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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10524 – MERCEDES BENZ / TOTALENERGIES / STELLANTIS / ACC**
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]

[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').

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Dear Sir or Madam,

(1) On 23 February 2022 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Mercedes-Benz AG ("Mercedes-Benz", Germany), Stellantis N.V. ("Stellantis", the Netherlands) and TotalEnergies SE ("TotalEnergies", France) will acquire within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation joint control of Automotive Cells Company SE ("ACC" or the "Target", France) by way of purchase of shares (the "Transaction").[3] Mercedes-Benz, Stellantis and TotalEnergies are designated hereinafter as the "Notifying parties" and, together with ACC, as the "Parties".

1. THE PARTIES

(2) Mercedes-Benz is an automotive original equipment manufacturer ("OEM") and dealer of motor vehicles, comprising passenger cars ("PCs") as well as light commercial vehicles ("LCVs") and heavy-duty vehicles, under the brands BharatBenz, Freightliner, FUSO, Mercedes-Benz, Setra, Thomas Built Buses and Western Star. Mercedes-Benz is part of the Daimler Group ("Daimler").

(3) Stellantis is an automotive OEM and dealer of motor vehicles, comprising PCs as well as LCVs, under the brands Abarth, Alfa Romeo, Chrysler, Citroën, Dodge, DS, Fiat, Fiat Professional, Jeep, Lancia, Opel, Peugeot, Ram and Vauxhall.

(4) TotalEnergies is an international integrated broad energy company active mainly in the oil and gas sector as well as in renewable energies. Its subsidiary Saft EV SAS ("Saft") designs, develops, and manufactures advanced industrial batteries for a wide range of civil and military applications.

(5) ACC develops, manufactures and supplies lithium-ion ("Li-ion") cells and modules mainly for the automotive industry. Electric batteries are composed of multiple modules, each consisting of a number of cells.[4] ACC is currently (pre-Transaction) jointly controlled by TotalEnergies (through Saft) and Stellantis.

2. THE CONCENTRATION

(6) The concentration consists of the acquisition of joint control by Daimler, Stellantis and TotalEnergies over the Target through the acquisition by Mercedes-Benz of [share capital of the JV] of the share capital and voting rights of the Target by means of a capital increase against subscription of new shares. Mercedes-Benz, Stellantis and Saft will thereafter hold [share capital of the JV]% of ACC's shares respectively.

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[3] Publication in the Official Journal of the European Union No C 102, 2.3.2022, p. 6.

[4] Form CO, paragraph 180.

2.1. Joint control

(7) Prior to the Transaction, Saft and Stellantis each hold [share capital of the JV] of the share capital and the voting rights of the Target, and currently jointly control it.[5] Post-Transaction, [management of the JV].

(8) The management of the Target will remain supervised by a Board of [management of the JV] Directors. Each of the Notifying parties will appoint [management of the JV] Directors. According to the Term-Sheet some decisions will be adopted unanimously by the Directors by reference to the Existing SHA [management of the JV]. Such decisions will only be approved following the joint agreement of Saft, Stellantis and Mercedes-Benz who, therefore, will jointly control the Target.

2.2. Full-functionality of the Target

(9) The Commission previously found that ACC constitutes a joint venture performing on a lasting basis all the functions of an autonomous economic entity (so-called full-function joint venture).[6]

(10) The Commission's previous finding is not altered by the joining of Mercedes-Benz as an additional shareholder. In particular, the JV will still have a market presence that goes beyond its parents' activities. In this regard, it is foreseen that the supply agreements with both Mercedes-Benz and Stellantis cover only part of ACC's total capacity.[7] The Notifying parties further submit that Daimler's and Stellantis' supply agreements will represent, at least in the near- to mid-term and by [year of production] in any event, a maximum of [percentage of production capacity]% of ACC's production capacity and that at least [percentage of production capacity]% of ACC's capacity will be used to address the needs of other OEMs. In addition, [market price and conditions].[8]

(11) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) and Article 3 (4) of the Merger Regulation.

3. UNION DIMENSION

(12) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Daimler: [turnover]; Stellantis: [turnover]; TotalEnergies: [turnover]; ACC: [turnover]). Three of them have an EU-wide turnover in excess of EUR 250 million (Daimler: [turnover]; Stellantis: [turnover]; TotalEnergies:

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[5] The management of ACC is supervised by a Board of [management of the JV] directors (the "Board"). [management of the JV] Directors are appointed among the candidates proposed by Saft and [management of the JV] Directors are appointed among the candidates proposed by PSA Automobiles S.A. ("PSA") / Opel Automobile GmbH ("Opel") (i.e. Stellantis). Under the existing shareholders' agreement signed on [date of signature] between Opel, PSA and Saft, a number of decisions shall be adopted unanimously by the Directors. This includes, in particular: [management of the JV]. These decisions can only be adopted following the joint agreement of Saft and Stellantis. Therefore, ACC is currently jointly controlled by Stellantis and Saft (itself solely controlled by TotalEnergies). The joint control of Saft and Stellantis over the Target has been confirmed by the Commission in its M.9479 PSA/SAFT/ACC decision.

[6] M.9479 – *PSA / SAFT / ACC*, paragraphs 8-11.

[7] Form CO, paragraphs 115 *et seq*.

[8] Form CO, paragraph 115.

[turnover]), 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 concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

(13) Batteries can be supplied in various forms or compositions, depending on the customer's requirements. In automotive and industrial applications, batteries are typically installed in the form of modules and packs. To put it simply, cells, modules and packs are units of battery components, whereby cells are the basic and packs the most complex units. A cluster of battery cells[9] make up a battery module,[10] and a cluster of modules make up a battery pack (also called battery system).[11]

(14) The Target operates in France and Germany and focuses on the development, manufacturing and supply of cells and modules (using the Li-ion chemistry only) on a large scale, *i.e.* designed for mass production mainly for the automotive industry. The Target does not manufacture battery packs (or systems). The cells and modules of the Target can be used for various applications in the automotive sector (PCs and LCVs) including Battery Electric Vehicles ("BEVs"), Plug-in Hybrid Vehicles ("PHEVs") and Mild Hybrid Electric Vehicles ("MHEVs") as well as 12V Starter, Lighting and Ignition ("SLI") batteries. The Target may also manufacture cells and modules for non-automotive applications (so-called industrial applications), and these activities will represent less than [percentage of production capacity]% of ACC's total capacity.

4.1. Manufacture and supply of battery cells and modules

4.1.1. Product market

4.1.1.1. The Commission's decisional practice

(15) In previous decisions,[12] the Commission has distinguished between "primary" (also known as disposable) and "secondary" (also known as rechargeable) batteries. Within rechargeable batteries, the Commission has previously differentiated the market into three separate product markets:[13] (i) portable batteries; (ii) heavy-duty industrial batteries; and (iii) automotive batteries.

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9 Battery cells are the basic units of Li-ion batteries consisting of separated cathode, anode and electrolytes.

10 Battery modules are assemblies of multiple cells in a frame combining a set number of cells to protect the cells from external shocks, heat or vibration.

11 Battery systems are assemblies of multiple modules managed by an electronic control unit that is called a battery management system. Such systems may entail ancillary equipment such as complementary thermal management, fire-detection and suppression systems, remote communication and diagnostic appliances. See, *e.g.*, M.5421 - *Panasonic/Sanyo*, paragraph 108.

12 M.8988 - *Energizer/Spectrum Brands (battery and portable lighting business)*; M.8425 - *Safran/Zodiac Aerospace*; M.7655 - *Berkshire Hathaway/the Duracell Business*; M.5421 - *Panasonic/Sanyo*; M.5227 - *Robert Bosch/Samsung/JV*; M.2705 - *Enersys/Invensys*; M.836 - *Gillette/Duracell*; M.9479 - *PSA / SAFT / ACC*.

13 M.5421 - *Panasonic/Sanyo*, paragraph 12.

(16) The Commission has considered, but ultimately left open, whether this market should be further segmented into the supply (i) of modules (consisting of a number of cells) or (ii) integrated into a battery pack (or system).[14]

(17) The Commission has also previously indicated a possible distinction for automotive batteries by cell technology (*e.g.*, Li-ion or NiMH[15]), which was ultimately left open.[16]

4.1.1.2. The Notifying parties' view

(18) The Notifying parties submit that the effects of the Transaction should be assessed on the narrowest-possible relevant market, *i.e.* the manufacture and supply of cells and modules (excluding battery systems), noting that most OEMs currently purchase cells or modules but do not purchase battery systems and rather do their own integration into battery systems.

(19) With regard to a possible segmentation according to their use for different applications, the Notifying parties submit that battery cells and modules for the automotive industry need to meet specific requirements (particularly in terms of volume, energy, density, etc.) which warrant a differentiation with other applications (*e.g.* industrial). The Target will generate almost its entire turnover supplying the automotive industry and, therefore, the Notifying parties submit that the effects of the Transaction should be assessed in (i) a separate product market for the manufacture and supply of battery cells and modules for automotive applications (PCs/LCVs),[17] and (ii) a separate product market for the manufacture and supply of battery cells and modules for other industrial clients (*i.e.* non-automotive).

(20) With regard to a possible segmentation according to the different technologies used for the manufacture of cells and modules, the Notifying parties submit that the effects of the Transaction should be assessed in a product market for the manufacture and supply of cells and modules for automotive applications without any further segmentation based on the technology. In this regard, the Notifying parties submit that, as recalled in the Commission's past decisions,[18] almost all cells and modules manufacturers use Li-ion technology and that Li-ion cells are expected to constitute the technology of choice for the next decade.[19] The Notifying parties submit that the other remaining technology (NiMH) is now marginal and is used only by a very limited number of manufacturers, and that therefore a distinction according to the technology used does not appear relevant.

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14 M.5421 - *Panasonic/Sanyo*, paragraph 116.

15 Nickel-metal hydride.

16 M.5421 - *Panasonic/Sanyo*, paragraph 116.

17 The Parties also submit that, in the automotive sector, there are technological evolutions that may result in a "cell to pack" approach where cells could be directly supplied to automotive OEMs. Therefore, cells and modules will be increasingly substitutable and there is, therefore, no need to retain two separate markets for cells and modules in the automotive sector.

18 See Cases M.5421 - *Panasonic / Sanyo* and M.5227 - *Robert Bosch / Samsung / JV*.

19 In the area of non-automotive applications, the Parties also propose a product market definition without distinguishing by the technology used. According to the Parties, from the demand point of view, lead-acid batteries are substitutable to electric batteries using other technologies and that, in any event, the Target will generate only a very limited part of its total turnover through sales to non-automotive clients.

4.1.1.3. Results of the market investigation and the Commission's assessment

(21) The majority of respondents to the market investigation confirmed the distinction between the manufacture and sale of battery cells and modules, on the one hand, and of battery packs or systems, on the other hand.[20] The majority of automotive customers of battery cells and modules responding to the market investigation further confirmed that a distinction by cell technology (*i.e.* between Li-ion and NiMH) is not warranted due to the marginal role that NiMH technology plays today. The results of the market investigation were inconclusive as to any possible further segmentation.

(22) In any case, as the activities of ACC in the market for the manufacture and supply of battery cells and modules for the automotive sector under any plausible product market definition or sub-segment (between modules and cells versus integrated battery packs, Li-ion versus NiMH batteries) will remain below 20%, the Commission considers that for the purposes of the present decision, the precise market definition can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any plausible product market definition.

(23) Since ACC will only be active in the manufacture and supply of battery cells and modules (excluding battery systems) using Li-ion technology, the Commission will analyse the market for the manufacture and supply of battery cells and modules (excluding battery systems) using Li-ion technology as the narrowest plausible product market leading to vertically affected markets.

4.1.2. Geographic market

(24) In previous decisions, the Commission had left the geographic definition open with regard to the markets for cells and modules, indicating that these could be worldwide or EEA-wide.[21]

(25) The Notifying parties consider that the markets for the manufacture and supply of battery cells and modules for the automotive sector and for the non-automotive sector should be assessed at worldwide level in light of both supply-side and demand-side considerations.[22] The Notifying parties therefore suggest conducting the assessment on potential worldwide markets for both automotive and non-automotive battery cells and modules. In any event, the Notifying parties also provided information for potential EEA-wide markets.

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[20] The market investigation also confirmed that fuel cell systems do not form part of the market for electric battery packs or cells and modules.

[21] M.5421 – *Panasonic/Sanyo*; M.7655 – *Berkshire Hathaway/the Duracell Business*; M.9479 - *PSA / SAFT / ACC*.

[22] The Parties submit that manufacturers are active on a global basis, production plants are mainly based in Asia, relative transport costs are low (around [percentage of purchase price]%), OEMs source on a worldwide basis (global Requests for Quotations ("RFQs")), etc.

(26) In this regard, the results of the market investigation were inconclusive, although a number of respondents provided elements which indicate potentially EEA-wide markets for the manufacture and supply of battery cells and modules.[23]

(27) The Commission considers that for the purposes of the present decision, it can be left open whether the markets for the manufacture and supply of battery cells and modules are worldwide or EEA-wide, since the activities of the Parties will remain below 20% and the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any plausible geographic market definition.

4.2. Manufacture and supply of passenger cars and light commercial vehicles

4.2.1. Product market

(28) In previous decisions, the Commission has considered separate markets for the manufacturing and supply of PCs on the one hand, and LCVs on the other hand.[24]

4.2.1.1. Passenger cars

(A) The Commission's decisional practice

(29) For PCs, the Commission has defined separate product markets for (i) mini cars, (ii) small cars, (iii) medium cars (iv) large cars, (v) executive cars, (vi) luxury cars (vii) sport cars, (viii) sport utility vehicles ("SUVs") and (ix) multipurpose vehicles.[25] The Commission further considered a segmentation of the SUV market by size into separate markets for (x) mini (A-SUVs) to (xiv) luxury (E-SUVs) SUVs.[26]

(30) The Commission previously considered, but ultimately left open, further segmentations by size and weight.[27]

(31) The Commission also previously considered, but ultimately left open, whether PCs overall or each vehicle segment described at paragraph (29) above should be further segmented by type of propulsion technology between vehicles with internal combustion engines ("ICE") and electric vehicles ("EVs").[28] Within EVs, a possible further segmentation exists on the basis of technology, between BEVs and hybrid electric vehicles ("HEVs").[29] The Commission has however based its competitive analysis in previous cases on the different PC segments (mini cars, small cars, etc.)

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[23] Such elements include regionally different taxes and subsidies, local content requirements and supply chain risks for non-EEA components.

[24] See, *e.g.*, M.8449 - *Peugeot / Opel*, paragraph 6; M.9360 - *Daimler / Geely / JV*, paragraph 14.

[25] See, *e.g.*, M.8449 - *Peugeot / Opel*, paragraphs 7-16; M.9360 - *Daimler / Geely / JV*, paragraph 15.

[26] M.9730 – *FCA / PSA*, paragraphs 1092-1097.

[27] See, *e.g.*, M.9479 - *PSA / SAFT / ACC*, paragraph 24.

[28] M.8449 - *Peugeot / Opel*, paragraphs 14-16; M.9360 – *Daimler / Geely / JV*, paragraph 16; M.9730 – *FCA / PSA*, paragraph 1099.

[29] M.9479 - *PSA / SAFT / ACC*, paragraph 25.

and, within EVs, separately on BEVs and HEVs as the narrowest plausible market segments.[30]

(B) The Notifying parties' view

(32) The Notifying parties argue that, given that the Commission has not ultimately decided whether such segments as mentioned at paragraph (31) above should be markets on their own, it can be held with respect to the Transaction that the relevant product market is that of PCs overall. In particular, they argue that there is no product characteristic on which consumer preferences or supplier technologies concentrate sufficiently to define an economically significant market narrower than an overall PCs market. In particular, the boundaries between the different segments by vehicle size are blurred by factors other than the size or length of cars (such factors include price, image and the amount of extra accessories) and OEMs either supply all kind of PCs or could enter into any segment of the PCs sector.

(33) The Notifying parties therefore submit that the effects of the Transaction should be assessed on a possible market for Low Emission Vehicles ("LEVs") (including BEVs, HEVs and, possibly, fuel cell electric vehicles ("FCEVs")[31]) and suggest to leave the product market definition open given that the competitive assessment would be unchanged.

(C) Results of the market investigation and the Commission's assessment

(34) Regarding a possible market for LEVs, the majority of suppliers of passenger cars responding to the market investigation indicated that FCEVs are not part of the same market as BEVs and HEVs. The results of the market investigation remained inconclusive regarding further possible segmentations.

(35) In light of the above, for the purposes of the present decision, the Commission considers that the exact market definition for the downstream market for the manufacture and supply of PCs and its potential sub-segments (between different types of propulsion technology and the further segmentation within EVs) can be left open, as the Transaction does not give rise to competition concerns under any plausible product market definition. The Commission will focus its assessment on the PC segment of EVs including its possible sub-segments (BEVs versus HEVs), since this is the only segment in which vertical effects could arise.

4.2.1.2. Light commercial vehicles

(36) The Commission's decisional practice has distinguished for the manufacture and supply of commercial vehicles between (i) light (LCVs), (ii) medium-size and (iii) heavy-duty commercial vehicles.[32] The Commission further segmented LCVs into

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30 M.8744 - *Daimler / BMW / Car Sharing JV*, paragraph 81.

31 The Parties consider that hydrogen electric vehicles, also named fuel cell electric vehicles are part of the same market as other LEVs (*i.e.* BEVs and HEVs). While FCEVs differ from other LEVs in that FCEVs produce electricity using a fuel cell powered by hydrogen (rather than drawing electricity from a battery), FCEVs use the same batteries as certain other LEVs. In any case, the competitive assessment would be unchanged given that the commercialisation of FCEVs is still nascent and the volume of vehicles registered is not significant. [Information on supply of FCEVs].

32 See M.8449 - *Peugeot / Opel* and M.6267 - *Volkswagen / Man*.

(i) small LCVs up to 3.5 tonnes, (ii) medium LCVs up to 3.5 tonnes, (iii) large LCVs up to 3.5 tonnes, (iv) LCVs between 3.5 and 6 tonnes and (v) large LCVs and large LCVs above 3.5 tonnes combined,[33] and considered that pick-up trucks were not part of the same product market as LCVs.[34] Regarding electric LCVs, the Commission considered in previous decisions that it was unnecessary to further sub-segment LCVs markets between LEVs and ICEs.[35]

(37) The Notifying parties suggest retaining a market encompassing LCVs up to 3.5 tonnes without further segmentation.

(38) The results of the market investigation remained inconclusive as to a possible segmentation of LCV by type of propulsion technology (BEV and ICE), while the majority of respondents to the market investigation confirmed that a segmentation was not warranted for electric LCVs with regard to the size or loading capacity of LCVs.[36]

(39) The Commission considers that for the purpose of the present decision, the exact market definition for the downstream market for the manufacture and supply of LCVs and its potential sub-segments (in particular by type of propulsion technology) can be left open, as the Transaction does not give rise to competition concerns under any plausible product market definition. The Commission will focus its assessment on the LCV segment of EVs, including its possible sub-segments (BEVs versus HEVs), as this is the only segment in which vertical effects could arise.

4.2.2. Geographic market

(40) The Commission has considered the markets for the manufacturing and supply of (i) PCs and (ii) LCVs to be national in scope.[37]

(41) The Notifying parties suggest leaving the geographic market definition open and provided market information at national level.

(42) In light of the above, for the purposes of the present decision, it can be left open whether the markets for the manufacture and supply of passenger cars and light commercial vehicles are EEA-wide or national in scope, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement, under any plausible geographic market definition.

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[33] M.9730 - *FCA / PSA*, paragraph 164.

[34] M.9730 - *FCA / PSA*, paragraph 36.

[35] M.9730 - *FCA / PSA*, paragraph 34.

[36] One customer noted that "[i]*n general, LCV* […] *share the platform, therefore, no need to segment* [them] *in terms of sourcing of battery cells and modules.*" Another customer indicated that same cell manufacturer would be capable of offering cells and modules across LCV segments but that the specific design of the modules depended on project-specificities and use cases.

[37] M.9730 - *FCA / PSA*, paragraphs 159 and 1104.

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

(43) The Transaction does not lead to any horizontally affected markets. Daimler and Stellantis do not manufacture or supply cells and modules for third-party OEMs and, therefore, do not overlap on a market with ACC's activities.[38]

(44) The Transaction leads to a merger-specific vertical relationship between the possible upstream market for the manufacture and supply of battery cells and modules for the automotive sector using Li-ion technology, where the Target is active, and the downstream markets for the manufacture and supply of PCs and LCVs, where Daimler and Stellantis are active.

(45) At the upstream level, the Target will only start commercialising its automotive cells and modules in 2023, and its total production capacity of cells and modules for automotive applications will remain limited compared to its competitors. Given the uncertainty around the Target's production capacity increase in the next years, the Notifying parties provided market shares estimates based on both (i) the Target's expected production capacity pre-Transaction and (ii) the Target's current expected production capacity post-Transaction. The estimated projected market shares in both scenarios are [10-20]% or below both in 2025 and 2030 on an EEA-wide level. Moreover, a number of competitors have announced the creation or extension of a number of battery plants at EU or worldwide level until 2030.

(46) At the downstream level, Daimler's and Stellantis' individual market shares for EVs for the period of 2018-2020 are significantly below 30% both at EEA-wide and at national level. The Notifying parties submit that Daimler's and Stellantis' individual market shares would not exceed 30% under any possible sub-segmentation for EVs (neither in BEV, nor in HEV, nor by vehicle size according to the segments applicable to the overall PC and LCV markets) in 2020 [duration].

(47) Regarding PCs and LCVs overall and on the basis of the Commission's previous segmentation by size of PCs (*i.e.*, mini cars, small cars, medium cars, etc.) and by weight of LCVs (*e.g.*, small, medium and large LCVs up to 3.5 tonnes, etc.), Daimler's and Stellantis' individual market shares for the period of 2018-2020 respectively exceed 30% for a limited number of markets in a limited number of Member States as well as at EEA-level, leading to vertically affected markets in the relevant areas.[39]

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[38] While Stellantis does not manufacture cells and modules for automotive batteries, see M.9479 - *PSA / SAFT / ACC*, paragraph 36, [information on Daimler's sourcing strategy for cells and modules]. Both Stellantis and Daimler therefore cannot be considered to be active on the market for the manufacture and supply of battery cells and modules. The Parties' activities potentially overlap in the market for the manufacture and supply of battery cells and modules for industrial (*i.e.* non-automotive) applications, where ACC is active, as Saft manufactures industrial battery cells and modules, albeit only for captive use. This potential relationship is not merger-specific and is therefore not further assessed in this case. In any event, this potential relationship would not lead to an affected market, as the Notifying parties estimate their combined share to be below 5% under any plausible market definition, see M.9479 - *PSA / SAFT / ACC*, footnote 25.

[39] Out of more than 480 national markets by size and weight of PCs and LCVs in the EEA, Daimler's market shares in 2020 exceeded 30% only in [number] national markets in [list of segments]. Stellantis' market

5.2. Vertical relationship with regard to the supply of battery cells and modules to vehicle manufacturers

(48) According to the Commission's Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings[40] ('Non-horizontal Merger Guidelines'), foreclosure effects may occur where actual or potential rivals' 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.

5.2.1. No input foreclosure

(49) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products that it would have otherwise supplied absent the merger, thereby raising its downstream rival's costs by making it harder for them to obtain supplies of the input under similar prices and conditions as in the absence of the merger.

(50) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

(51) The Notifying parties submit that the Target will have no ability to foreclose access to inputs, and there would be no anticompetitive effect from any such attempt to foreclose downstream rivals' access to ACC's battery cells and modules, due to the Target's low market shares and readily available alternative supplies from strong and established competitors in the battery cells and modules market. They further submit that the Target will have no incentive to foreclose access to its battery cells and modules as this would significantly reduce the Target's revenues from third-party sales, contrary to the commercial interests of its third shareholder, Saft.[41]

(52) The Commission considers that the Target will not have the ability or incentive to exclude competitors of Daimler and of Stellantis from access to battery cells and modules for automotive applications.

(53) In the vast majority of PC and LCV markets, nationally and at EEA-level, Daimler and Stellantis have individual market shares below 30%. Only if accounting for combustion vehicles and EVs combined, their individual market shares exceed 30% in a small number of markets due to Daimler's and Stellantis' historic position in ICE technology (which does not use the Target's inputs). As noted in paragraph (46) above, in a hypothetical market encompassing EVs only (for which the Target's input is actually relevant), the Transaction would not lead to any affected market, given Daimler and Stellantis' moderate market shares in that area (see also

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shares exceeded 30% in [number] national markets primarily in [list of segments]. In LCVs, Stellantis' market shares exceeded 30% in [number] national markets for [list of segments]. At the broader level, Stellantis' market shares exceeded 30% only in [number] national markets for [list of segments] and in [number] national markets for [list of segments]. Form CO, Annex 6-1-2.

40 OJ C 265, 18.10.2008.

41 Form CO, paragraphs 336-344.

paragraph (61) below). In any event, even if a wider market including both combustion vehicles and EVs is considered, Daimler's market position downstream is unlikely to lead to anticompetitive foreclosure of rival OEMs from battery cells and modules.[42]

(54) *First*, since the Target's cells and modules will only be an input for EVs, vertical effects could only arise in the possible markets for LEVs, or BEVs more specifically (on which Daimler's shares are very low) or on the electric segment of a broader market for both vehicles with combustion and vehicles with electric propulsion systems (which forms a small proportion of Daimler's sales of PCs and LCVs). Moreover, the Target would have market shares significantly below 30% on its related upstream market ([0-5]% in 2020, about or below [0-5]% over the course of 2025-2030 worldwide and [10-20]% over the course of 2025-2030 at EEA-wide level).

(55) *Second*, the supply agreements between the Target and Daimler and Stellantis will only cover a maximum of [percentage of manufacture capacity]% of the Target's supplies as from 2028 and [information on the commercial strategy of the JV].[43] A foreclosure strategy would therefore reduce ACC's projected revenues.

(56) *Third*, the fact that Saft is one of the controlling shareholders of ACC guarantees that commercial decisions are made only in the interest of ACC and, therefore, that sales of cells and/or modules to Daimler and Stellantis will not be made below normal market conditions. Moreover, it is the Notifying parties' declared intention that ACC's production would not be entirely dedicated to Stellantis and Daimler, as described at paragraph (55) above.

(57) *Fourth*, any attempt to restrict access to the Target's input would not be recouped and have limited effects on the downstream market. This is due to the fact that even when the Target will have reached its full production capacity, it will still only supply a very small part of the market. The results of the market investigation indeed confirmed that important competitors such as LG Chem, CATL, Panasonic, BYD, SK Innovation, Northvolt, Samsung SDI, many of which are well-established suppliers with significant production capacity and ongoing supply relationships with the largest automotive OEMs, and new entrants such as Verkor would constitute sufficient alternative sources of supply for other automotive OEMs competing with Daimler and Stellantis.[44]

(58) Finally, the majority of respondents to the market investigation consider the impact of the Transaction to be neutral.[45]

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[42] In addition, Stellantis' market position downstream as such does not lead to anticompetitive foreclosure as the vertical relationship with the Target does not change post-Transaction.

[43] [Information on the commercial strategy of the JV]. Form CO, paragraph 133.

[44] For instance, one customer noted that "[t]here are enough competitors on the market to purchase batteries, cells and modules from." Question 18.1 of questionnaire Q1 to customers.

[45] In terms of impact on innovation and strategic supply-chain considerations, a large number of respondents even consider the impact of the Transaction to be positive.

5.2.2. No customer foreclosure

(59) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.

(60) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.

(61) The Notifying parties submit that Daimler and Stellantis will have no ability to foreclose upstream rivals' access to customers, as both parties' share of BEV and HEV sold in the EEA are very low (Daimler: less than [0-5]% for BEV, less than [0-5]% for HEV and less than [0-5]% for LEV combined; Stellantis: less than [10-20]% for BEV, less than [5-10]% for HEV and less than [5-10]% for LEV combined). The Notifying parties further submit that Daimler and Stellantis will have no incentive to foreclose upstream rivals' from supplying battery cells and modules for Daimler's and Stellantis' use in the production of LEVs, as this would be contrary to both parties' current multi-sourcing strategy and their commercial interests of remaining independent of individual component suppliers. Finally, the Notifying parties submit that there would be no anticompetitive effect from any such attempt to foreclose upstream rivals' access to automotive customers, due to the large number of competitors in the market for PCs and LCVs and any segments thereof. As the relationship between Stellantis and the Target is not merger-specific, it is therefore not further assessed in this case.

(62) *Firstly*, neither Daimler nor Stellantis will have the ability to foreclose the competitors of ACC given that neither Daimler nor Stellantis represent important customer for battery cells and modules on the downstream market, in particular for LEVs. Daimler and Stellantis have very low market shares for LEVs in the EEA, as noted in paragraph (61), and these market shares are expected to remain largely below 30% in 2025.[46]

(63) *Secondly*, Daimler and Stellantis currently purchase battery cells and modules from several manufacturers. Automotive OEMs commonly apply a multi-sourcing strategy for their purchases of cells and modules. As Daimler and Stellantis will purchase the cells and modules from ACC at market conditions, they will therefore have no interest in purchasing cells and modules exclusively from ACC, also in order not to be locked in with a single supplier.

(64) *Third*, such a foreclosure strategy would have limited effects in the market, since Daimler and Stellantis continue to face numerous rival OEMs who are actual or potential customers for the Target's competitors. Those include BMW, Ford, Geely, Honda, Hyundai, Renault-Nissan, Tesla, Toyota, Volkswagen and others, whose

[46] Form CO, Tables 6-5-a, 6-5-b and 6-5-c, and paragraph 321.

growing demand will meet the offer of the upstream undertakings competing with ACC.

(65) Finally, as noted above,[47] the majority of respondents to the market investigation consider the impact of the Transaction to be neutral.

(66) Therefore, the Commission considers that the Parties will not have the ability or incentive to exclude competitors of the Target from access to Daimler or Stellantis as customers and that, in any event, any such attempt to foreclose access by the Target's competitors to Daimler or Stellantis as customers would have limited effects in the market.

6. CONCLUSION

(67) 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

[47] See paragraph (58) above.