EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.10565 – VOLKSWAGEN / TRINITY / EUROPCAR**
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 19 April 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Volkswagen Aktiengesellschaft ('Volkswagen', Germany) and Trinity Investments Designated Activity Company ('Trinity', Ireland), managed by Attestor Limited ('Attestor',

[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').

UK), will acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Europcar Mobility Group, S.A ('Europcar', France) (the 'Transaction').[3] (Volkswagen and Trinity are designated hereinafter as the 'Notifying Parties', and Volkswagen, Trinity and Europcar are designated hereinafter as the 'Parties'.)

1. THE PARTIES

(2) Volkswagen is an automotive Original Equipment Manufacturer ('OEM') mainly active in the development, manufacture and distribution of new passenger cars, light commercial vehicles and trucks. It is the parent company of the Volkswagen group of companies, whose vehicle brands include Volkswagen, Porsche, Audi, Škoda, Bentley, Bugatti, Lamborghini, SEAT, MAN, Scania and Ducati. Volkswagen is also active in the provision of car rental services, mainly through Volkswagen Financial Services AG ('VWFS'), and other mobility services.

(3) Trinity is a private investment company established for the purpose of pursuing certain investment opportunities, notably in growth stage companies. It is managed by Attestor.

(4) Europcar is active in the provision of short-term car rental services, mainly under the Europcar, Goldcar, and InterRent brands. It also is active in the provision of other mobility services and the sale of used vehicles to resellers.

2. THE CONCENTRATION

(5) Volkswagen, through its subsidiary Volkswagen Finance Luxembourg S.A., created a special purpose vehicle under the name Green Mobility Holding S.A. ('BidCo'). On 20 September 2021, BidCo launched a voluntary takeover offer under French law to acquire all of Europcar's issued and outstanding share capital.

(6) Post-Transaction, BidCo's share capital will be owned by Volkswagen (66%), Trinity (27%) and Pon Holdings B.V. ('Pon') (7%) ('the Consortium') and it is envisaged that, pursuant to the Shareholders' Agreement relating to BidCo, key strategic decisions with respect to Europcar will be taken by a Supervisory Board ('SB') and a Consortium Committee ('CC'). Each of these bodies will have five members; Volkswagen and Trinity will have the right to nominate two members each, and Pon will have the right to nominate one member.

(7) […],[4] […].

(8) Europcar will therefore be jointly controlled by Volkswagen and Trinity. The Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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3 Publication in the Official Journal of the European Union No C 172, 26.4.2022, p. 2.

4 Consultation C.1866.

3. UNION DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (namely, EUR […] million).[5] Each of them has a Union-wide turnover in excess of EUR 250 million (Volkswagen: EUR […] million; Trinity: EUR […] million; Europcar: EUR […] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

(10) The main link between the Parties' activities consists in the vertical relationship between Volkswagen's upstream activities in the manufacture and supply of new vehicles and Europcar's downstream activities in car rental services. In addition, the Parties' activities overlap horizontally as Volkswagen is active to a relatively limited extent overall in the provision of car rental services.[6]

(11) There are no overlaps between the activities of Trinity and the activities of the other Parties.

4.1. Relevant product market

4.1.1. Supply of car rental services

4.1.1.1. Commission's practice

(12) In previous decisions, the Commission considered that it may be appropriate to distinguish between short-term car rental services (e.g. provision of cars for an individually agreed duration for business or leisure trips) and long-term car rental services (e.g. with a rental period of more than one year).[7]

(13) In addition, the Commission has also considered in previous decisions the possibility of further dividing the short-term car rental market between passenger cars and industrial vehicles, i.e. trucks.[8]

(14) Within the market for short-term car rental services, the Commission has defined separate markets according to customer groups, differentiating between corporate and leisure car rentals. Corporate car rentals would mainly be the result of corporate agreements concluded between major car rental companies and large corporations. While leisure customers in general rent cars from a wide range of companies, corporate car rentals are usually booked on the basis of corporate agreements from a small group of large, international rental companies that have the requisite airport network, reputation, and service levels.[9]

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

6 Volkswagen's car rental activities generate about EUR […] million in the EEA. There are additional minimal horizontal overlaps between the Parties in the sale of second hand cars, fleet management services and car sharing. These overlaps do not give rise to affected markets and therefore they are not discussed further in this Decision.

7 Cases M.8569 Europcar/Goldcar, M.6333 BMW/ING Car Lease; M.4613 Eurazeo S.A./Apcoa Parking Holdings GmbH.

8 Cases M.8569 Europcar/Goldcar, M.5347 Mapfre/Salvador Caetano/JVs.

9 Cases M.8569 Europcar/Goldcar, M.2510 Cendant/Galileo.

(15) The Commission has further suggested that there may be a replacement rentals segment, in which rental companies settle their accounts with car insurance companies.[10]

4.1.1.2. Notifying Parties' view

(16) The Notifying Parties submit that the main relevant product market in the present case should be defined as an overall market for short-term car rentals,[11] irrespective of vehicle category, whether these services are provided to corporate or leisure customers or whether the services are marketed as 'low cost' or provided as on- and off-airport services.

(17) As regards vehicle, customer or service categories, the Notifying Parties submit that there are no clear dividing lines such as to facilitate or justify narrower product market definitions within the overall market for short-term car rentals.[12]

4.1.1.3. Commission's assessment

(18) Several elements support the conclusion that the supply of car rental services should be further segmented in line with the Commission's past decisional practice.

(19) First, a majority of car rental companies, brokers and corporate customers having expressed an opinion in the market investigation considers that it is appropriate to distinguish between short and long-term rental, passengers cars and industrial cars, and that short-term rental for passenger cars could be further segmented between corporate and leisure customers because customer groups are different, suppliers may be different and prices and conditions may differ.[13] In particular, one car rental company indicated that '*customers of short rental vs. long rental cars; passenger cars vs. industrial cars; and corporate passenger cars vs. leisure passenger cars (and/or the requirements of those customers) are generally different*'.[14] Moreover, the supply of replacement short-term car rental services appears to constitute a distinct market, in particular due to the fact that customers in this segment are generally insurance companies and not all suppliers are active in this segment.[15]

(20) Second, the Parties in their internal documents assess the short-term and long-term segments, and leisure and corporate segments separately.[16]

(21) Third, market shares are materially different between replacement services and other car rental services as well as between passenger and commercial car rental services.[17]

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10 Case M.4613 EURAZEO SA / APCOA PARKING HOLDINGS GMBH.

11 The Parties hardly provide any long-term car rental services.

12 Form CO, paragraph 210.

13 Replies to questionnaire 2 to car rental companies, question 4.1, questionnaire 3 to brokers and questionnaire 4 to corporate customers, question 4.

14 Reply to questionnaire 2 to car rental companies, question 4.1.

15 Form CO, paragraph 92.

16 Annex 9.2 to QP4, slides 8, 11, 17; annex 15.6 to QP3; slides 16 and 35.

17 Annexes 9 and 9a to QP1.

(22) Based on the above, for the purpose of assessment of the Transaction and in line with past decisional practice, the Commission will assess the effects of the Transaction on i) the supply of short-term car rental services (all), ii) the supply of short-term car rental services for passenger cars, iii) the supply of short-term leisure car rental services, iv) the supply of short-term corporate car rental services, and v) the supply of replacement short-term car rental services.

4.1.2. Manufacture and supply of passenger cars and commercial vehicles

4.1.2.1. Commission's practice

(23) In previous decisions, the Commission has defined separate markets for the manufacture and supply of (i) passenger cars, and (ii) commercial vehicles. It considered further segmentations according to categories that are based on vehicle type and size.[18]

(24) The Commission left open whether low-emission cars should be considered as a separate market and whether it should be further segmented according to technology[19] and according to the vehicle categories.[20]

(25) In previous decisions, the Commission has not, however, considered whether a separate market for the supply of cars to car rental companies exists.

4.1.2.2. Notifying Parties' view

(26) The Notifying Parties submit that there is no separate market for the manufacture and supply of new vehicles to car rental companies.[21] In particular, the Notifying Parties argue that the vehicles sold to the rental channel are identical to the vehicles sold to the general market, and that the terms and conditions at which cars are offered to rental car providers are not substantially different from the terms and conditions offered to other (bulk-buying) large customers, only cut differently.[22]

4.1.2.3. Commission's assessment

(27) The Commission's investigation indicates that a separate market exists for the manufacture and supply of new vehicles to car rental companies,[23] without a need to further segment it.[24]

(28) Several elements support this conclusion.

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18 Passenger car categories are A (mini), B (small), C (medium), D (large), E (executive), F (luxury), J (SUVs, further segmented to small, medium and large), M (multi-purpose) and S (sport). Commercial vehicle categories are: light commercial vehicles ('LCV'), up to 3.5 tons (sub-divided to small, medium and large), LCV up to 6 tons, medium duty trucks (up to 16 tons), heavy duty trucks (above 16 tons) and pickup trucks.

19 Battery car ('BEV'), hybrid ('HEV') and plug-in hybrid ('HPEV').

20 Case M.9730 FCA/PSA.

21 Form CO, paragraph 232.

22 Form CO, paragraph 253.

23 Replies to questionnaire 1 to car manufacturers, question 12 and to questionnaire 2 to car rental companies, question 6.

24 Replies to questionnaire 1 to car manufacturers, question 13 and to questionnaire 2 to car rental companies, question 7.

(29) First, a majority of respondents to the market investigation who expressed a view indicated that vehicle sales to car rental companies are made at different prices and supply conditions (for example, buy-back or leasing arrangements) than those to end customers.[25] For instance, one car rental company indicated that '*the conditions offered to car rental companies are very specific to the car rental industry and, to our knowledge, not offered to other customers. Vehicles are supplied on the basis of buy-back or leasing agreements*',[26] one OEM responded that '*the conditions for the sale of vehicles to rental companies is completely different from those made to other customers*', and another indicated that '*rebates & holding periods (in case of buy-back) for STR [short-term rental] are different from the other channels*'.[27] One car rental company indicated that '*the supply of vehicles to rental companies is a separate market from the supply of cars to other companies in particular due to the difference in pricing and further conditions*'.[28] Indeed, car rental companies hold vehicles for a limited period of time, usually a few months, and tend to purchase them subject to buy-back agreements with OEMs under which vehicles are sold back to OEMs at a pre-defined price after a certain period of time.[29] To a lesser extent car rental companies source vehicles under leasing arrangements or standard purchases. On the other hand, the majority of car rental companies who expressed an opinion with respect to the affected markets were of the view that suppliers other than OEMs such as leasing companies, new car dealers and used cars dealers can supply them with cars.[30] However, as the Transaction does not raise serious doubts as to its compatibility with the internal market under the narrowest plausible market definition, there is no need to discuss a wider market definition.

(30) Second, the range of vehicles to be supplied is negotiated between car rental companies and OEMs. A majority of car rental companies who expressed a view in the market investigation indicates that they purchase ranges of cars with some flexibility on the exact product mix, which is ultimately to a large extent determined by OEMs.[31] Similarly, in the pre-notification interviews, one car rental company indicated that it '*typically informs the OEMs of the volume it wants to purchase, and the OEMs decide on the splits and models, and therefore ultimately on the car mix. By way of overview of the process, [the car rental company] specifies the number of units, the specification of such units e.g. fuel type, transmission type, the ratio between risk and buy-back and mix of vehicle type (small, medium, large vehicles). The relevant OEM engages with [the car rental company] accordingly in respect of each of these criteria in the context of its vehicle production. Though the process is iterative, the OEM ultimately determines and controls what it can deliver to [the car rental company], which outcomes inform [the car rental company]'s comparable conversations with other OEMs and fleet strategy*'.[32]

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25 Replies to questionnaire 1 to car manufacturers, questions 14 and 15 and to questionnaire 2 to car rental companies, questions 8 and 9.

26 Reply to questionnaire 2 to car rental companies, question 9.

27 Reply to questionnaire 1 to car manufacturers, question 12.

28 Reply to questionnaire 2 to car rental companies, question 6.

29 Minutes of a conference call with a car rental company on 7 February 2022.

30 Replies to questionnaire 2 to car rental companies, questions 21 and 22.

31 Replies to questionnaire 2 to car rental companies, question 10.

32 Minutes of a conference call with a car rental company on 27 January 2022.

(31) Third, Volkswagen's internal documents analyse the supply of cars to the car rental companies separately from the supply of cars to other customers.[33]

(32) Regarding electric vehicles specifically, the Commission does not see a reason to define a separate market for the manufacture and supply of electric vehicles. First, the sources of supply between electric vehicles and internal combustion engine vehicles do not differ significantly as all major OEMs (except Tesla) manufacture and supply both electric vehicles and internal combustion engine vehicles.[34] Second, the market shares of Volkswagen in the manufacture and supply of electric vehicles do not materially change compared to those for the manufacture and supply of internal combustion engine vehicles.[35] In any event, the analysis of a separate market would not have any appreciable impact in the assessment of the effects of the Transaction on the markets in view of the limited presence of these vehicles in the car rental companies' fleets in the EEA. Indeed, a majority of car rental companies who expressed a view in the market investigation indicated that electric vehicles represented less than 10% of their company's EEA fleet in 2021.[36]

(33) Based on the above, for the purpose of assessment of the Transaction, the Commission will assess the effects of the Transaction on a separate market for the manufacture and supply of passenger cars and commercial vehicles to car rental companies.

4.2. Relevant geographic market

4.2.1. Supply of car rental services

4.2.1.1. Commission's practice

(34) In previous decisions, the Commission has considered that the market for short-term car rental services is national in scope.[37] The Commission also assessed whether the local dimension is relevant for the market of short-term car rental services.[38]

4.2.1.2. Notifying Parties' view

(35) For the purposes of the present case, the Notifying Parties submit that the relevant geographic market for the provision of short-term car rentals services is national in scope. As Volkswagen Group does not operate classic airport or downtown stations but sells car rentals in dealership outlets focussing on workshop replacement and corporate rentals, there is no significant overlap with Europcar's traditional airport or downtown station-based short-term car rental business.[39]

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33 Annexes 15.1 and 15.2 to QP3.
34 Annex 3.2 to QP4.
35 Annex 1 to QP2.
36 Replies to questionnaire 2 to car rental companies, question 18.
37 Cases M.8569 Europcar/Goldcar; M.8309 Volvo Car Corporation/First Rent A Car; M.3090 Volkswagen/Offset/Crescent/LeasePlan/JV.
38 Cases M.8569 Europcar/Goldcar, M.8744 Daimler/BMW/Car Sharing JV.
39 Form CO, paragraph 285.

4.2.1.3. Commission's assessment

(36) A majority of respondents to the market investigation having expressed an opinion considers that the market for the supply of car rental services is not larger than national.[40]

(37) In addition, a majority of respondents to the market investigation having expressed an opinion considers that it is not appropriate to further segment it at local level to individual airports and downtown locations.[41] In particular, one broker explained that '*a rental company based in the airport building is certainly in competition with a provider outside an airport. The basis of the consideration here is that vehicles from providers located outside an airport can be significantly cheaper for the same service. To get to the offer, shuttle services from the airport to the station are used to pick up customers in front of the Airport Building. In this case, a reservation must already been made in advance (pre-booked business)*'.[42]

(38) For the purpose of this Decision, the question of whether the geographic scope of the market for short-term car rental services is national or local can be left open, as the Transaction would not raise serious doubts as to its compatibility with the internal market under either plausible market definition.

(39) The Commission will assess the effects of the Transaction on short-term car rental services at national level and at local level, the latter defined as services provided either (i) at the airport (including both on- and off-airport services), or (ii) downtown.

4.2.2. Manufacture and supply of passenger cars and commercial vehicles

4.2.2.1. Commission's practice

(40) In previous decisions, the Commission considered the market for the manufacture and supply of new vehicles to be national in scope due to differences in prices, customer preferences, regulation, and distribution channels.[43]

4.2.2.2. Notifying Parties' view

(41) The Notifying Parties submit that the definition of the geographic market for the manufacture and supply of passenger cars and commercial vehicles can be left open in the present case, as the Proposed Transaction does not lead to competitive concerns under any conceivable market definition.[44]

4.2.2.3. Commission's assessment

(42) Several elements indicate that the supply of cars to car rental companies is national in scope.

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40 Replies to questionnaire 2 to car rental companies, to questionnaire 3 to brokers and to questionnaire 4 to corporate customers, question 5.1.

41 Replies to questionnaire 2 to car rental companies, question 5.3, to questionnaire 3 to brokers and to questionnaire 4 to corporate customers, question 5.2.

42 Reply to questionnaire 3 to brokers, question 5.1.

43 Case M.9730 FCA/PSA.

44 Form CO, paragraph 292.

(43) First, the negotiations for the supply of cars to car rental companies take place at the national level on the side of both the OEMs and the car rental companies. In this respect, a majority of respondents to the market investigation having expressed an opinion indicates that the negotiations for the supply of cars take place on a country-by-country basis.[45] Similarly, the Notifying Parties submit that for Volkswagen, '*the typical scope of negotiations and agreements with RaC [rental car] customers is national*',[46] and that the supply contracts of Volkswagen with rental car companies are also negotiated at national level.[47]

(44) Second, prices for the supply of cars to car rental companies differ between Member States. In this respect, a majority of respondents to the market investigation having expressed opinion indicated that prices of the same cars differ between Member States.[48] In particular, one car rental company explained that '*prices are negotiated on country level and can differ up to 10%. This is because the market conditions vary between the Member States, as do taxes and ancillary costs*'.[49] Similarly, the Notifying Parties explain that, for Volkswagen, […], different VAT regulations and different tax regimes apply across Member States.[50] For Europcar, […].[51]

(45) Third, the conditions of supply differ on a by-country-basis. In this respect, a majority of respondents to the market investigation having expressed an opinion indicated that the conditions of supply of cars differ between Member States.[52] In particular, one car rental company responded that '*discounts, buy back prices, leasing instalments, reconditioning costs etc. can vary significantly from country to country*'.[53] Similarly, the Notifying Parties submitted that […].[54]

(46) Fourth, a majority of car rental companies responding to the market investigation indicated that the fleet mixes supplied to their companies differ on a country-basis.[55] One respondent explained that '*customer demand (which is a key driver in determining fleet mixes) differs between Member States depending on various factors including (but not limited to): size and quality of roads, climate, demographic, brand preferences/loyalties, seasonality, business/leisure use etc. Model availability and infrastructure (e.g., for charging electric vehicles) may also vary between Member States*'.[56] Similarly, the Notifying Parties submitted that the fleet order mixes can be different per country.[57]

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45 Replies to questionnaire 1 to car manufacturers, question 17 and to questionnaire 2 to car rental companies, question 11.
46 Response to RFI-5 question 3.
47 Response to RFI-5 question 1.
48 Replies to questionnaire 1 to car manufacturers, question 19 and to questionnaire 2 to car rental companies, question 12.
49 Reply to questionnaire 2 to car rental companies, question 12.
50 Response to RFI-5 question 2.
51 Response to RFI-5 question 2.
52 Replies to questionnaire 1 to car manufacturers, question 20 and to questionnaire 2 to car rental companies, question 13.
53 Replies to questionnaire 2 to car rental companies, question 13.
54 Response to RFI-5 question 2.
55 Replies to questionnaire 2 to car rental companies, question 14.
56 Reply to questionnaire 2 to car rental companies, question 14.
57 Response to RFI-5 question 2.

(47) Based on the above, for the purpose of assessment of the Transaction, the Commission considers that the manufacture and supply of passenger cars and commercial vehicles to car rental companies is national in scope.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(48) Under Article 2(2) and (3) of the Merger Regulation,[58] the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.

(49) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.[59]

(50) Non-horizontal effects arise when the parties to a concentration operate in different levels of the supply chain in certain relevant markets (vertical effects). The Commission appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.[60]

(51) Both the Horizontal and Non-Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

(52) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each party to the merger on the other, as a result of which the merged entity would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[61]

(53) The Horizontal Merger Guidelines list a number of factors, which may influence whether or not significant non-coordinated effects are likely to result from a merger. In particular, the Horizontal Merger Guidelines refer the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers or the fact that the merger would eliminate an important competitive force.[62] Not all these factors need to be present

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58 As regards the assessment in relation to the EEA, see also Annex XIV to the EEA Agreement.

59 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2,2014, p. 5) ('Horizontal Merger Guidelines').

60 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6) ('Non-Horizontal Merger Guidelines').

61 Horizontal Merger Guidelines, paragraph 24.

62 Non-Horizontal Merger Guidelines, paragraph 26.

for significant non-coordinated effects to be likely. The list of factors is also not exhaustive.

(54) In non-horizontal mergers, non-coordinated effects may arise when the concentration gives rise to foreclosure. In vertical mergers, foreclosure can take the form of input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input; and/or the form of customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.[63]

(55) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines whether the merged entity would have post-transaction the ability to foreclose access to either inputs or customers, whether the merged entity would have the incentives to do so and whether such foreclosure strategy would have a detrimental effect on competition.[64]

5.2. Horizontal overlap: the supply of car rental services

(56) Europcar and Volkswagen are both active in the supply of car rental services, but Volkswagen's activity is relatively limited overall.

(57) Europcar is present in approximately 130 countries worldwide and in 2020 had an average fleet of around 248 000 vehicles. Europcar's three major car rental brands are Europcar (a provider of car rental and light commercial vehicle rental services), Goldcar (a low-cost car rental services provider) and InterRent (offering 'mid-tier' car rental services). Europcar's other brands include Buchbinder, Megadrive, and Global. In the EEA, Europcar achieves revenues from its direct operations (i.e. excluding revenues linked to its franchisee network) in the following EEA Member States: Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Norway, Portugal, Slovakia and Spain.

(58) Volkswagen provides car rental services, largely limited to VW Group branded vehicles, via VW FS, under the brands Euromobil and FS AG Rent-a-Car, as well as through Audi on demand (in Spain), Audi rent, Porsche Drive Rent and Volkswagen Group Retail France (in France), Porsche Bank (in Austria), PHS (in Bulgaria, Croatia, Czech Republic, Italy, Poland, Portugal, Romania, Slovakia, Slovenia). Volkswagen provides car rental services in Austria via ARAC GmbH ('ARAC'), in Hungary via Eurent Autovermietung Kft. ('Eurent') and in Sweden via Europeisk Biluthyrning AB ('EB'). ARAC, Eurent and EB are Europcar franchisees that are operated by Volkswagen.

(59) The Parties' activities in the supply of car rental services overlap in eight Member States.[65] At the national level, there are affected markets in three countries: Austria, Germany and Hungary. When local markets (i.e. airports and downtown stations) are considered, in the eight Member States in which the Parties operate their own rental stations, the Transaction gives rise to 12 affected markets for the supply of short-term car rental services: in Austria, at the airports of Graz, Innsbruck, Salzburg and

63 Non-Horizontal Merger Guidelines, paragraph 30.
64 Non-Horizontal Merger Guidelines, paragraph 30.
65 Austria, Denmark, France, Germany, Hungary, Italy, Portugal and Spain.

Vienna, and downtown in the cities of Graz, Linz, Salzburg, Klagenfurt and Innsbruck; in Germany, downtown in Ulm; and in Hungary, at Budapest airport and downtown in Budapest.

(60) The combined market shares of the Parties do not exceed 40% in any affected market, with their combined market shares being 35% or lower in all but two of those markets (as shown in Tables 1 and 3 below).

(61) Moreover, the Parties appear not to be close competitors as they have a somewhat different focus. While Europcar is a large rental car provider with a multi-national outreach for business and leisure customers, Volkswagen's activities are largely concentrated on mobility replacement offers to workshop and leasing customers as well as captive mobility offerings for its own employees.[66] Internal documents show that Europcar considers its main competitors to be the other large multi-national companies rather than Volkswagen.[67] Moreover, only a small minority of car rental companies that expressed a view in the market investigation take into account Volkswagen's prices and/or offers when setting their prices and/or offers.[68]

(62) As regards the Parties' competitors in the markets for car rental services, in addition to Europcar, there are four large multi-national car rental companies (Avis, Enterprise, Hertz and Sixt) that operate under well-established brands and through an extensive footprint of stations. These largest car rental companies in the EEA not only service corporate customers, but also leisure travellers to a large extent, either under their more recognisable brands or under subsidiary brands.[69] Moreover, the Parties also compete with a number of medium-size companies operating a national or regional network of rental stations and local car rental companies operating a small number of rental stations.

5.2.1. National markets: Austria, Germany and Hungary

(63) The Parties' combined market shares in all horizontally affected markets at the national level are listed in Table 1 below.

66 Form CO, paragraph 543.

67 Form CO, Annex 9.2 to QP4, slide 6.

68 Replies to questionnaire 2 to car rental companies, question 30.

69 ` The Avis Budget Group's main car rental brands are Avis and Budget; Hertz's main brands are Hertz, Dollar and Thrifty; Enterprise's main brands are Enterprise, National and Alamo.

Table 1: Affected national markets for the supply of car rental services (market shares and HHI[70])

Market	Party	Austria	Germany	Hungary
Short-term (all)	Europcar	[10-20]%	[20-30]%	Not affected
	Volkswagen	[10-20]%	[0-5]%	
	Combined	**[20-30]%**	**[20-30]%**	
	HHI	2 117	2 496	
	ΔHHI	377	163	
Short-term passenger	Europcar	[10-20]%	[20-30]%	[0-5]%
	Volkswagen	[10-20]%	[0-5]%	[20-30]%
	Combined	**[20-30]%**	**[20-30]%**	**[30-40]%**
	HHI	2 124	2 789	2 214
	ΔHHI	296	181	173
Short-term leisure	Europcar	[20-30]%	Not affected	[10-20]%
	Volkswagen	[10-20]%		[10-20]%
	Combined	**[30-40]%**		**[30-40]%**
	HHI	2 305		2 333
	ΔHHI	530		581
Short-term corporate	Europcar	[10-20]%	[20-30]%	Not affected
	Volkswagen	[10-20]%	[0-5]%	
	Combined	**[20-30]%**	**[20-30]%**	
	HHI	1 995	2 846	
	ΔHHI	289	171	
Short-term replacement	Europcar	[5-10]%	Not affected	Not affected
	Volkswagen	[10-20]%		
	Combined	**[20-30]%**		
	HHI	2 154		
	ΔHHI	201		

Source: Tables 10, 10a, 12, 13, 14, 14a and Annex 13.1 to QP4, Form CO, and response to RFI 11.

(64) As shown in Table 1, there are affected markets at a national level for the supply of short-term car rental services (Austria and Germany) and sub-segments of that market, i.e. the supply of short-term car rental services for passenger cars (Austria, Germany and Hungary), the supply of short-term leisure car rental services (Austria and Hungary), the supply of short-term corporate car rental services (Austria and Germany), and the supply of replacement short-term car rental services (Austria). The market shares of the merged entity on these markets for short-term car rental

[70] The Herfindahl-Hirschman Index ('HHI') is a measure of concentration levels in a market. As set out in the Horizontal Merger Guidelines, there are unlikely to be horizontal competition concerns in a merger with a post-merger HHI between 1 000 and 2 000 and a delta (ΔHHI) below 250, or a merger with a post-merger HHI above 2 000 and a delta below 150.

services range between 22% - 34%. The increments in market shares brought about by the Transaction range between 4 percentage points and 13 percentage points. The HHIs range from 1 995 to 2 846, with the HHI deltas ranging from 163 to 581.

(65) Although there are some markets with a HHI above 2 000 and some with HHI deltas above 250, significant competitors are active in each of these markets. The major international car rental companies (Sixt, Hertz, Avis, and Enterprise) are all present, in addition to local car rental companies. Table 2 presents the market shares in the overall market for the supply of short-term car rental services in Austria, Germany and Hungary.

Table 2: Market shares in overall short-term car rental services in Austria, Germany and Hungary in 2020.

Company	Austria	Germany	Hungary
Europcar	[10-20]%	[20-30]%	[0-5]%
Volkswagen	[10-20]%	[0-5]%	[20-30]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**
Sixt	[20-30]%	[30-40]%	[10-20]%
Hertz	[10-20]%	[5-10]%	[10-20]%
Avis	[10-20]%	[5-10]%	[10-20]%
Enterprise	[5-10]%	[5-10]%	[0-5]%
Others	[10-20]%	[10-20]%	[20-30]%
Total	**100%**	**100%**	**100%**
HHI	2 117	2 496	1 523
HHI delta	377	163	130

Source: Tables 10, 12 and 14 Form CO, and responses to RFI 10 and 11.

(66) In Austria, the merged entity would be the largest player with a market share of [20-30]% and the HHI delta is over 250. However, the HHI is only modestly above 2 000 and Sixt will be just behind the merged entity with a market share of [20-30]%. The merged entity would also face competition from the other international players such as Hertz ([10-20]%), Avis ([10-20]%) and Enterprise ([5-10]%), as well as smaller local competitors.

(67) In Germany, the merged entity would be the second largest player with a market share of [20-30]%. While the HHI is over 2 000, the HHI delta is only modestly above 150. Sixt is the largest player with [30-40]%, and the merged entity would also face competition from other international players such as Avis ([5-10]%), Hertz ([5-10]%), and Enterprise ([5-10]%), as well as smaller local competitors.

(68) In Hungary, the merged entity would be the largest player with a market share of [20-30]% but the HHI delta is below 150 and it would face competition from international players such as Sixt ([10-20]%), Hertz ([10-20]%) and Avis ([10-20]%) as well as smaller local competitors.

(69) The vast majority of both corporate customers and brokers who responded to the market investigation stated that they do not expect any impact from the Transaction, and the vast majority of the rental car companies who responded to the market

investigation did not raise any material concerns as to the effect of the Transaction on any of these horizontally affected markets.[71]

(70) Moreover, a majority of rental car companies consider that there will be new entrants in the supply of car rental services in the EEA in the next three years, with one respondent noting that '*The area of mobility - leasing, car rental, car sharing, ride hailing etc. - is undergoing significant change…Our expectation is that …the boundaries between rental and other mobility solutions will increasingly blur. In this context, … new start-ups are developing - some will develop and flourish and others will fail in time*.'[72] There appears to be consensus among respondents to the market investigation that traditional car rental activities will face increased competition in the near future through new entrants with different business models.

(71) Overall, given the market shares of the Parties, the presence of significant competitors, that the Parties appear not to be close competitors and the fact that no material concern was expressed by the vast majority of respondents during the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the affected markets for short-term car rental services listed in paragraph (64).

5.2.1.1. Local markets: stations in airports and in downtown areas in cities

(72) The Parties' combined market shares in all horizontally affected markets at the local level are listed in Table 3 below.

Table 3: Affected local markets for short-term car rental services

Location	Volkswagen	Europcar	Combined	HHI	HHI delta
On-airport car rental services					
Graz	[5-10]%	[20-30]%	[30-40]%	3 068	444
Innsbruck	[10-20]%	[10-20]%	[30-40]%	2 628	522
Salzburg	[10-20]%	[10-20]%	[20-30]%	2 639	332
Vienna	[10-20]%	[10-20]%	[20-30]%	2 513	350
Budapest	[10-20]%	[10-20]%	[20-30]%	2 322	325
Downtown car rental services					
Graz	[10-20]%	[20-30]%	[40-50]%	2 564	652
Linz	[10-20]%	[20-30]%	[30-40]%	2 108	658
Salzburg	[10-20]%	[10-20]%	[20-30]%	1 983	377
Innsbruck	[10-20]%	[5-10]%	[20-30]%	2 128	232
Klagenfurt	[10-20]%	[5-10]%	[20-30]%	1 830	192
Ulm	[20-30]%	[5-10]%	[30-40]%	1 987	254
Budapest	[0-5]%	[20-30]%	[20-30]%	2 576	172

Source: Tables 11 and 15 and Annex 13.1 to QP4, Form CO, and response to RFI-11

[71] Replies to questionnaire 3 to brokers, questions 19-21, to questionnaire 4 to customers, questions 24-26, and to questionnaire 2 to car rental companies, questions 57-59.

[72] Replies to questionnaire 2 to car rental companies, question 25.

(73) The market shares of the merged entity on the markets for short-term car rental services at the airports and in the downtown areas listed in (59) and Table 3 range between [20-30]% - [40-50]%. The increments in market shares brought about by the Transaction range between 4 percentage points and 15 percentage points. The HHIs range from 1 830 to 3 068, with HHI deltas ranging from 172 to 658.

(74) Although in some cases the HHI is above 2 000 and the HHI delta is above 250, as with the situation at the national level (as illustrated in Table 2), significant competitors are active in each of these airport and downtown markets, with at least two and sometimes all four of the major international car rental companies (Sixt, Avis, Hertz, and Enterprise) being present, in addition to local car rental companies.

(75) The vast majority of both corporate customers and brokers who responded to the market investigation stated that they do not expect any impact from the Transaction, and no respondent to the market investigation raised any material concerns as to the effect of the Transaction on the market for short-term car rental services at any airport or downtown areas.[73]

(76) Moreover, as discussed above, a majority of rental car companies consider that there will be new entrants in the supply of car rental services in the EEA in the next three years.[74]

(77) Overall, given the market shares of the Parties, the presence of significant competitors, that the Parties appear not to be close competitors and the fact that no material concern was expressed during the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the affected markets for short-term car rental services at any of the airports or downtown areas.

5.3. Vertical relationship: manufacture and supply of passenger cars to car rental companies (upstream) and car rental services (downstream)

(78) As explained above in paragraphs (42) to (47), car rental companies purchase cars at a national level, and any foreclosure strategy would be implemented at least at the national level. The analysis the potential risks of input and customer foreclosure arising by the Transaction will therefore be conducted at the national level.

(79) When considering national markets for the manufacture and sale of passenger cars to car rental companies upstream and car rental services downstream, the Transaction gives rise to five vertically affected markets.

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73 Replies to questionnaire 3 to brokers, questions 19-21, to questionnaire 4 to customers, questions 24-26, and to questionnaire 2 to car rental companies, questions 57-59.

74 Replies to questionnaire 2 to car rental companies, question 25.

Table 4: Vertically affected markets

	Upstream	Downstream
Member State	**Volkswagen's share of manufacture and supply of passenger cars to car rental companies**	**The Parties' combined share of car rental services**
Austria	[30-40]%	[20-30]%
Denmark	[50-60]%	[20-30]%
Finland	[30-40]%	[20-30]%
Germany	[40-50]%	[20-30]%
Spain	[30-40]%	[10-20]%

Source: Form CO, annex 13.1 to QP4.

5.3.1. Input foreclosure

(80) Several car rental companies taking part in the Commission's market investigation raised concerns that post-Transaction Volkswagen would deteriorate the conditions of supply of its cars to competing car rental companies in terms of prices, availability of cars and access to car data[75] and connectivity technologies.[76] In particular, concerns were raised that post-Transaction Volkswagen would have an incentive to divert car sales from competing car rental companies to Europcar and that other OEMs will not be able to satisfy their demand. Indeed, the car manufacturing industry is currently operating with limited capacity due to shortages of semiconductors used as components in car production and car supply in the market is currently limited.

5.3.1.1. Ability to foreclose

(81) The Commission considers that post-Transaction Volkswagen would not have the ability to engage in input foreclosure. This is for the following reasons.

(82) First, at the EEA level, Volkswagen accounts for about [30-40]% of the supply of passenger cars to rental companies. At the national level and in the countries in

[75] Cars may be installed with equipment that allows the collection and transmission of operational data such as millage, fuel level and consumptions and alerts. The data, which collected by the equipment provider, may be very useful to improve fleet management The concern raised by some car rental companies related to the use Volkswagen would do with data collected from the its cars in their fleets and the conditions under which they could access the data. Replies to questionnaire 2 to car rental companies, question 51; minutes of calls with car rental companies of 7 February 2022, paragraph 17 and of 3 February 2022, paragraph 19.

[76] Connectivity services allow remote access to cars for example, locking and unlocking rental cars from a smartphone. Car rental companies are increasingly offer connectivity services. The concern raised with respect to connectivity services is that post-Transaction Volkswagen may deteriorate the connectivity services to competing car rental companies. Replies to questionnaire 2 to car rental companies, questions 51 and 52; minutes of calls with car rental companies of 27 January 2022, paragraph 12 and of 3 February 2022, paragraph 19.

which Europcar is active, Volkswagen holds a share of under [40-50]% with the exception of Denmark[77] and Germany.

(83) Second, as can be seen in Table 5 below, at both the EEA and national level, Volkswagen faces competition from a significant number of large OEMs such as Stellantis, Renault, Hyundai, BMW, Toyota, Daimler, Ford and others.[78]

Table 5: Market shares of OEMS for the supply of cars to car rental companies

OEM	Market shares in volume in 2021					
	EEA	Austria	Denmark	Finland	Germany	Spain
Volkswagen	[30-40]%	[30-40]%	[50-60]%	[30-40]%	[40-50]%	[30-40]%
Stellantis	[20-30]%	[20-30]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%
Renault	[10-20]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Hyundai	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[10-20]%
BMW	[5-10]%	[10-20]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%
Toyota	[5-10]%	[0-5]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%
Daimler	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%
Ford	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Others	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: Form CO, annex 21.2 to QP3.

(84) Third, it is expected that Chinese OEMs such as SAIC and electric car OEMs such as Tesla and Polestar will increase their presence in the market in the coming years.[79]

(85) Fourth, it should be noted that the recent disruptions in the supply of cars due to the pandemic and the semiconductor crisis are expected to be resolved in the short term. The majority of respondents, both OEMs and car rental companies, expect that the supply disruptions will be resolved by the end of 2024.[80] Likewise, industry observers expect car supply to return to pre-pandemic levels during 2023 or 2024 and that by that time capacity will exceed demand.[81] It must be noted that sales to car rental companies are one of the main channels to absorb oversupply.[82] Consequently,

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77 Denmark represents a small market for car supply, accounting for [0-5]% of overall demand of cars in the EEA and [0-5]% EEA demand of cars for rental companies. Volkswagen's share of supply of cars in Denmark has been decreasing consistently since 2019. Form CO, annex 21.2 to QP3.

78 Among them, OEMs such as Honda, Mazda, Suzuki, Tesla, Tata (India), Geely and SAIC (China).

79 Form CO, paragraphs 430-432 and Annex 6, page 13. Replies to questionnaire 2 to car rental companies, question 36, minutes of a call with car rental company of 26 April 2022, paragraph 6.

80 Replies to questionnaire 1 to car manufacturers, question 32.2; replies to questionnaire 2 to car rental companies, question 27.2.

81 LMC Automotive, 'Global top-10 OEMs Production Forecast', 22 April 2022; HIS Markit Automotive, 'Around the World Global Sales and Production Forecast', 21 April 2022; Boston Consulting Group, 'Future Production and Supply Trends', May 2022. The industry reports were provided by the Notifying Parties in response to RFI-4.

82 In addition to the direct revenue from sales to car rental companies, the buy-back arrangements allow OEMs to offer on the second hand market cheaper yet young cars. In this way, OEMs are able to serve full demand at different customers' budget levels. See Boston Consulting Group, 'Future

should Volkswagen reduce post-Transaction its supply to competing car rental companies, other OEMs will be able to replace it.

(86) Fifth, the majority of OEMs having expressed opinion in the market investigation were of the view that car rental companies could increase purchases of cars in the affected markets from them and from other OEMs.[83] In addition, the majority of car rental companies have expressed opinion with respect to the affected markets were of the view that suppliers other than OEMs such as leasing companies, new car dealers and used cars dealers can supply them with cars.[84]

(87) Sixth, the Notifying Parties argue that Volkswagen cars have no particular brand importance to car rental companies. In this respect, responses of car rental brokers and corporate customers in the Commission's market investigation show that customer choice of car rental companies is not dependent on the ability of the car rental companies to offer Volkswagen cars. The majority of brokers and the majority of corporate customers in the affected markets that have expressed a view, stated that the available car brands either do not influence 'at all' or 'not so much' their choice of car rental company.[85] The majority of brokers and the majority of corporate customers in the affected markets that have expressed a view, responded that it is 'not at all' or 'not so much' important for customers that a car rental company offers Volkswagen car models.[86] The majority of corporate customers in the affected markets that have expressed a view responded that they would procure car rental services from a car rental company that does not offer Volkswagen cars.[87] All brokers in the affected markets that have expressed a view responded that orders from a car rental company that stops offering Volkswagen cars would not be affected significantly.[88]

(88) Seventh, with respect to data and connectivity services,[89] in addition to the considerations above, among the car rental companies having expressed an opinion with respect to each of the affected markets, at least half, and in most affected markets the majority, either do not procure such services from Volkswagen or consider that Volkswagen's services could be replaced by the services of other providers.[90] The OEMs that expressed an opinion were of the view that, in addition to OEMs, other providers offer such services.[91]

5.3.1.2. Incentive to foreclose

(89) The commission considers that post-Transaction Volkswagen would not have the incentive to engage in input foreclosure. This is for the following reasons.

Production and Supply Trends', May 2022, provided by the Notifying Parties in response to RFI-4. Form CO, paragraph 221-227, et seq,

83 Replies to questionnaire 1 to car manufacturers, questions 45 and 46.

84 Replies to questionnaire 2 to car rental companies, questions 21 and 22.

85 Replies to questionnaire 4 to corporate customers, question 6; Replies to questionnaire 3 to brokers, question 6.

86 Replies to questionnaire 4 to corporate customers, question 10; Replies to questionnaire 3 to brokers, question 10.

87 Replies to questionnaire 4 to corporate customers, question 11.

88 Replies to questionnaire 3 to brokers, question 11.

89 See footnotes 76 and 77 above.

90 Replies to questionnaire 2 to car rental companies, question 53

91 Replies to questionnaire 1 to car manufacturers, question 50.

(90) First, according to Volkswagen´s internal projections, it will return to pre-pandemic production levels already in […]. Due to its high sunk and fixed costs, Volkswagen must achieve high utilisation levels in its factories and car rental companies are an important channel to absorb oversupply of cars.[92] An input foreclosure strategy would entail a reduction of sales to Europcar's competitors. Volkswagen would therefore need to find other buyers to these volumes and it is not obvious that Europcar would be able to absorb them. As can be seen in the table below, Europcar's procurement of cars pre-pandemic in Austria and Germany, Denmark and Finland was significantly lower than Volkswagen sales to car rental companies. In these markets, Europcar's demand for cars will not compensate for Volkswagens' loss of sales due to input foreclosure. In Spain, Europcar's fleet in 2019 was minimally larger than Volkswagen sales to rental companies. In order for Europcar to absorb the volumes sold by Volkswagen to rental companies, it will have to switch almost its entire fleet in Spain to Volkswagen cars. However, as explained further in paragraph (102) below, car rental companies prefer keeping a brand mix in their fleets.

Table 6: Sale and purchase of cars 2019

Market	Number of cars sold by Volkswagen to car rental companies	Number of cars procured by Europcar
Austria and Germany[93]	[…]	[…]
Denmark	[…]	[…]
Finland	[…]	[…]
Spain	[…]	[…]

Source: Response to RFI-9, annex 1.1 revised and Form CO, annex 21.2 to QP3.

(91) Second, according to the information provided by the Parties, Volkswagen's margins from the sale of cars to car rental companies are significantly higher than Europcar's margins,[94] reducing even further the incentive of Volkswagen to engage in input foreclosure.[95]

(92) Third, Volkswagen already offers car rental without this existing vertical relationship creating an incentive to engage in input foreclosure strategies. The majority of car rental companies having expressed opinion responded that in the markets were Volkswagen already has car rental activities their relationship with Volkswagen was not negatively affected.[96] In that respect, as argued by the Parties and confirmed by the majority of OEMs having expressed an opinion, car rental companies are not only an important distribution channel in terms of sales but also an important promotional channel, allowing drivers to test-drive cars for several hours or days and gain first-hand experience. The importance of car rental companies as a promotional channel may even increase as OEMs are endeavouring to increase the sale of electric

92 Form CO, annex 7. In addition to the direct revenue from car rental companies, the buy-back arrangements allow the OEMs to re-sell the cars on the second-hand markets to customers looking for cheaper yet young cars.

93 Europcar's demand for cars in Austria is served by the German fleet pool; response to RFI-9, paragraph 2.

94 Form CO, annex 3.1 to questions of 30 March 2022, page 3; annex 6, page 23, response to RFI-7.

95 Non-Horizontal Merger Guidelines, paragraph 41.

96 Replies to questionnaire 2 to car rental companies, question 43.

cars, a technology with which most drivers are not familiar.[97] These considerations create an inventive to Volkswagen to continue supplying car rental companies post-Transaction.

5.3.1.3. Overall impact

(93) Given the likely absence of ability and incentive to foreclosure Volkswagen's competitors, it also seems unlikely that a foreclosure strategy could lead to any anticompetitive effects if implemented.

5.3.2. Customer foreclosure

(94) In the Commission's market investigation, a number of OEMs raised concerns that post-Transaction Europcar would increase its purchases of cars from Volkswagen and decrease those from other OEMs. Moreover, they indicated that Europcar could share with Volkswagen the details of its negotiations with other OEMs and that this would allow Volkswagen to undercut its OEM competitors.

5.3.2.1. Ability to foreclosure

(95) The Commission considers that post-Transaction Volkswagen would not have the ability to engage in customer foreclosure. This is for the following reasons.

(96) First, although Europcar is a large customer for OEMs, it represents only [0-5]% of total EEA car demand and between [0-5]% in any of the affected national markets.[98] Consequently, should Europcar decrease procurement from Volkswagen's competitors, they will still have sufficient alternatives to sell their output.

(97) Second, the majority of OEMs that took part in the Commission's market investigation answered that Europcar represented only up to 10% of their sales to car rental companies in each of the affected markets and overall in the EEA.[99] All OEMs having expressed an opinion were of the view that should Europcar significantly decrease the purchase of non-Volkswagen cars for its fleet, it would not affect their ability to compete.[100] The majority of respondents having expressed an opinion also expect to increase their sales to car rental companies in the coming three years.[101] It is therefore unlikely that Europcar would have the ability to engage in customer foreclosure.

(98) Third, as regards the concern that post-Transaction Volkswagen could obtain information about the offers made to Europcar by competing OEMs, it is not obvious that the conditions offered by OEMs to Europcar are a reliable proxy to the conditions that would be offered to other car rental companies. Respondents to the market investigation provided mixed responses on the question of whether conditions offered by an OEM to one car rental company are a good proxy to the conditions it would offer to another. The views among OEMs were mixed but overall leaned toward a positive response to the question, some explaining that they

97 Replies to questionnaire 1 to car manufacturers, question 50; see also minutes of a conference call with an OEM on 14 February 2022.

98 Response to RFI-5, question 8; response to RFI-8.

99 Replies to questionnaire 1 to car manufacturers, question 37.

100 Replies to questionnaire 1 to car manufacturers, question 42.

101 Replies to questionnaire 1 to car manufacturers, question 39.

offer similar conditions to customers.[102] The views among car rental companies were mixed but overall leaned toward a negative response, some explaining that conditions negotiated by rental companies differ.[103]

(99) Moreover, OEMs and car rental companies can and do sign non-disclosure agreements ('NDAs') that protect information exchanged during negotiations. The majority of OEMs and car rental companies having expressed a view, responded that they have NDAs in place.[104] In all affected markets, all OEMs having expressed an opinion were of the view that in case they do not have NDAs with car rental companies they could ask that NDAs would be put in place and would consider doing so with respect to Europcar.[105] Similarly, the majority of car rental companies having expressed a view were of the opinion that NDAs could be put in place easily.[106]

5.3.2.2. Incentive to foreclose

(100) The Commission considers that post-Transaction Volkswagen would not have the incentive to engage in customer foreclosure. This is for the following reasons.

(101) First, post-Transaction Volkswagen would not be Europcar's only controlling shareholder and any sourcing strategy the company were to follow would need to be acceptable to Trinity and aimed at maximising Europcar's profitability. Indeed, Trinity would not *per se* benefit from an increase in sales to Europcar made by Volkswagen.

(102) Second, from the point of view of Europcar, there may be little incentive to engage in customer foreclosure. The Notifying Parties explained that diversity of car supply and sourcing cars from multiple OEMs is important in order to secure supply and offer customers wide range of cars. This was acknowledged by another OEM opining that '*Europcar is mostly likely continue to purchase cars from other OEMs as car rental companies have an interest in having diversity in their fleets.*'[107] Car rental companies also confirmed that it is important to source cars from a range of OEMs.[108] Indeed, in its internal documents Volkswagen […].[109] In another internal document Volkswagen […].'[110]

(103) Third, as regards the concern that post-Transaction Volkswagen could obtain information about the offers made to Europcar by competing OEMs, the Notifying Parties explained that, since Europcar will be jointly controlled, they will not treat it as part of their groups. Consequently, they agreed to put in place mechanisms that

102 Replies to questionnaire 1 to car manufacturers, question 53.
103 Replies to questionnaire 2 to rental companies, question 50.
104 Replies to questionnaire 1 to car manufacturers, question 54; see also minutes of a conference call with an OEM on 14 February 2022; replies to questionnaire 2 to rental companies, question 46.
105 Replies to questionnaire 1 to car manufacturers, questions 55 and 56.3.
106 Replies to questionnaire 2 to rental companies, questions 47 and 48.
107 Replies to questionnaire 1 to car manufacturers, question 64.
108 Car rental companies were asked to rate from 1 to 5 (5 being the most important) how important is it for a car rental company to source cars from a range of OEMs. The majority of respondents having expressed an opinion with respect to the affected markets chose the ratings 5 or 4.
109 Form CO, Attachment D, 211116 - K2 EMG Management Conference, page 37.
110 Form CO, Attachment C, 20210413_KVS_K2, page 7.

will ensure that sensitive information will not be shared between Volkswagen and Europcar.[111]

5.3.2.3. Overall impact

(104) Given the likely absence of ability and incentive to engage in customer foreclosure, it also seems unlikely that a foreclosure strategy could lead to any anticompetitive effects if implemented. Indeed, the large majority of OEMs having expressed opinion in the market investigation were of the view that the Transaction will have *'neutral / no significant impact'* on them.[112]

6. CONCLUSION

(105) 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

111 Form CO, paragraphs 503-506; response to RFI-2, question 10.
112 Replies to questionnaire 1 to car manufacturers, question 59.