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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9839 – VGRD/Auto Wichert Assets**
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 11 May 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Volkswagen Group Retail Deutschland GmbH ("VGRD", Germany), a wholly-owned subsidiary of Volkswagen AG ("VW AG", Germany) belonging to the Volkswagen Group ("VW Group"), acquires sole control over certain assets of Auto Wichert GmbH (the "Target", Germany), presently owned by Auto Wichert GmbH ("Wichert", Germany) (the "Transaction").[3] VGRD is referred to as the "Notifying Party". VGRD and the Target are collectively referred to as the Parties.

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").

3 Publication in the Official Journal of the European Union No C 171, 19.5.2020, p. 11.

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1. THE PARTIES AND THE OPERATION

(2) VGRD operates a retail network of car dealerships in Germany. VW Group is active worldwide in the development, manufacture, marketing and sale of passenger cars ("PCs"), light commercial vehicles ("LCVs"), trucks, buses, coaches, chassis for buses and diesel engines, and motor bikes, each including spare parts and accessories. VW Group also engages in vehicle distribution.[4]

(3) Wichert is an exclusive VW Group dealer active in the retail distribution of new and used PCs, LCVs and related spare parts of the VW Group Brands, including related repair activities, in the metropolitan area of Hamburg. VW Group intends to acquire certain assets of Wichert (the Target). The Target comprises vehicles, employees and other fixed and current assets at the following four sites, as well as customer relationships:

- Bornkampsweg: Bornkampsweg 2, 4-6 and 54 / 56, Hamburg, Germany;
- Stockflethweg/Langenhorner Chaussee: Langenhorner Chaussee 666 and Stockflethweg 30, Hamburg, Germany;
- Wendenstraße/Ausschläger Weg: Wendenstraße 150-160, 156, 162 and 200 and Ausschläger Weg 74, Hamburg, Germany;
- Segeberger Chaussee: Segeberger Chaussee 179 and 181-187, Hamburg, Germany.

(4) Wichert is in financial distress, [VW Group intends to acquire the Target].

(5) The Transaction is an acquisition of indirect sole control by VGRD (via Raffay Versicherungsdienst GmbH)[5] over the Target through a transfer of assets. On 29 April 2020, Raffay submitted its binding offer (including the terms of the asset purchase agreement ("APA")) to Wichert who accepted the terms of the APA by countersigning the offer letter submitted by Raffay on 4 May 2020. Post-Transaction, VGRD shall take responsibility for operating the Target Business. The Operation therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

(6) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (VW AG: EUR […] million and the Target: EUR […] million). Each of them has an EU-wide turnover in excess of EUR 250 million (VW AG: EUR […] million and the Target: EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

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4 VW Group includes the vehicles brands Volkswagen Passenger Cars, Volkswagen Commercial Vehicles, Porsche, Audi, Škoda, SEAT, Bentley, Bugatti, Lamborghini, MAN, Scania and Ducati (the "VW Group Brands").

5 Raffay will be renamed into Volkswagen Group Retail Hamburg GmbH.

3. MARKET DEFINITION

(7) The Parties' activities overlap horizontally and are vertically linked on a number of markets in the wholesale and retail distribution of new and used PCs and LCVs, in the manufacture and distribution of the related original equipment ("OE") spare parts, and related services in Germany.

(8) The following horizontal overlaps do not give rise to affected plausible markets: (i) retail distribution of new PCs and LCVs in the metropolitan area of Hamburg, Germany or at EEA-wide level; (ii) retail distribution of used PCs and LCVs in the metropolitan area of Hamburg, Germany or at EEA-wide level; (iii) retail distribution of VW-branded OE spare parts for PCs and LCVs in Germany or at EEA-wide level; (iv) retail distribution of non-OE spare parts in the metropolitan area of Hamburg, Germany or at EEA-wide level; (v) car repair and maintenance of automotive vehicles separately for light repair and complex repair in Germany; and (vi) short-term car renting in Germany.

(9) The following vertical links do not give rise to affected plausible markets: (i) wholesale and retail distribution of new PCs and LCVs at EEA-wide level; (ii) wholesale and retail distribution of used PCs and LCVs in the metropolitan area of Hamburg, Germany or at EEA-wide level; (iii) wholesale and retail distribution of non-OE spare parts in the metropolitan area of Hamburg, Germany or at EEA-wide level.

(10) The Transaction, however, gives rise to the following horizontally and vertically affected markets:

a) Horizontally affected market: retail distribution of VW-branded OE spare parts in the metropolitan area of Hamburg.

b) Vertically affected markets: (i) wholesale distribution of new PCs (upstream) in Germany and retail distribution of new PCs in Germany or in the metropolitan area of Hamburg (downstream) and (ii) wholesale distribution of VW-branded OE spare parts in Germany (upstream) and retail distribution of VW-branded OE spare parts in Germany or in the metropolitan area of Hamburg (downstream).

3.1. Wholesale distribution of new PCs and LCVs

3.1.1. Product market definition

(11) In previous decisions, the Commission has distinguished between the wholesale and retail distribution of vehicles.[6] The Commission has concluded that the wholesale distribution of PCs and the wholesale distribution of LCVs are separate markets and that it was not necessary to conduct a further segmentation by car type (e.g., mini

[6] Commission decision of 5 July 2017, COMP/M.8449 – *Peugeot / Opel*; Commission decision of 23 July 2008, COMP/M.5250 – *Porsche / Volkswagen*.

cars, small or medium cars, etc.), as manufacturers usually distribute different car types covering different market segments under the same distribution channel.[7]

(12) The Notifying Party does not contest the above market definition.

(13) The Commission considers that there is no reason to deviate from previous product market definitions. Therefore, for the purposes of this Decision, the Commission considers the relevant product markets to be that of the wholesale distribution of PCs on the one hand and the wholesale distribution of LCVs on the other hand.

3.1.2. Geographic market definition

(14) In the relatively recent *Peugeot/Opel* decision, the Commission has left open whether the geographic market for the wholesale distribution of new PCs and LCVs is to be considered EEA-wide or national in scope.[8]

(15) The Notifying Party submits that the relevant wholesale market is at least national in scope, as wholesalers (importers) of new PCs and LCVs are generally active at national level, and in many cases also across several Member States.

(16) The Commission considers that, the scope of the geographic market can be left open, as the Transaction does not raise serious doubts whether the geographic market is considered EEA-wide or national in scope.

3.2. Retail distribution of new PCs and LCVs

3.2.1. Product market definition

(17) In previous decisions, the Commission has distinguished between the retail distribution of PCs and LCVs. The Commission has also found that further sub-segmentation is not appropriate.[9]

(18) The Notifying Party does not contest the above market definition.

(19) The Commission considers that there is no reason to deviate from previous product market definitions. Therefore, for the purposes of this Decision, the Commission considers the relevant product markets to be that of the retail distribution of PCs on the one hand and the retail distribution of LCVs on the other hand.

3.2.2. Geographic market definition

(20) In previous decisions, the Commission has left open whether the geographic market for the retail distribution of new PCs and LCVs is to be considered EEA-wide, national or sub-national in scope.[10]

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7 Commission decision of 5 July 2017, COMP/M.8449 – *Peugeot* / Opel; Commission decision of 19 December 2011, COMP/M.6403 Volkswagen / KPI Polska / Skoda Auto Polska / VW Bank Polska / VW Leasing Polska; Commission decision of 21 January 1992, COMP/M.182 – *Inchcape / Iep.*

8 Commission decision of 5 July 2017, COMP/M.8449 – *Peugeot / Opel*.

9 Commission decision of 5 July 2017, COMP/M.8449 – *Peugeot / Opel*; Commission decision of 16 October 2015, COMP/M.7747 - *PGA / MSA*; Commission decision of 22 July 2002, COMP/M.2832 – *General Motors / Daewoo Motors.*

(21) The Notifying Party notes that the German Federal Cartel Office did not yet conclude on the exact geographic scope of retail distribution markets for (new or used) PCs and LCVs.[11] Nonetheless, the Notifying Party considers the relevant retail market to be national in scope as customers increasingly use the internet to compare prices across the country (in particular with respect to used cars) and are willing to travel longer distances to buy a vehicle, exemplified by increasing interest in factory pick-up. In any event, the Notifying Party considers that the exact definition of the geographic scope of the market can be left open.

(22) The Commission considers that, in any case, the scope of the geographic market can be left open, as the Transaction does not raise serious doubts whether the geographic market is considered EEA-wide, national or sub-national (i.e. in this case the metropolitan area of Hamburg) in scope.

3.3. Wholesale distribution of OE spare parts for PCs and LCVs

3.3.1. Product market definition

(23) In previous decisions, the Commission has found that there are separate markets for the wholesale distribution of OE spare parts and non-OE spare parts and that the wholesale distribution of OE spare parts is brand-specific.[12] The Commission further considered a segmentation of the market between categories of vehicles, i.e. light vehicles (PCs and LCVs) and heavy vehicles[13], but without any sub-segmentation by product.[14]

(24) The Notifying Party does not contest the above market definition.

(25) The Commission considers that there is no reason to deviate from previous product market definitions. Therefore, for the purposes of this Decision, the Commission considers the relevant product markets to be that of wholesale distribution of brand-specific OE spare parts for PCs and LCVs on the one hand and the wholesale distribution of non-OE spare parts for PCs and LCVs on the other hand.

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10 Commission decision of 16 October 2015, COMP/M.7747 - *PGA / MSA*.

11 The only relevant decision concerning distribution of PCs and LCVs the Notifying Party is aware of is BKartA, 26.10.2012, Az. B9-32/12 – *General Motors/PGA*, where the Federal Cartel Office may have leaned towards national markets but ultimately left the exact geographic market definition open.

12 Commission decision of 10 September 2018, COMP/9070 – *Eurocar/Vicentini*; Commission decision of 12 May 2011, COMP/M.6063 – *Itochu/Speedy*.

13 Commission decision of 10 September 2018, COMP/9070 – *Eurocar/Vicentini*; Commission decision of 26 November 2014; COMP/M.7401 – *Blackstone/Alliance BV/Alliance Automotive Group.*

14 Commission decision of 10 September 2018, COMP/9070 – *Eurocar/Vicentini*; Commission decision of 28 October 2016, COMP/M.8198 – *Alliance Automotive Group/FPS Distribution*; Commission decision of 26 November 2014, COMP/M.7401 – *Blackstone/Alliance BV/Alliance Automotive* Group; Commission decision of 30 September 2011, COMP/M.6319 – *Triton/Europart.*

3.3.2. Geographic market definition

(26) In previous decisions, the Commission has found that the wholesale distribution of OE spare parts could be either EEA-wide or national, but ultimately left open the exact scope of the geographic market definition.[15]

(27) The Notifying party does not contest this market definition.

(28) The Commission considers that, in any case, the scope of the geographic market can be left open, as the Transaction does not raise serious doubts whether the geographic market is considered EEA-wide or national.

3.4. Retail distribution of OE spare parts for PCs and LCVs

3.4.1. Product market definition

(29) In previous decisions, the Commission has distinguished between the distribution of OE spare parts and non-OE spare parts for PCs and LCVs and considered that the retail distribution of OE spare parts is brand-specific.[16]

(30) The Notifying Party does not contest the above market definition.

(31) The Commission considers that there is no reason to deviate from previous product market definitions. Therefore, for the purposes of this Decision, the Commission considers the relevant product markets to be that of the retail distribution of brand-specific OE spare parts for PCs and LCVs on the one hand and the retail distribution of non-OE spare parts for PCs and LCVs on the other hand.

3.4.2. Geographic market definition

(32) In previous decisions, the Commission has considered that the retail distribution of OE spare parts could be either national or sub-national, but ultimately left open the exact definition.[17]

(33) The Notifying Party claims that the exact definition of the geographic scope of the market can be left open, although it considers the relevant market to be national in scope because customers can increasingly search for OE spare parts online across Germany and have them installed by independent repair shops. When zooming into the local level, the Notifying Party considers the metropolitan area of Hamburg to be the narrowest plausible geographic scope of the market for the purpose of this case. Customers that source OE spare parts together with car repair and maintenance services are typically willing to drive a certain distance (50-100 km) in order to get these services at a lower price.

(34) The Commission considers that, in any case, the scope of the geographic market can be left open, as the Transaction does not raise serious doubts whether the geographic

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[15] Commission decision of 10 September 2018, COMP/9070 – Eurocar/Vicentini; Commission decision of 26 November 2014, COMP/M.7401 – *Blackstone/Alliance BV/Alliance Automotive Group*.

[16] Commission decision of 10 September 2018, COMP/M.9070 – *Eurocar/Vicentini*.

[17] Commission decision of 10 September 2018, COMP/M.9070 – *Eurocar/Vicentini*; Commission decision of 13 November 2012, COMP/M.6718 – *Toyota Tsusho Corporation/CFAO*.

market is considered national or sub-national (i.e. in this case the metropolitan area of Hamburg) in scope.

4. COMPETITIVE ASSESSMENT

4.1. Horizontal non-coordinated effects

4.1.1. Introduction

(35) As explained in paragraph (10) the Transaction leads to one horizontally affected market in relation to the retail distribution of VW-branded OE spare parts in the metropolitan area of Hamburg. Prior to the Transaction, the Target was an exclusive distributor of VW-branded OE spare parts.

4.1.2. Retail distribution of VW-branded OE spare parts

(36) The Parties estimate their combined market share to be [60-70]% post-Transaction in the metropolitan area of Hamburg, giving rise to a horizontally affected market. The increment brought by the Transaction is of [20-30]%. At national and EEA-level, the merged entity's combined market share is below 20%.

Table 1: Retail distribution of VW-branded OE spare parts (2019)

2019	VW Group in value [mio. EUR]	Target [mio. EUR]	Overall market value [mio. EUR][18]	VW Group market share [value]	Target market share [value]	Parties' combined market share [value]
Hamburg	[…]	[…]	[…]	[30-40]%	[20-30]%	**[60-70]%**
Germany	[…]	[…]	[…]	[5-10]%	[0-5]%	**[5-10]%**

(37) The Notifying Party claims that, despite an appreciable combined share post-Transaction at local level, the Transaction does not give rise to competition concerns, even if a very narrow local market was assumed because:

(a) The Parties' combined shares in such hypothetical local market are inherently overstated, as they do not take into account "cross-supplies" within the VW service partners' network and to independent car repairers. Branded products of other manufacturers and/or non-branded products, which may well be used for VW branded vehicles and represent an alternative source for customers are not either taken into consideration on the total market size, which is confined to sales of VW-branded OE spare parts alone.

(b) Due to the very fragmented structure of the automotive aftermarket, there are plenty of viable competitors active in the metropolitan area of Hamburg which supply VW-branded OE spare parts, including other authorised VW

[18] Source: "best estimate" of the Parties, as described in paragraph 161 of the Form CO.

service partners and independent car repairers. Given the trade of spare parts across Germany (and also other countries), as provided for by the Motor Vehicle BER, third-party service providers would be well-equipped to conduct additional sales. Customers are also able to source VW-branded OE spare parts from other regions and sources in Germany (including through online sales channels), and have these installed by repair shops of their choice, which underlines the existence of a broader than local market.

(c) [Business secret regarding VW Group's distribution strategy]. It is implausible that VW Group would alter its distribution and marketing strategy with a view to one single local market in Germany.

(38) The Commission takes the view that, in spite of the high market share at local level in the metropolitan area of Hamburg, the Transaction will not lead to any competition concerns.

(39) First, the Target is already an exclusive dealer of VW and, because the market for the distribution of OE-spare parts is brand-specific (i.e. in this case VW-branded OE spare parts), the Transaction is unlikely to bring a substantial change in the competitive landscape with regard to the distribution of VW-branded OE spare parts.

(40) Second, after the Transaction, the merged entity will compete with other VW-authorised dealers and with independent car repairers within the metropolitan area of Hamburg and within Germany. A 'local' price increase does not make sense since, should the price of VW-branded spare parts increase in Hamburg, customers of VW-spare parts, including independent car dealers and repairers, would be free to source VW-branded OE spare parts from other dealers/retailers of the VW network within Germany and the EEA. These "cross-supplies" are explicitly allowed under Commission's Regulation (EU) No 461/2010 (Vertical Block Exemption Regulation in the Motor Vehicle Sector – "*Motor Vehicle BER"*).

(41) The market investigation also supported this conclusion. Respondents indicated that they are not prevented from obtaining VW-branded OE spare parts from other dealers in Germany and that they can source VW-OE spare parts from suppliers located all over Germany. The respondents did not expect any difficulties in obtaining VW-branded OE spare parts following the Transaction.[19]

4.1.3. Conclusion on horizontal non-coordinated effects

(42) The Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the market for the retail distribution of VW-OE spare parts in the metropolitan area of Hamburg, given the fact that customers may source VW-OE spare parts across Germany (where the market share of the merged entity is below 10%) and the fact that the Target was (already prior to the Transaction) an exclusive distributor of VW OE-spare parts.

[19] Replies to E-mails of 12 May 2020 and of 14 May 2020.

4.2. Non-horizontally affected markets

4.2.1. Introduction

(43) The Transaction gives rise to vertically affected relationships as follows:

(i) between the wholesale distribution of new PCs in Germany (upstream) and retail distribution of new PCs in Germany or in the metropolitan area of Hamburg (downstream); and

(ii) between the wholesale distribution of VW-branded OE spare parts in Germany (upstream) and retail distribution of VW-branded OE spare parts in Germany or in the metropolitan area of Hamburg (downstream).

4.2.2. Wholesale distribution of new PCs (upstream) and retail distribution of new PCs (downstream)

(44) In the upstream market for the wholesale distribution of new PCs, VW Group has a market share of [30-40]% in Germany, giving rise to a vertically affected market.[20] In the downstream market for the retail distribution of new PCs, the merged entity will have a combined market share below 10% in any plausible geographic market, i.e. be it EEA-wide[21], national or sub-national.

Table 2: Wholesale distribution of new PCs (2019)

2019	VW group [units][22]	Overall market in volume[23] [units]	VW group market share [volume]
Germany	[…]	3,607,258	**[30-40]%**

Table 3: Retail distribution of new PCs (2019)

2019	Target in volume [units]	VW Group in volume [units]	Overall market in volume [units]	Target market share [volume]	VW Group market share [volume]	Parties combined market share [volume]
Hamburg	[…]	[…]	157,757	[0-5]%	[5-10]%	**[5-10]%**
Germany	[…]	[…]	3,607,258	[0-5]%	[0-5]%	**[0-5]%**

[20] On a EEA-wide market level, VW Group's market share in the wholesale distribution of new PCs is [10-20]% (Form CO, footnote 75).

[21] In the EEA, the Parties' combined market share in the retail distribution of new PCs will be of [0-5]% (Form CO, footnote 43).

[22] The figures provided refer to the total number of registrations of vehicles of the VW Group Brands, deducting the sales made through VW Group's own retail channels.

[23] Source: Kraftfahrtbundesamt, data based on the total number of newly registered PCs and LCVs in Germany in 2019. This is the same total market volume used as for the calculation of the retail distribution market shares.

(45) VW Group's market share in the wholesale distribution of new PCs is [30-40]% in Germany ([30-40]%). Downstream, the combined market share of the Parties is below 10% in any plausible geographic market. In view of the low market shares downstream and the fact that the Target is already an exclusive distributor of VW, an input or customer foreclosure strategy seems implausible.

(46) The Commission therefore considers that the Transaction is unlikely to reduce competition in the market for the retail distribution of new PCs in Germany or in the metropolitan area of Hamburg.

4.2.3. Wholesale and retail distribution of VW-branded OE spare parts for PCs and LCVs

(47) In the upstream market for the wholesale distribution of VW-branded OE spare parts for PCs and LCVs, VW Group has a monopoly at national level in Germany, giving rise to a vertically affected market. In the downstream market for the retail distribution of VW-branded OE spare parts for PCs and LCVs, the merged entity will have a combined market share below 20% both at EEA and national level, and of [60-70]% in the metropolitan area of Hamburg.

Table […]*: Retail distribution of VW-branded OE spare parts (2019)

2019	VW Group in value [mio. EUR]	Target [mio. EUR]	Overall market value [mio. EUR][24]	VW Group market share [value]	Target market share [value]	Parties' combined market share [value]
Hamburg	[…]	[…]	[…]	[30-40]%	[20-30]%	**[60-70]%**
Germany	[…]	[…]	[…]	[5-10]%	[0-5]%	**[5-10]%**

4.2.3.1. Customer foreclosure

(48) Prior to the Transaction, the Target was already an exclusive distributor of the VW Group brands. The Target sources its VW-branded OE spare parts directly from VW Group, while it does not sell any other brands (i.e., the Target is not a customer of other suppliers with respect to OE spare parts). As the Transaction will not lead to change in that regard, there is no scope for customer foreclosure.

(49) In light of the structure of the market, the only conceivable theory of harm is that the merged entity will be in a position to foreclose access to inputs (VW-OE spare parts) to other dealers operating at the retail level, namely VW service partners and independent repairers.

4.2.3.2. Input foreclosure

(50) In light of the structure of the market, the Commission has assessed whether VW could foreclose other dealers operating at the retail level, namely VW service

* Should read: "4"

24 Source: "Best estimate" of the Parties, as described in paragraph 161 of the Form CO.

partners and independent repairers, which both currently source VW-branded OE spare parts from the Parties for their own services in the aftermarket.

Ability and incentive to foreclose

(51) As VW Group enjoys a monopoly upstream, it clearly has the ability to stop or reduce its supply of VW-branded OE spare parts to downstream competitors in the metropolitan area of Hamburg.

(52) However, the Notifying Party claims that the merged entity will lack the incentive to foreclose its downstream competitors because:

(a) [VW's distribution system is set up in such a way that customers have the possibility to source from different suppliers, also located in different geographic areas]. This strategy will not change post-Transaction, be it in Germany or specifically in the area of Hamburg.

(b) The Target's business is limited exclusively to the metropolitan area of Hamburg and, given VW Group's general approach to distribution (see (a) above), it would not make commercial sense for the company to engage in any hypothetical foreclosure practices in Germany just because of the acquisition of one dealer in Hamburg.

(c) It would not constitute a commercially viable or sensible strategy if the merged entity were to put VW service partners or independent car repair shops at a disadvantage post-Transaction. [Customers have the possibility to source VW-branded OE spare parts from different suppliers]. Moreover, service partners and independent car repairers in the metropolitan area of Hamburg or anywhere else in Germany could still buy, *inter alia*, from any other VW service partner in other parts of Germany or the EEA.

(53) The Commission considers that, given the nature of VW's distribution strategy and given the fact that the Target's presence is limited to the metropolitan area of Hamburg, VW is unlikely to have an ability or incentive to foreclose downstream competitors.

(54) In light of the limited geographic presence of the Target in the downstream market, VW will have to rely on VW service partners and independent car repair shops in other regions in order to maintain its distribution in all of Germany. VW will therefore in any event have an incentive to directly supply VW-branded parts to its service partners in regions where the Target is not active. [VW's distribution system is set up in such a way that customers have the possibility to source from different suppliers, also located in different geographic areas].[25] Hence, downstream competitors will continue to have access to spare parts from other service partners located in regions where the merged entity will not be active (notably, the remaining [90-100]% of the national market and [30-40]% of the metropolitan area of Hamburg, as other service partners can also cross-sell). As explained in paragraph (41) this was confirmed by the Commission's market investigation:

[25] Form CO, paragraph 178. This is also compliant with the Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

respondents indicated that they can source VW-OE spare parts from suppliers located all over Germany and that they did not expect any difficulties in obtaining VW-branded OE spare parts following the Transaction.[26]

(55) In this context, a foreclosure strategy limited to the metropolitan area of Hamburg would be very likely to fail: competitors of the merged entity in the metropolitan area of Hamburg will retain the ability to source VW-branded OE spare parts from service partners located in other local areas, where the merged entity will not be present. In more detail, downstream competitors will continue to have access to a significant number of other suppliers (notably, the remaining [90-100]% of the national market and [30-40]% of the metropolitan area of Hamburg, as other service partners can also cross-sell). Hence, if the merged entity were to engage in input foreclosure, it would not be able to recoup the lost sales at downstream level, and therefore the merged entity will not have the incentive to foreclose access to input.

(56) As regards the retail distribution of VW-branded OE spare parts on a plausible geographic market encompassing Germany, the Commission considers that the Transaction will not lead to a foreclosure risk either, given the limited activities of the Parties in Germany (combined market share of the Parties for the retail distribution of VW-branded OE spare parts in Germany of [5-10]%), and the fact that VW Group is already active pre-Transaction both at the wholesale and the retail level in Germany, as well as given the negligible increment resulting from the Transaction (Target's market share in Germany is only [0-5]%).

(57) Thus, no competition concerns will arise in relation to the vertical link between the wholesale and the retail distribution of VW-branded OE spare parts for PCs and LCVs in the metropolitan area of Hamburg or in Germany.

Overall likely impact on effective competition

(58) In view of the Target's limited geographic scope of activities, the fact that VW will need to continue to supply its OE spare parts across Germany, and that downstream competitors in the metropolitan area of Hamburg can source the VW spare parts from across Germany (or even the EEA), post-Transaction, VW will not have the ability or incentive to foreclose downstream competitors, in the metropolitan area of Hamburg. The Commission therefore considers that the Transaction is unlikely to reduce competition in the market for the retail distribution of VW-branded OE spare parts in Germany or in the metropolitan area of Hamburg.

4.2.4. Conclusion on non-horizontally affected markets

(59) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-horizontal effects either in the market for the distribution of new PCs or in the market for the distribution of VW-OE spare parts. In the market for the distribution of new PCs, this is mainly due to the limited market share of the merged entity downstream at retail level ([0-5]% in Germany and [5-10]% in the metropolitan area of Hamburg). In the market for the distribution of VW-OE spare parts, this is due to the Target's limited geographic scope of activities, the fact that VW will need to continue to supply its OE spare

[26] Replies to E-mails of 12 May 2020 and of 14 May 2020.

parts across Germany, and that downstream competitors in the metropolitan area of Hamburg can source VW-OE spare parts from across Germany (or even the EEA), post-Transaction.

5. CONCLUSION

(60) 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