would arise only on the national and local levels.

5. COMPETITIVE ASSESSMENT

(34) The Transaction gives rise to the following affected markets:

(a) horizontally affected markets for the wholesale distribution of new LCVs in the Czech Republic, Hungary and Slovakia, and

(b) vertically affected markets between wholesale distribution of new LCVs (upstream) and retail distribution of new LCVs (downstream) in the Czech Republic.

5.1. Analytical framework

(35) According to the Merger Regulation and the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings[28] ("Horizontal Merger Guidelines"), concentrations between actual or potential competitors in a relevant market may significantly impede effective competition, if they give rise to non-coordinated or coordinated effects. Non-coordinated effects may significantly impede effective competition through the creation or strengthening of the dominant position of a single firm, or through the elimination of important competitive constraints on one or more firms, which consequently would allow those firms to have increased market power without resorting to coordinated behaviour.[29]

(36) The legal test for the assessment of vertical effects of a merger is set out in the Merger Regulation and the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings[30] ("Non-horizontal Merger Guidelines"), according to which input or customer foreclosure effects may occur where actual or potential rivals'

26 Non-confidential responses to Questionnaire 1 (competitors), question 12.1.
27 Non-confidential responses to Questionnaire 2 (customers (retailers and B2B)), question 11.1.
28 OJ C 31, 05.02.2004.
29 Horizontal Merger Guidelines, paragraphs 22-25.
30 OJ C 265, 18.10.2008.

access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[31]

5.2. Affected markets

(37) The Notifying Party has identified horizontally affected markets only in the potential narrow market for the wholesale distribution of new LCVs on a national basis, in the Czech Republic, Hungary and Slovakia.

Table 1 – Overview of the Parties' market shares giving rise to horizontally affected markets in wholesale distribution of new LCVs

	2019			2020			2021		
	EF	**FCA**	***Comb.***	**EF**	**FCA**	***Comb.***	**EF**	**FCA**	***Comb.***
Czech Republic	[20-30] %	[10-20] %	*[30-40] %*	[20-30] %	[10-20] %	*[40-50] %*	[20-30] %	[10-20] %	*[30-40] %*
Hungary	[10-20] %	[10-20] %	*[20-30] %*	[10-20] %	[10-20] %	*[20-30] %*	[10-20] %	[10-20] %	*[20-30] %*
Slovakia	[20-30] %	[20-30] %	*[50-60] %*	[30-40] %	[20-30] %	*[50-60] %*	[30-40] %	[20-30] %	*[50-60] %*

(38) Due to very limited activities of Emil Frey on the retail level, with two car dealerships in the Czech Republic, the Transaction technically gives rise also to vertically affected markets in the Czech Republic.[32] The Notifying Party's market share in retail distribution of new PCs and LCVs in the Czech Republic on a national basis would be minimal (PCs: [0-5]%; LCVs: [0-5]%), and even on a local basis for the city of Prague, where both dealerships of Emil Frey are located,[33] the Notifying Party's market share would remain below [0-5]% and, hence, significantly below 30% on any plausible segment for PCs or LCVs.

5.3. No competition concerns in horizontally affected markets

(39) *First*, the concentration represents a combination, under one roof, of the wholesale distribution of all Stellantis brands currently distributed in the relevant Member States via different (exclusive) channels. Emil Frey is already importer and distributor of the Stellantis brands Citroën, DS, Peugeot, and Opel in the Czech Republic and in Slovakia; and of the Stellantis brands Citroën, Peugeot, and DS in Hungary. The brands currently distributed by the Target Companies (Alfa Romeo, Fiat, Fiat Professional, Jeep and Abarth) are part of the Stellantis brands. As the result of the Transaction, the Stellantis brands will be distributed by the same company. The combination corresponds to Stellantis' Europe-wide strategy to align the market distribution models across the Stellantis brands. It reflects the concentration of brands that has already taken place at the manufacturing level with the PSA/FCA transaction[34].

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31 Non-horizontal Merger Guidelines, paragraph 18.

32 The Transaction does not give rise to vertically affected markets in Hungary, where combined shares remain below 30% on any market level, nor in Slovakia, where the Parties have no retail activities downstream.

33 As part of an estimated total of [100-150] dealerships in Prague.

34 See case M.9730 – *PSA/FCA*.

(40) The remedies undertaken in case COMP/M.9730 - *FCA/PSA* to solve the competition concerns identified due to, *inter alia*, the Stellantis brands' high combined market shares in the LCV segment (including for wholesale) are relevant to the assessment of the present transaction. In case M.9730, PSA committed to expand its existing cooperation with Toyota in relation to LCVs, in particular, by making available an important supplementary annual production capacity and supply of additional volumes of Toyota-branded LCVs at a reduced price (including discounts on the transfer price and on service parts and accessories). As a result, Toyota was able to reinforce its position in the wholesale distribution of LCVs significantly in all three Member States (Czech Republic: from [0-5]% (2019) to [10-20]% (1st trimester 2022); Hungary: from [5-10]% (2019) to [10-20]% (1st trimester 2022); Slovakia: from [0-5]% (2019) to [10-20]% (1st trimester 2022)).

(41) As a result, both the Parties' combined market shares and the share increment experience a continued downward trend since 2019. The Parties' combined share declined between 2019 and the 1st trimester 2022 to reach [30-40]% (Czech Republic), [10-20]% (Hungary), and [40-50]% (Slovakia). At the same time, the increment dropped from between [10-20]; and [20-30]; percentage points in 2019 (for Czech Republic, Hungary (both around [10-20]; percentage points) and Slovakia respectively), to below [0-5]; percentage points (Czech Republic) and below [5-10]; percentage points (Hungary) and even in Slovakia below [10-20] percentage points in the 1st trimester 2022. The Notifying Party submits that this downward trend of Stellantis' and, therefore, the Parties' shares will likely continue over time in the Central European region, due to said commitments.

(42) The market investigation confirmed a significant increase in all three Member States of wholesale distribution of LCV by Toyota over the past 12-24 months.[35] And, indeed, all market participants having expressed a view indicated that Toyota's upward trend can be expected to continue increasing Toyota's market share in LCV wholesale distribution in these Member States, with some of them stating in particular that Toyota's share will likely continue to increase to the detriment of Stellantis.[36]

(43) *Second*, the Parties continue to face competition from strong competing wholesalers of LCV, many of which are vertically integrated distribution arms of the manufacturers. This is the case for the Parties' top 6 competitors in the Czech Republic (Renault/Dacia CZ, Ford CZ, Porsche CR, Mercedes-Benz, Iveco and Toyota) and 4 out of the top 5 competitors in Hungary (Ford Közep, Renault Hungária, Toyota and Porsche Hungária) and Slovakia (Renault Slovensko, Porsche Slovakia, Toyota, and Mercedes-Benz). The Notifying Party submits that these integrated competitors have strong financial means backed by their parent companies, wide wholesale distribution networks and benefit from the internalisation of the ex-works margin.

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35 Non-confidential responses to Questionnaire 1 (competitors), question 37.1. For Hungary, respondents to the market investigation confirmed an increase of Toyota's share from [5-10]% in 2019 to [10-20]% in 2021, in line with the Parties' submission. For Czech Republic and Slovakia, respondents confirmed an increase of Toyota's share without being able to estimate the increase.

36 Non-confidential responses to Questionnaire 1 (competitors), question 37.2.

(44) The market investigation confirmed that vertical integration between the wholesale and the manufacturing levels is common and can provide competitive advantages contrary to downward integration between wholesale and retail levels.[37]

(45) For the reasons above, the Transaction will not give rise to serious doubts as to the compatibility of the concentration with the internal market. Market shares are below [30-40]% in Czech Republic and Hungary, and while market shares remain around [50-60]%in Slovakia, the remedies undertaken in case M.9730 – *PSA/FCA* were adopted to address horizontal effects created by the Parties' overlap and high combined market shares in the LCV segment (including for wholesale). As a result of these commitments' implementation, the Stellantis brands' market share in LCV, including on the wholesale level, is expected to decrease in the short term as can already be observed today.

5.4. No competition concerns in vertically affected markets

(46) The Transaction leads to a vertically affected market in the wholesale distribution of new LCVs (upstream) and retail distribution of new LCVs (downstream) in the Czech Republic.

(47) However, the Transaction will not give rise to serious doubts as to the compatibility of the concentration with the internal market as a result of this vertical relationship. Emil Frey's market shares in the retail sale of PCs and LCVs in the Czech Republic was below [0-5]%; in 2021 (based on the number of registrations of new PC and LCV). Moreover, even on a narrower geographic area (city of Prague, where Emil Frey has its only two car dealerships within the country) its share was less than [0-5]% (based on the number of local dealerships).[38]

(48) The Notifying Party argues that, despite the moderate combined shares on the national wholesale distribution level ([30-40]% in the Czech Republic, see Table 1 above), the Transaction cannot lead to vertical foreclosure concerns given the *de minimis* downstream market share of Emil Frey, and the presence of efficient competitors at the upstream level in the Czech Republic (e.g. Toyota).[39] Moreover, the Target Companies are not active at the retail level and, therefore, the Transaction does not lead to any share increment at the downstream level.

(49) The market investigation also did not give rise to any concerns with regard to this vertical relationship.

(50) The Commission considers that the Transaction cannot give rise to input foreclosure to the detriment of PC and LCV retailers, as not only the Notifying Party remains constrained by strong competitors of rival brands, but also by existing long-term supply agreements with retailers, the duration of which can be more than five years or be tacitly renewable unless terminated with a two-year notice period, as confirmed by respondents to the market investigation having

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37 Non-confidential responses to Questionnaire 1 (competitors), questions 22-24.

38 Form CO, para. 141. Emil Frey has two PC and LCV dealerships in the city of Prague (one dealing with Kia, Suzuki and Subaru vehicles, the other dealing with Toyota vehicles). The Notifying Party estimates the total number of PC and LCV dealerships in Prague at around [100-150].

39 Form CO, para. 139.

expressed a view.[40] The Notifying Party would also have no incentive to foreclose independent retailers in the downstream market, because (i) Emil Frey's own market share in retail distribution of new PC and LCV remains *de minimis* (less than [0-5]% nationally), hence depriving Emil Frey of the ability to step in at the retail level and take over significant volumes of foreclosed PCs and LCVs sales, (ii) Emil Frey's dealerships do not distribute Stellantis brands (but instead Kia, Suzuki, Subaru and Toyota), contrary to Emil Frey's wholesale entities, and would therefore require significant investments in store refurbishments, hence rendering such strategy less profitable, and (iii) Emil Frey remains bound by its contractual obligations vis-à-vis Stellantis to distribute Stellantis-branded vehicles in the Czech Republic to the largest possible number of customers.

(51) The Commission also considers that the Transaction cannot give rise to customer foreclosure to the detriment of rival wholesale distributors, given Emil Frey's *de minimis* share in the retail market (less than [0-5]% nationally and less than [0-5]% locally).

6. CONCLUSION

(52) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[40] Non-confidential responses to Questionnaire 2 (customers (retailers and B2B)), question 16.