EUROPEAN COMMISSION

Brussels, 7.11.2018
C(2018) 7527 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying parties:

Subject: **Case M.8744 - DAIMLER / BMW / CAR SHARING JV**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) 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 17 September 2018, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004[3] by which Bayerische Motoren Werke Aktiengesellschaft ("**BMW**") and Daimler AG ("**Daimler**") (together, the "Parties") intend to establish six joint ventures (separately, "the JVs"; all six together, the "JV"), bringing together the Parties' mobility services in five business fields ("the proposed Transaction"). The sixth joint venture will manage the brands and license them out to the other joint ventures. BMW and Daimler will jointly control the JV within the meaning of Articles 3(1)(b) and 3(4) of the Merger Regulation.

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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

1. THE PARTIES

1.1. BMW

(2) With the trademarks BMW, Rolls Royce and MINI, BMW is a manufacturer ("OEM") of passenger cars and motorcycles worldwide as well as a provider of services in the field of individual mobility, such as (free-floating) car sharing services. BMW is a publicly listed company established under German law which is headquartered in Munich, Germany. Passenger cars include plug-in hybrid vehicles and electric vehicles. With its subsidiary "DriveNow", BMW provides free-floating car sharing services.

1.2. Daimler

(3) With its divisions Mercedes-Benz Cars, Daimler Trucks, Mercedes-Benz Vans, Daimler Buses and Daimler Financial Services, Daimler is a publicly listed company established under German law with its registered headquarter in Stuttgart, Germany. Daimler is globally active in the development, manufacturing and distribution of automotive products, mainly passenger cars, trucks, vans and buses. The Mercedes-Benz Car division sells passenger cars under the Mercedes-Benz and 'smart' brands. Daimler Financial Services supports the sales of vehicles worldwide. Its product and services portfolio consists of tailored financing and leasing packages for dealers and customers, as well as financial services such as insurance brokerage, investment products, credit cards, and full fleet management and leasing services.

(4) With its subsidiary "car2go" Daimler provides free-floating car sharing services.

2. THE OPERATION AND THE CONCENTRATION

(5) The proposed Transaction concerns the acquisition by BMW and Daimler of joint control over six legal entities, bringing together the Parties' mobility services in five business fields, i.e. (i) car sharing services DriveNow and car2go, (ii) ride hailing services, (iii) parking services, (iv) charging services as well as (v) other on-demand mobility services. The sixth joint venture will manage the brands and license them out to the other joint ventures. The Parties will transfer existing business to the JV. The JV will offer its services to commercial customers, public entities and private customers. It is planned that the JV will operate in various countries worldwide. In the EEA, the Parties' activities will overlap in seven cities within the EU, namely in Austria (Vienna), Germany (Berlin, Cologne, Dusseldorf, Hamburg and Munich) and Italy (Milan).

(6) More specifically, Daimler will contribute to the JV:

(7) **car2go:** a provider of free-floating car sharing services (www.car2go.com), fully owned by Daimler. Previously Daimler held 75% of the shares in car2go Europe GmbH and [INFORMATION ON TRANSACTION STRUCTURE]. The remaining 25% in car2go Europe GmbH were held by the car rental company Europcar. However, meanwhile Daimler has acquired the entirety of the shares of

and thereby sole control over car2go from Europcar.[4] Daimler will contribute to the JV all the shares in car2go. [INFORMATION ON TRANSACTION STRUCTURE].

(8) **mytaxi group (Intelligent Apps GmbH)** ("**mytaxi**")**:** a taxi dispatch service provider (for Europe see under www.de.mytaxi.com). Currently, Daimler holds [INFORMATION ON SHARES]% of the shares in Intelligent Apps GmbH and its subsidiaries with the brands mytaxi, Chauffeur Privé, Beat and Clever taxi. [INFORMATION ON TRANSACTION STRUCTURE][5] [INFORMATION ON TRANSACTION STRUCTURE]. The Parties do not, however, offer ride-hailing services in the EEA.

(9) **moovel:** a multimodal online platform, providing customers with access to a wide range of mobility offerings by enabling in-app searching, booking, ticketing and payment (www.moovel.com). Currently, Daimler holds 100% of the shares in moovel.

(10) BMW will contribute to the JV:

(11) **DriveNow:** also a provider of free-floating car sharing services (www.drive-now.com), fully owned by BMW. Previously BMW held 50% of the shares in DriveNow. The remaining 50% were held by the car rental company Sixt. However, meanwhile BMW has acquired the entirety of the shares of and thereby sole control over DriveNow from Sixt.[6] BMW will contribute to the JV all of the shares in DriveNow.

(12) **ReachNow:** a provider of car sharing and ride hailing services (www.reachnow.com) in Seattle and Portland (USA). Currently, BMW holds 100% of the shares in ReachNow.

(13) **Parkmobile/Parknow ("ParkNow"):** providers of digital cashless parking payment services (de.park-now.com; us.parkmobile.com). Currently, BMW holds 100% of the shares in [INFORMATION ON TRANSACTION STRUCTURE]. BMW will contribute to the JV all its shares in ParkNow.

(14) **ChargeNow: a** provider of access to charging stations of various charge point operators (www.chargenow.com). Currently, BMW holds 100% of the shares in ChargeNow.

---

4 The acquisition of the remaining 25% of the shares in car2go by Daimler was signed on [DATE OF SIGNING]. The transaction has been notified to the Austrian competition authority (*Bundeswettbewerbsbehörde*) and the German Federal Cartel Office (*Bundeskartellamt*). The acquisition of the remaining car2go shares by Daimler has been cleared by the *Bundeskartellamt* on 8/03/2018 and by the *Bundeswettbewerbsbehörde* on 30/03/2018.

5 Annex 5.1(e), paragraph 1 and Annex 3.1(c), paragraph 2.2(a)(i) of the [INFORMATION ON AGREEMENT].

6 The acquisition of the remaining 50% of the shares in DriveNow by BMW was signed on [DATE OF SIGNING]. The transaction has been notified to the Austrian competition authority (*Bundeswettbewerbsbehörde*) and the German Federal Cartel Office (*Bundeskartellamt*). The acquisition of the remaining DriveNow shares has been cleared by the *Bundeskartellamt* on 07/02/2018 and by the *Bundeswettbewerbsbehörde* on 28/02/2018.

(15) The single transactions for each one of the JVs are interdependent as they are conditional upon each other.[7] In addition, the individual transactions are linked in the following way:

(16) First, the envisaged transactions are *de jure* inter-conditional. Some structural preparation steps and the contribution of the business fields to the JVs are closing conditions[8] in the [INFORMATION ON AGREEMENT] are closing actions under the [INFORMATION ON AGREEMENT].[9] Thus, the Parties will not close the [INFORMATION ON AGREEMENT] without a legal obligation to [INFORMATION ON AGREEMENT].

(17) The [INFORMATION ON AGREEMENT] states that BMW and Daimler wish to implement their cooperation by setting up the JVs and by establishing a player in the innovative mobility service business through these JVs. According to the above-mentioned agreements, the Parties will not set up one of the JV without the other ones. [INFORMATION ON AGREEMENT].

(18) Secondly, the single transactions are also *de facto* inter-conditional. All transactions are intended to serve the same purpose: BMW and Daimler have the aim to establish a mobility service provider that offers the whole range of mobility services. It is planned that the offerings of the six JVs will be combined.[10] Moreover, there will be a strategic alignment of the JVs in future[11]. As a result, also the economic aim of the transactions shows that they will be carried out together and in parallel.

2.1. Joint Control

(19) Post-closing, the Parties will each hold 50% of the shares and voting rights in all the JVs (and, consequently, in the JV), [INFORMATION ON TRANSACTION STRUCTURE]. Each of the JVs (and, consequently, the JV) will be jointly controlled by BMW and Daimler.[12]

(20) Each JV will at least have two managing directors (CEO and CFO). Generally, the appointment or dismissal of the directors must be decided by majority vote[13].

---

7 Paragraph 38 CJN.

8 Section 5.1 of the [INFORMATION ON AGREEMENT].

9 Section 6.3 of the [INFORMATION ON AGREEMENT] once all merger control approvals have been received.

10 Section 1.3 of the [INFORMATION ON AGREEMENT] and Section 1.4 of the [INFORMATION ON AGREEMENT].

11 Section 2.4(d) of the [INFORMATION ON AGREEMENT].

12 [INFORMATION ON TRANSACTION STRUCTURE].

13 Section 3.2(e) and Section 3.2(f) of the [INFORMATION ON AGREEMENT].

Thus, BMW and Daimler each have a relevant veto right within the meaning of the CJN.[14] [INFORMATION ON CORPORATE GOVERNANCE].[15]

(21) Corporate planning and the budget must be decided by a qualified majority, i.e. at least 75% of the voting rights.[16.] [INFORMATION ON CORPORATE GOVERNANCE].[17]

(22) The above shows that topics which relate to strategic decisions cannot be decided by either BMW or Daimler alone. [INFORMATION ON CORPORATE GOVERNANCE].[18] [INFORMATION ON CORPORATE GOVERNANCE].

(23) Therefore, BMW and Daimler will have joint control over the JV.

2.2. Full functionality

(24) The JV will be fully-functional within the meaning of the CJN,[19] as it fulfils all the relevant criteria, namely (i) the assets attributable to the JV already operate on markets and they perform the functions normally carried out by undertakings operating on the same markets; (ii) the JV will not only serve a specific function for the Parties, but will conduct business with third parties and have own access to and presence on markets, (iii) [INFORMATION ON TRANSACTION STRUCTURE][20]; (iv) there are no strong sales or purchase relations with the Parties, (v) the JV will be operating on a lasting basis.

(25) With regard to (iv), the Parties will provide vehicles to the relevant JVs. However, this is in fact not different to the situation today with regard to, on the one hand, BMW and DriveNow and, on the other hand, Daimler and car2go.[21] [INFORMATION ON CORPORATE GOVERNANCE AND BUSINESS PLANS].[22] [INFORMATION ON CORPORATE GOVERNANCE AND BUSINESS PLANS].[23] [INFORMATION ON CORPORATE GOVERNANCE

14 Paragraph 69 of the CJN.

15 Section 2.4 [INFORMATION ON AGREEMENT].

16 Section 6.1 [INFORMATION ON AGREEMENT].

17 Section 1.5(b) [INFORMATION ON AGREEMENT] and Section 6.1 [INFORMATION ON AGREEMENT].

18 See Section 3 of the [INFORMATION ON AGREEMENT].

19 Paragraphs 91 and ff of the CJN.

20 Section 5 of the [INFORMATION ON AGREEMENT].

21 Section 7(4) of the [INFORMATION ON AGREEMENT].

22 Section 5.1(f) of the [INFORMATION ON AGREEMENT]. The Parties confirm, in their reply to question 3 of RFI 13 dated 6 November 2018, what stated in paragraphs 134 and ff of the Form CO, i.e. that the supply volume of vehicles to DriveNow and car2go is marginal in comparison to BMW's and Daimler's overall supply volume.

23 Section 1.7(b) [INFORMATION ON AGREEMENT].

AND BUSINESS PLANS].[24] [INFORMATION ON CORPORATE GOVERNANCE AND BUSINESS PLANS]. However, this is only an ancillary function of the JV as its focus lies in providing services to third parties. In conclusion, the Parties estimate that the JV's turnover with the Parties will be less than [INFORMATION ON TURNOVER]% of the JV's total turnover.

(26) With regard to (v), there is no specific duration in the [INFORMATION ON AGREEMENT AND ON CORPORATE GOVERNANCE].[25]

3. EU DIMENSION

(27) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5,000 million[26]. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(28) The Transaction has therefore an EU dimension according to Article 1(2) of the Merger regulation.

4. MARKET DEFINITION

4.1. Relevant product market

Horizontally Affected Markets

(29) The stated rationale of the deal is to prepare for a future in which individual car ownership and therefore vehicle sales decrease, and mobility is instead provided as a service; and ultimately, for the age of self-driving vehicles when taxi, ride hailing and car sharing services all collapse into one mobility market. However, a single product market for all mobility solutions seems, at least for the near future, unlikely to be the relevant market.

(30) In prior decisions, the Commission dealt with the market for (i) all passenger transport services[27] and for (ii) short term car rental services including car sharing services.[28] However, there are no prior decisions in which the Commission dealt with (iii) car sharing services or (iv) free-floating car sharing services. As a consequence, the Parties submit that the Commission should consider either the

---

[24] Section 7.3 [INFORMATION ON AGREEMENT]. This means that [INFORMATION ON BUSINESS PLANS].

[25] [INFORMATION ON CORPORATE GOVERNANCE].

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

[27] See e.g., Cases M.8441 – *Firstgroup/MTR Corporation/South Western Rail Franchise*, para. 14 et seq.; M.7146 – *Govia/Thameslink, Southern and Great Northern Passenger Rail Franchise*, para. 16.

[28] See e.g. Cases M.8309 – *Volvo Car Corporation/First Rent A Car*, paragraphs 41 et seq.; M.6333 *BMW/ING Car Lease*, paragraphs 17 et seq.

overall market for all passenger transport services[29] or, at least, the market for short term car rental services assessed at national level.

(31) For the reasons explained in sections 4.1.1, 4.1.2, 4.1.3 below, and in line with the decisional practice of the Commission and considering the number of novel mobility solutions that have been recently realised in various cities across the EEA, it appears appropriate to assess the proposed Transaction under all the market segmentations.

4.1.1. All passengers transport services

4.1.1.1. Commission's practice

(32) The Commission has considered a product market that comprises all passenger transport services. For example, in one decision, the Commission stated that the relevant product market with regard to railway services could be as wide as all passenger transport services or as narrow as solely rail services.[30] In another case, the Commission's market investigation indicated that car sharing services exerted pressure on the transport by bus, especially regarding short and medium distances, and on the transport by personal car.[31]

4.1.1.2. Parties' view

(33) The Parties submit that it would be accurate to define a market encompassing all passenger means of transport including different options, such as public transport, taxis, cars, scooters and (electric) bicycles for short to medium distances. The Parties argue that the Parties' customers use the services of different providers already today as prices are transparent and there are several transportation options available for a specific trip.[32]

(34) The Parties also refer to the fact that, in their view, smartphones and apps are widely available and that, as a consequence, passengers use different means of transport especially for short and medium distance journeys.[33]

(35) The Parties also refer to the *Zipcar/Streetcar* merger, reviewed by the UK competition authority in 2010[34] and to the *Europcar/Buchbinder* merger,

---

29 The Parties submit that the market for all passenger transport services should include public transport, taxi services together with non-traditional services (such as Uber), car rental (including car sharing activities), motor scooters rental, electric scooters rental, (electric) bicycle rental and private transportation options (e.g. carpooling).

30 See e.g., Cases M.8441 – *Firstgroup/MTR Corporation/South Western Rail Franchise*, para. 14 et seq.; M.7146 – *Govia/Thameslink, Southern and Great Northern Passenger Rail Franchise*, para. 16.

31 See e.g. Case M.5741 – *CDC/Veolia Environment/Transdev/Veolia Transport*, paragraph 20.

32 Form CO, paragraph 119.

33 Form CO, paragraphs 74-75.

34 UK Competition Commission (now CMA), final report of 22 December 2010, *Streetcar/Zipcar*.

reviewed by the *Bundeskartellamt* in 2017[35]. Whilst the UK competition authority took a narrow car sharing segment as a starting point, it acknowledged in its further assessment that there is in fact a high degree of potential substitution between car sharing and other transport options, such as car rental, taxis and public transport and that these alternatives constrain the prices for car sharing.[36] The *Bundeskartellamt*, on the other hand, left the precise market definition open and dealt with car sharing as a minor aspect, given that the merger did not concern car sharing providers.

4.1.1.3. Commission's assessment

(36) With regard to the supply side, the majority of OEMs that responded to the market investigation did not consider the non-car sharing mobility solutions as substitutable with car sharing. As a consequence, the market investigation did not reveal the market for all passengers transport as being the relevant product market. Rather, station-based car sharing was identified by OEMs that responded to the market investigation as the best alternative to free-floating. In particular, one OEM stated that "*all the other mobility solutions are significantly different, both from a customer perspective and from the operating mode: (i) car sharing requires embedded technology to allow door unlock/lock from a smartphone (or RFID card), […] (ii) ride hailing and taxi do not offer the same privacy (driver aboard) and pricing as car sharing, (iii) public transport does not offer the same privacy and flexibility since it is based on a fixed route and time schedule, (iv) bike and scooter sharing do not offer the same comfort and luggage capacity, are unpleasant to use with bad weather conditions […], (v) own car requires a totally different budget for the end user in order to acquire, insure and maintain the vehicle, and afford a parking place […]*".

(37) When asked about close substitutes, ride hailing was identified as the closest substitute to free-floating car sharing by OEMs that responded to the market investigation, followed by station-based car sharing and taxi on the one hand, and by public transport and car rental. Another OEM stated that "*scooter and bicycle sharing are less close to car sharing due to comfort and risk perception, [whilst] own car and car rental and taxi are less comparable due to higher costs, ride hailing is less comparable due to customer experience […]*".

(38) Amongst other car sharing, scooter sharing, ride-hailing, taxi or other mobility services providers ("mobility service providers"), station-based car sharing was picked up by mobility service providers that responded to the market investigation as the best alternative to free-floating car sharing, followed by peer-to-peer car sharing and taxi and by ride hailing and public transport. Some mobility service providers who responded to the market investigation indicated that free-floating car sharing is only used for spontaneous journeys.

(39) When asked about close substitutes, station-based car sharing was identified as the closest substitute to free-floating by mobility service providers that responded to the market investigation, whilst taxi and ride-hailing were picked up as close

35 Bundeskartellamt, 26/09/2017, *Europcar/Buchbinder.*

36 Form CO, paragraph 76.

substitutes to free-floating car sharing. One respondent to the market investigation stated that "*although the ease of picking up and dropping off a car using free-floating car sharing services is [more] analogous to car ownership, car ownership is cost prohibitive for many due to the cost of the car, parking, gas, insurance and maintenance, Therefore, for those who don't have free-floating car sharing as an option, station-based car sharing and peer-to-peer car sharing are the most analogous to free-floating car sharing. Ride hailing and taxi are cost prohibitive for longer distances […] and therefore not competitive, and if bulky items or larger groups (such as family) are being transported, the other options (public transport, scooter sharing, bicycle sharing, etc.) are not competitive*".

(40) The majority of providers of front-end/back-end and hardware/software car sharing-related technology ("technology providers") who responded to the market investigation indicated station-based car sharing as being part of the same market as free-floating car sharing. A minority of the technology providers who responded to the market investigation indicated that bicycle sharing belongs to the same market as free-floating car sharing. None of the technology providers who responded to the market investigation mentioned other mobility solutions as being part of the same market as (free-floating) car sharing.

(41) When asked about close substitutes, one technology provider amongst those that responded to the market investigation indicated taxi as being closest substitute to station-based car sharing and public transport and ride-hailing as being close substitutes to station-based car sharing. Another respondent to the market investigation indicated free-floating as being close substitute to ride-hailing.

(42) On the basis of the results of the market investigation as outlined above, not all of the transport options set out above appear to be closely substitutable with one another. There are stark differences both from a customer perspective and in the positions the various actors on the supply side, as well as very different pricing levels.

(43) For the purpose of this decision, the Commission considers it more appropriate to assess the proposed Transaction on a market for (free-floating) car sharing services as the narrowest-possible relevant market. However, the Commission will also have due regard to the competitive pressure exerted by some other passengers transport services on (free-floating) car sharing in its competitive assessment below.

4.1.2. Short term car rental services (including car sharing)

4.1.2.1. Commission's practice

(44) In prior decisions, the Commission has considered a market for car rental services. In this framework, the Commission considered that this market could be further segmented into (i) short-term car rental services (e.g. for business trips, leisure trips, tourism) and (ii) long-term car rental services (e.g. with a rental period of more than one year).[37] The Commission mentioned further possible segmentation of the car rental segment based on customers groups, vehicle

[37] See e.g. Cases M.6333 *BMW/ING Car Lease*, paragraph 17; M.4613 *Eurazeo S.A./ApcoaParking Holdings GmbH*, paragraph 16; M.8569 – *Europcar/Goldcar*, paragraph 11.

category and a possible separate segment for replacement rentals.[38] In addition, it has considered whether other mobility solutions such as car sharing from part of short-term car rental services.[39]

(45) At national level, the French *Autorité de la Concurrence*, when assessing the merger between France Cars and the Avis Budget Group[40], examined the market for car rental services, taking into account the Commission's case *BMW/ING Car Lease*[41], where the notifying parties argued that the short-term car rental segment includes car sharing activities.[42] Finally, the *Autorité de la Concurrence* left the market definition open in this regard.[43]

4.1.2.2. Parties' view

(46) In the event the Commission does not accept an all passengers, transport services relevant market, at least a short term car rental segment should be considered, along with car sharing services, as a relevant product market, without further segmentation being appropriate.[44] In their view, it would not be accurate to separate car sharing from a short term car rental segment, for reasons of demand substitution, supply substitution, potential competition and expansion.[45]

(47) With regard to demand-side substitutability, according to the Parties, the customer is flexible and can choose a specific car from a number of vehicles offered in order to drive to a destination; he only pays for the concrete use; both options are attractive for a short period of time; pricing flexibility and flexibility in access to the car; and a number of car rental companies has already introduced fully 'counterless' short term car rental services.[46] With regard to the supply-side substitutability, according to the Parties, car rental companies can easily align

---

38 See e.g. Case M.4613 – *Eurazeo S.A./Apcoa Parking Holdings GmbH*, paragraph 16.

39 See e.g. Cases M.8309 – *Volvo Car Corporation/First Rent A Car*, paragraphs 41 et seq.; M.6333 *BMW/ING Car Lease*, paragraphs 17 et seq.

40 Autorité de la Concurrence, Decision of 06/12/2016, *France Cars/A vis Budget Group* (16-DCC-200) (http://www.autoritedelaconcurrence fr/pdf7avis/16DCC200versionpublication.pdf).

41 Ibid, paragraph 7.

42 Case M.6333 - *BMW/ING Car Lease*, paragraphs 18 et seq.

43 Autorité de la Concurrence, Decision of 6 December 2016, *France Cars/Avis Budget Group* (16-DCC-200), paragraphs 7 and 17.

44 Form CO, paragraph 77.

45 Form CO, paragraph 112.

46 Car rental services where customers do not need to go to a reception counter to rent the car (to pick up the keys and provide the relevant documents). For example, Hertz has launched a new concept (Hertz 24/7) which can currently be used in Europe (in the UK, Germany, France, Portugal, the Netherlands, Italy, Belgium and Spain) and in Australia. The rental process is fully 'counterless': via a smartphone app, the customer can reserve a car at any time. The customer obtains access to the car by using a PIN code. Currently, cars can be picked-up at highly-frequented places (in the UK, for instance, in hundreds of IKEA, B&Q, and Costco stores). The customer is charged by hourly rates.

their offerings to car sharing services in a timely manner insofar as they have not already introduced 'counterless' services, only requiring some minor changes that do not cause substantial costs.

4.1.2.3. Commission's assessment

(48) Only a minority of OEMs and mobility service providers responding to the market investigation considered car rental to be part of the same market as free-float car sharing. Only two respondents ranked car rental as the closest alternative to or substitute for free-floating car sharing, while three respondents ranked it as second closest alternative, 12 others ranked it as third closest alternative, and the majority of respondents did not even indicate car rental as a substitute for free-floating car sharing.[47]

(49) Some respondents highlighted the differences between free-floating car sharing and car rental, e.g. the technology used (lock/unlock or RFID card), enrolment services requiring the visit of a reception desk in the case of rental services, and making round trips (as opposed to the flexibility in case of free-floating car sharing) as well as peculiarities in billing (*e.g.* car rental services do not allow billing based on the number of minutes driven), etc. Others indicated that free-floating car sharing "*can be more flexible than station based car sharing and rental*", and that "*car rental and taxi are less comparable due to higher costs*".[48]

(50) On this basis, for the purpose of this decision, the Commission does not consider it appropriate to consider a short-term car rental market including (free-floating) car sharing as the relevant product market in this case. As stated above, for the purpose of this decision, the Commission considers it more appropriate to assess the proposed Transaction on a market for (free-floating) car sharing and to look at the competitive pressure exerted by car rental on (free-floating) car sharing in its competitive assessment below.

4.1.3. Car sharing as a whole and station-based vs free-floating

4.1.3.1. Commission's practice

(51) The Commission has only dealt with car sharing services in a few decisions adopted under the simplified procedure[49], and there appears to be no settled practice with regard to this possible relevant product market.

4.1.3.2. Parties' view

(52) As explained above in paragraphs (46) - (47), the Parties only suggested a broad passenger transportation market and (alternatively) a short-term car rental segment including car sharing, arguing that a further segmentation is not appropriate.

---

47 Replies to questions 4-5 of questionnaire to OEMs. Replies to questions 6-7 of questionnaire to mobility service providers.

48 Replies to questions 4-5 of questionnaire to OEMs.

49 See e.g. M.8163 - *AC/EYSA/JV* and M.6437 – *Enterprise Holding / CITER*.

4.1.3.3. Commission's assessment

(53) Car sharing is a type of self-service car rental in which cars are picked up and returned by the user without the need to interact with a staff member. It is designed to provide on-demand mobility for people who want to rent cars for short distances and short periods of time. After a one-time registration and authentication process, car sharing users can flexibly search and reserve cars through a dedicated smartphone app. It is usually offered within a certain area of a city and can be further sub-segmented into (i) station-based car sharing, (ii) free-floating car sharing and – to a very small extent – (iii) peer-to-peer car sharing.

(54) Station-based car sharing – usually used for several hours and longer distances than free-floating car sharing – means that the customer needs to collect and return the car to fixed stations. Usually, the car has to be returned to the same station where it was picked up. Station-based car sharing is only suitable for round trips, it requires prior booking and it is generally for longer durations. Neither of the Parties is active in station-based car sharing.

(55) Free-floating car sharing – mostly used for short-term trips of around 20 minutes and usually paid per minute – allows customers to pick up and drop off the car anywhere within a certain delimited area of a city using authorised parking spaces (e.g. public parking spots). The car can then be picked up by the next user in the location where the previous user parked it. The car sharing market is a dynamic, young and growing market, which is often (especially in the field of free-floating car sharing) not profitable yet.

(56) Peer-to-peer (P2P) car sharing involves cars belonging to private individuals. Market players provide an online platform to handle the transaction, offer insurance, and in some cases equip the car with telematic devices to ensure easy access. Users pick up and return the car where the owner has parked it (e.g., in front of her home). For the purpose of this decision, P2P car sharing will not be further discussed as none of the Parties is active in P2P car sharing and it still appears – in relation to free-floating and station-based car sharing – negligible with respect of its size in the cars sharing market.

(57) In some cities, there is a trend towards convergence of free-floating and station-based car sharing due to the fact that free-floating car sharing suppliers offer schemes which allow for booking of a longer time, e.g. 3, 6, 9 and 24 hours with fixed prices and a maximum number of driven kilometres included, while station-based car sharing suppliers offer shorter renting schemes based on minutes, as is the standard in free-floating. There is also one supplier which has instead of a fixed station certain areas in which the car can be picked up and returned.

(58) The majority of the OEMs, mobility service providers and technology providers considered that station-based car sharing would belong to the same market as free-floating car sharing. In terms of close substitutes, station-based car sharing was mostly chosen by mobility service providers and technology providers as the closest substitute to free-floating car sharing and by OEMs as one (behind ride hailing) of the close substitutes to free-floating car sharing.

(59) In addition to the replies to the market investigation, the Commission, in order to delineate the relevant product market, has also considered the results of a July

2018 customer survey in 14 EEA cities by CRA, including the seven overlap cities, which was submitted by the Parties' economic advisers in August 2018.[50] This survey was conducted in order to better understand the substitution patterns of users of the Parties' car sharing services towards one another and towards other service providers and means of transport.

(60) On the demand side, the customer survey shows that (i) the market is evolving, (ii) there is a large range of mobility services that are, to varying degrees, seen as substitutes by consumers, including public transport, (iii) the highest diversion ratio goes to competing free-floating car sharing suppliers, narrowly followed by public transport as the only real other alternative.

(61) Among other, this survey asked users which alternative mobility service they would use for a typical trip if their preferred provider were not available for at least six months. Such diversion questions may allow discerning which services users would be most likely to switch to as an alternative to their preferred provider. Table A below indicates the answer to this question for car2go and DriveNow users as a simple average of overlap cities.

	Diversion from		
Diversion to	**car2go**	**DriveNow**	**Average**
car2go	./.	[40-50]%	[30-40]%
DriveNow	[20-30]%	./.	
Public transport	[30-40]%	[20-30]%	[20-30]%
Own car	[10-20]%	[10-20]%	[10-20]%
Bike/scooter	[5-10]%	[5-10]%	[5-10]%
Other free floating	[5-10]%	[5-10]%	[5-10]%
Taxi/Uber	[5-10]%	[0-5]%	[5-10]%
Rental/station-based	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**

Table A: Diversion ratios to and from the Parties

[50] CRA Charles River Associates, Project KITT – analysis of EU survey results, 21/08/2018.

(62) As shown in the table, users tend to view the respective merging partner as the closest competitor (with on average [30-40]% of customers stating that they would switch to the merger partner as their preferred second option). The difference in the diversion ratios between users of DriveNow and car2go may be explained by the different types of cars on offer. The cars offered by DriveNow are larger and more expensive per minute leading to relatively fewer users of car2go switching to DriveNow.

(63) Table A also shows, however, that public transport is an equally credible alternative to DriveeNow/car2go for a substantial number of users (with on average [20-30]% stating that they consider it their second best option). Finally, customers appear to consider a variety of other means of transport as potential alternatives. Depending on the specific customer and the situation he or she is in, different mobility services may therefore be a substitute to the Parties' car sharing offers.[51]

(64) Given that, as show in Table A, more than [50-60]% of the customers would change to alternative means of transports, especially to public transport and to their own cars, which shows the large heterogeneity of substitution patterns of customers between the different means of transport, the Commission considers that market definition in car sharing and market shares may be less precise indicators of competitive positioning in this case. Therefore, while the Commission will assess this transaction also on both a market for car sharing and in the narrowest plausible market of free-floating car sharing, it will in its competitive assessment also take account of certain out-of-market constraints exerted by, in particular, the public transport services, that are not included in such a market.

4.1.3.4. Conclusion

(65) Although, on the basis of the results of the market investigation and the above-referred customer survey, it cannot be ruled out that there is a separate market for free-floating car sharing, the precise market definition can be left open as also in a broader market encompassing all types of car sharing (and not just free-floating car sharing services) the assessment would not change.

Vertically Affected Markets

(66) The Commission also identified several possible vertically affected markets, mostly between the manufacturing of passenger cars and the activities of some of the JVs, including free-floating car sharing. As set out below, these vertical relations do not appear to be of any major concern due to the Parties' moderate share in the market for passenger cars and the presence of several strong competitors in that market.

---

[51] While a diversion ratio of "only" 36% to the respective merging partner may appear small at first sight, it should be stressed that this is not so. In particular, note that in a hypothetical market where two out of four symmetric firms merge, the diversion ratio from one merging partner to the other would be only 33.3%, even though the combined market share of the merging firms would be 50%. Diversion ratios of 36% are therefore consistent with significant closeness of substitution (see the competitive assessment further below).

4.1.4. Parking

4.1.4.1. Commission's practice

(67) In *Fortis AG SA/Bernheim-Comofi SA*, the Commission dealt with car parking operators. The notifying parties were of the opinion that a market for the operation of paid public parking facilities (without free parking spaces, residential parking or private or company parking) should be considered.[52]

(68) In the case *Eurazeo S.A./Apcoa Parking Holdings GmbH*, the Commission looked at a possible separate market for parking management services.[53] The notifying parties argued that a broader market for facility management services should be taken into account.[54] The Commission's market investigation showed that providers of such services are usually chosen in tender procedures on a long-term basis. They do not mandatorily own the buildings, but manage them under a facilities management contract. The Commission ultimately chose to leave the exact market definition open.[55] The provision of car park management services "at off-street parking facilities"[56] in the UK has been examined in the Commission's competitive assessment in the case *Mirael/Ferrovial/NDHI.*[57]

4.1.4.2. Parties' views

(69) In the Parties' view, the market should comprise all companies that supply hardware which provides access and payment services. This includes suppliers of payment terminals and access equipment, such as (cashless) card payment terminals. According to the Parties, it is not plausible to divide the market for parking (including hardware payment) services into a sub-segment limited to software/mobile technology.[58]

4.1.4.3. Commission's assessment and conclusion

(70) The Commission considers that the market for parking services has evolved in such a way as to integrate (increasingly) the (hardware) payment services, since customers most often pay at the terminals or with special parking payment cards rather than at the reception desk. Hence, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis below on the market for parking services including hardware payment services as well as on a sub-segment limited to software/mobile technology.

---

52 Case M.2825 - *FORTIS AG SA/BERNHEIM-COMOFI SA*, paragraph 10.

53 Case M.4613 - *Eurazeo S.A./Apcoa Parking Holdings GmbH.*

54 Case M.4613 - *Eurazeo S.A./Apcoa Parking Holdings GmbH*, paragraphs 9 and 10.

55 Case M.4613 - *Eurazeo S.A./Apcoa Parking Holdings GmbH*, paragraph 10; see also Case M.7398 - *MIRAEL/FERROVIAUNDHI*, paragraph 30.

56 These are parking facilities anywhere but on the streets, like garages and lots.

57 Case M.7398 - *MIRAEL/FERRO VIAUNDHI*, paragraph 33.

58 Form CO, paragraph 215.

4.1.5. Charging

4.1.5.1. Commission's practice

(71) In *Verbund/Siemens/E-Mobility Provider Austria*, the Commission dealt with a market for the provision of electric mobility services, i.e. power supply for cars, infrastructure for charging cars and support services for users.[59] The market investigation conducted by the Commission showed that it could be appropriate to distinguish between these three segments and to further separate the market into private and commercial customers.[60]

(72) Additionally, the upstream market for the production, supply and installation of charging infrastructure for electric mobility services has been analysed. According to the notifying parties, the market could be segmented into (1) charging hardware, (2) necessary software and (3) additional services. However, the notifying parties also stressed that the market is just developing and that such segmentation could therefore be artificial[61].

4.1.5.2. Parties' views

(73) In the Parties' view, the operation of charging points and the provision of electric mobility services constitute separate markets. ChargeNow, BMW's access provider to charging stations of various charge point operators, is only active in a potential market for electric mobility services (i.e. a market where drivers are offered an app to allow them finding public charging outlets and easily pay for the charge).

(74) The Parties are of the opinion that it is not appropriate to segment the potential market for electric mobility services further, e.g. by customer groups. The reason is that practically all electric mobility service providers offer all kinds of services to all type of customers or they are at least in a position to easily expand their product portfolio in that regard within a short period of time.[62]

4.1.5.3. Commission's assessment and conclusion

(75) In light of the supply-side substitutability of charging or electric mobility services as explained by the Parties, and taking into account the very limited presence of BMW, through its ChargeNow services, on the market for charging services (more particularly electric mobility services), the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis below on the market for charging services.

---

59 Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria*, para. 13.

60 Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria*, para. 15 et seq.

61 Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria*, para. 26 et seq.

62 Form CO, paragraph 215.

4.1.6. Passenger cars

4.1.6.1. Commission's practice

(76) The Commission has in previous decisions distinguished between (i) the manufacture and supply of passenger cars and (ii) the distribution of passenger cars, considering both as possible upstream markets for activities such as full fleet management, car rental or car leasing.[63]

(77) As regards the manufacture and supply of passenger cars, the Commission has previously considered a segmentation on the basis of car categories: (i) mini cars; (ii) small cars; (iii) medium cars; (iv) large cars; (v) executive cars; (vi) luxury cars; (vii) sport cars; (viii) sport utility vehicles ("SUV"s) and (ix) multipurpose vehicles. For the SUV segment, a further division into (i) small, (ii) medium and (iii) large SUVs has been considered.[64] Moreover, the Commission has investigated whether electric cars constitute a separate product market and whether this possible market should be further segmented according to (i) technology (electric battery cars and hybrid cars) or (ii) the categories defined for vehicles with combustion engines.[65] However, the Commission left the market definition open in these cases.

(78) As regards the distribution of motor vehicles, the Commission has in previous decisions distinguished between the wholesale and retail distribution of motor vehicles.[66] In its previous decisions, the Commission considered that the distinction between the wholesale distribution of passenger cars and light commercial vehicles was sufficient and that a further segmentation of passenger cars by narrower product segments based on certain categories of cars (e.g. mini cars, small cars, medium cars, etc.) was not appropriate given that *"manufacturers normally distribute a model range which covers different market segments under the same distribution channel"*.[67]

4.1.6.2. Parties' views

(79) The Parties submit that the relevant market in the case at hand is the wholesale distribution of passenger cars, although the entirety of passenger car sales is channelled both via the wholesale and the retail distribution network of the Parties. The Parties explain that large customers, such as car rental and car

63 See e.g. Case M.8309 - *Volvo Car Corporation/First Rent A Car*, paragraph 12; Case M.6333 - *BMW/ING car lease*, paragraph 24; Case M.5568 - *Volkswagen/Fleet Investments/LeasePlan Corporation JV*, paragraph 30.

64 Case M.8449 *Peugeot/Opel*, paragraph 12.

65 See e.g. Case M.8449 *Peugeot/Opel*, paragraphs 14 et seq.

66 See e.g. Case M.6403 - *Volkswagen/KPJ Polska/Skoda auto Polska/VW bank Polska/VW leasing Polska*, paragraph 22.

67 See e.g. Case M.6403 - *Volkswagen/KPI Polska/Skoda auto Polska/VW bank Polska/VW leasing Polska*, paragraph 22; Case M. 182 - *Inchcape/IEP*, paragraph 9.

sharing service providers, however, source passenger cars on the wholesale level and not on the retail level.[68]

(80) In the Parties' view, the market for manufacture and supply of passenger cars should not be further segmented by categories of cars or into a potential electric segment.[69]

4.1.6.3. Commission's assessment and conclusion

(81) In line with its previous decisions, the Commission considers it appropriate, for the purpose of this decision, to carry out is vertical competitive analysis on the abovementioned segments of the market for the manufacture and supply of passenger cars, i.e. (i) the different categories of cars (mini cars, small cars, medium cars, multipurpose cars, sports cars) and (ii) electric cars, electric battery cars and hybrid cars, because these constitute the narrowest plausible market segments.

(82) With regard to the distribution of passenger cars, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis below on the overall passenger cars distribution market, since the Parties channel the entirety of their passenger car sales via their wholesale and retail distribution networks, indicating supply-side substitutability between both distribution channels.[70]

4.1.7. Financial and operational leasing

4.1.7.1. Commission's practice

(83) In its previous decisions, the Commission considered a distinction between (i) operational leasing, in which ownership of the relevant asset is typically not transferred to the lessee at the end of the lease and the risk of ownership are retained by the lessor, and (ii) financial leasing, which is generally for a longer period, during which the lessee fully repays the asset cost and in result acquires the ownership of the relevant asset at the end of the lease.[71] The Commission has also considered segmentations of the leasing market (i) according to the types of assets which are leased (cars, office equipment etc.), and (ii) according to the size of customers.[72] In the end, it was left open whether there is one relevant product market for leasing or whether it should be segmented (i) into operational and financial leasing, (ii) according to the size of customers (small- and medium-sized

68 Form CO, paragraph 126.

69 Reply to RFI of 9 October 2018, Annex 1, footnote 1.

70 Form CO, paragraph 126.

71 Case M.8414 – *DNB/Nordea/Luminor Group*, paragraph 54; see also Cases M.5384 – *BNP Paribas/Fortis*, paragraphs 61 et seqq.; M.6763 – *VWFS/PON Holdings B.V./PON Equipment Rental & Lease*, paragraphs 16 et seqq.; and M.6333 – *BMW/ING Car Lease*, paragraphs 14 et seqq. for a distinction.

72 Case M.8414 – *DNB/Nordea/Luminor Group*, paragraph 54.

enterprises or large corporate customers), and/or (iii) according to the type of assets leased.[73]

(84) In particular with regard to the automotive sector, in the *Volvo Car Corporation/First Rent A Car* case, the Commission has identified two types of automotive financing: operational and financial leasing. According to the decision, the primary objective of financial leasing is the acquisition of the car, whereas in the case of operational leasing it is the use of the car. Financial leases function as a loan by the lessor to enable the lessee to purchase a given asset, in this case a car. In essence, the lessee has the obligation to pay all the lease instalments to meet the financing costs of the car, and bears also the operational and residual value risk. With operational leasing, the economic and legal ownership of the car remains with the lessor. Hence, it is the lessor who has to bear all the risks attached to the property (e.g. maintenance, changes to the value of the car and its disposal at the end of the contract).[74]

4.1.7.2. Parties' views

(85) In the view of the Parties, there is no need to distinguish between financial leasing and operational leasing, leased assets or customer size. There is no generally accepted clear-cut distinction between financial and operational leasing, many suppliers (e.g. banks) offer leasing for a variety of assets and whilst the legal arrangements differ depending on customer size, the available offers as such are not fundamentally different.[75]

4.1.7.3. Commission's assessment and conclusion

(86) In light of the supply-side substitutability between both leasing services (suppliers offering both) and the similarity of the offers to customers irrespective of the customer size, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis on a market for financial and operational leasing. In any event, the Parties submit that their market shares would not differ significantly from their market shares in the separate financial leasing and operational leasing market segments.

4.1.8. Full fleet leasing and management services

4.1.8.1. Commission's practice

(87) In its recent decision *Volvo Car Corporation/First Rent A Car*, the Commission left open whether there is a separate market for full fleet leasing and management services, which consists in a combination of operational leasing and related fleet management services, or whether the market could be subdivided as follows:

- Funded fleet leasing (operational fleet leasing including where offered fleet management) and unfunded fleet leasing (fleet management services provided on a standalone basis);

---

[73] Case M.8553 – *Banco Santander/Banco Popular Group*, paragraph 23 et seq.; Case M.8414 – *DNB/Nordea/Luminor Group*, paragraph 67.

[74] Case M.8309 – *Volvo Car Corporation/First Rent a Car*, paragraphs 27 et seqq.

[75] Reply to RFI 10 of 26.10.2018.

- Fleet leasing and management for vehicles of up to 3.5 tons (passenger cars and light commercial vehicles) and of more than 3.5 tons (trucks and buses);
- By type (e.g. small, medium, large, executive, sport) or brand of cars (although leasing companies typically offer a range of types and brands; this segmentation does not seem relevant for the market of full fleet management services).[76] The Commission left the product market definition open. [77]

4.1.8.2. Parties' views

(88) The Parties submit that, for the purpose of the present case, the precise product market definition can be left open since the Proposed Transaction does not raise any concerns on any of these markets.[78]

4.1.8.3. Commission's assessment and conclusion

(89) In light of the limited turnover generated through unfunded fleet leasing (as opposed to funded fleet leasing), the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis below on the market for fleet leasing and management services.

4.1.9. Applications

4.1.9.1. Commission's practice

(90) In the case *Microsoft/Nokia*, the Commission examined whether apps for tablets were comparable in terms of features, functionality and price with those for smartphones[79] and also considered a separate market for consumer communications apps.[80]

(91) Furthermore, while the Commission considered that mobile productivity apps for corporate users may constitute a separate product market, it left open the question whether the market for mobile productivity apps should be further segmented by functionality and/or operating system.[81]

---

76 Case M.8309 - *Volvo Car Corporation/First Rent A Car,* paragraphs 34 et seq.

77 Case M.8309 - *Volvo Car Corporation/First Rent A Car,* paragraph 37.

78 Form CO, paragraph 157.

79 Case M.7047 – *Microsoft/Nokia*, paragraph 33.

80 Case M.7047 – *Microsoft/Nokia*, paragraph 45.

81 Case M.7047 – *Microsoft/Nokia*, paragraph 56.

(92) In the case *Facebook/WhatsApp*, the Commission considered a separate market for consumer communications apps for smartphones and carried out is competitive analysis on this product market.[82]

(93) In any event, in neither of these two cases did the Commission explicitly distinguish between the development and the sale of smartphone apps.

4.1.9.2. Parties' views

(94) The Parties clarify that development and sale of smartphone apps refers to (i) the development of an app for a third party or (ii) the sale of the final app either to end customers (in the sense that they pay remuneration for downloading the app) or the sale to B2B customers.

(95) With regard to a potential segment for development and/or sale of multimodal apps, the Parties acknowledge that programming business apps might require a different skill set than programming games. However, the Parties do not believe that there are software developers that only program multimodal apps (or any other transportation apps) and are not capable of programming other apps. In their view, it seems that there is a significant amount of supply-side substitutability. Thus, the Parties assume that there is no distinct market for the development and sale of multimodal apps.[83]

(96) With regard to a potential segment for access to multimodal apps, the Parties are not of the opinion that this is a relevant market pursuant to competition law. The Parties have understood "access to multimodal apps" as transportation service providers (or any other service provider interested) asking to have access to and be shown on a multimodal app. The reason for this view of the Parties is that a multimodal app is only one possible way of offering a transportation service to potential end customers. Most transportation providers rely on a wide variety of means, for example (individual) smartphone apps, homepages, ticket machines etc. The Parties refer to the CRA Study mentioned in paragraph (59) indicating that – even if one looked only at smartphone apps as a way of booking transportation services – multi-homing[84] is rather common in their view. Thus, there is also no need for a customer to be present on such multimodal app.[85]

4.1.9.3. Commission's assessment and conclusion

(97) In order to conduct a most complete assessment, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis on the narrowest plausible segments of the market for applications (for smartphones), namely on the markets for (i) development/sale of smartphone

---

82 Case M.7217 – *Facebook/WhatsApp*, paragraph 34.

83 Reply to RFI 9.

84 Multi-homing is the practice of connecting a host or a computer network to more than one network. Multi-homing in this case would be, for example, the practice of a consumer downloading multiple car sharing applications on his/her device.

85 Reply to RFI 9.

applications; (ii) development/sale of multimodal applications and (iii) access to multimodal applications.

4.2. Relevant geographic market

Horizontal

4.2.1. *All passengers transport services*

4.2.1.1. Commission's practice

(98) The Commission has not assessed the geographic scope of the market for an overall market for all (urban) passenger transport services.

4.2.1.2. Parties' view

(99) The Parties submit that, for the purpose of this decision, the geographic market definition could be left open as, even if the narrowest possible geographic market were considered, the proposed Transaction would not give rise to competition concerns.[86]

4.2.1.3. Commission's assessment

(100) The majority of OEMs and mobility service providers indicate that the relevant geographic market is local at city level. The Commission concurs with these results of the market investigation as this is in line with the usage patterns of customers for most of the transport options.

4.2.1.4. Conclusion

(101) For the purpose of this case, the relevant geographic market for an overall market for all (urban) passenger transport services is local at city level.

4.2.2. Short term car rental services including car sharing

(102) In prior decisions, the Commission considered the geographic scope of this market to be national.[87] For short term corporate car rentals, the notifying parties even discussed a possible Europe-wide market.[88] In *Europcar/Goldcar*, the Commission considered that the market for short term car rental services is either national or local.[89]

---

86 Form CO, paragraph 114.

87 See *e.g.* Case M.8309 - *Volvo Car Corporation/First Rent A Car*, paragraph 45; Case M.5568 - *Volkswagen/Fleet Investments - LeasePlan Corporation JV*, paragraph 20; Case M.3090 - *VolkswagenJOffset/Crescent LeasePlan/JV* paragraph 12.; Case M.1810 - *VW/Europe Car*, paragraph 13.

88 Case M.2510- *Cendant/Galileo*, paragraph 20.

89 Case M.8569 - *Europcar/Goldcar*, paragraph 42.

4.2.2.1. Parties' view

(103) The Parties consider it appropriate to delineate the market for short term car rental (including car sharing) as national in scope.[90]

4.2.2.2. Commission's assessment

(104) In line with its previous decisions, the Commission considers the market for short term car rental to be national or local.

(105) The market may be considered national in scope due to factors such as differing consumer conduct per country, national preferences (e.g. for national car models), linguistic barriers and difficulties with regard to cross-border transactions.[91]

(106) In line with its decision in *Europcar/Goldcar*, the market for short-term car rental services may also be defined as local in scope. In that case, the market investigation confirmed the local features of the market, taking in account the fact that customers (and airport managers) do not consider car rental services offered at airports as interchangeable with car rental services offered downtown.[92]

(107) The majority of OEMs and mobility service providers indicate that the relevant geographic market is local at city level. The Commission concurs with these results of the market investigation as this is in line with the usage patterns of short term car rental customers.

4.2.2.3. Conclusion

(108) For the purpose of this decision, the relevant geographic scope for a market for short term car rental would be local at city level.

4.2.3. Car sharing as a whole and station-based vs free-floating

4.2.3.1. Parties' view

(109) As explained above in paragraphs (33) and (46) *et seq.*, the Parties stated that it is not accurate to separate car sharing from a broad transportation market or, alternatively, the short term car rental segment. Following this line, the Parties stated that it is not appropriate to make a further segmentation.[93]

---

90 Form CO, paragraph 116.

91 Case M.8309 - *Volvo Car Corporation/First Rent A Car,* paragraph 45; Case M.5568 - *Volkswagen/Fleet Investments - LeasePlan Corporation JV,* paragraph 20; Case M.3090 - *VolkswagenJOffset/Crescent LeasePlan/JV* paragraph 12.; Case M.1810 - *VW/Europe Car,* paragraph 13.

92 Case M.8569 - *Europcar/Goldcar,* paragraphs 41-42.

93 Form CO, paragraph 77.

4.2.3.2. Commission's assessment

(110) In response to the market investigation, the (large) majority of OEMs and the majority of mobility service providers stated that the geographic market for free-floating car sharing is local on a city level.

(111) In response to the market investigation, a (large) majority of the OEMs (56%) and 43% of the mobility service providers indicated that the geographic market for free-floating car sharing (including all other mobility services they consider to be substitutes) is local (city level) in scope; 33% of the OEMs and 32% of the mobility service providers indicated an EEA-wide market; none of the OEMs and only 13% of the mobility service providers indicated a national geographic market.[94]

(112) The criteria taken into account and mentioned by market investigation respondents indicating a local (by city) geographic market are the following: demand-side substitutability, supply-side substitutability and regulatory regulations and requirements.[95]

(113) One mobility service provider explained that "[*f]rom a demand-side perspective, customers' demand for these services is overwhelmingly local. The average customer wants to make use of their mobility services in the city they live or work in. Their choice as to which provider they use will be driven by the offering of that provider in such a city, not at the national or regional level. Moreover, as a supplier you have to determine whether to be present in a city/local area or not. The network required to provide a compelling offering means that a scattered or light touch spread is not an option. Rather, a supplier could offer a comprehensive network offering in one city but not in the next closest major city. That also affects how a supplier enters a market – they would invariably focus efforts on entry on a local level to get to the necessary level of vehicles. Finally, it is important to note that free floating car sharing services depend totally on the local regulations governing parking in the different cities. This means the supply characteristics vary by city.*"[96]

(114) This is in line with the fact that free-floating car sharing can only – except for Cologne and Dusseldorf, which can be used as one business area with an extra fee for leaving the car within the other city – be used within a single city. Even though driving outside the business area is possible at any time, the car can only be booked, picked up and left within the relevant city.

4.2.3.3. Conclusion

(115) The Commission considers the geographic market for (free-floating) car sharing to be local on a city level.

---

94 Replies to Questionnaire to OEMs, question 6. Replies to Questionnaire to mobility service providers, question 8.

95 Replies to Questionnaire to OEMs, question 6.1. Replies to Questionnaire to mobility service providers, question 8.1.

96 Reply to Questionnaire to mobility service providers, question 8.1.

Vertically related markets

4.2.4. Parking

4.2.4.1. Commission's practice

(116) In *Fortis AG SA/Bernheim-Comofi SA*, a local market was discussed, but the precise market definition was left open.[97] For the provision of parking management services even an EEA-wide or regional scope has been considered, but the Commission did not decide on the precise market definition.[98]

4.2.4.2. Parties' views

(117) The Parties believe that it is appropriate to define markets on a national basis because market conditions are rather homogenous within each country. In Germany, over 40 cities apply the concept of the so-called *Smart Parking Initiative,* which grants access for every provider of parking services. Thus, companies can rather easily expand their activities. Although in the UK tender processes are used, it is also true that all providers for parking services in the UK compete regularly in these tenders.[99]

4.2.4.3. Commission's assessment and conclusion

(118) In light of the homogenous parking conditions within each country, and in line with its previous decisions, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis with regard to parking services on a national basis.

4.2.5. Charging

4.2.5.1. Commission's practice

(119) Regarding the provision of electric mobility services, different geographical market definitions have been considered by the notifying parties and the participants of the market investigation (regional, national, perhaps wider than national) in the *Verbund/Siemens/E-Mobility Provider Austria* case.[100] The Commission did not finally decide on the market definition in this case.[101]

(120) As regards the upstream level, i.e. the production, supply and installation of charging infrastructure for electric mobility services, the notifying parties considered an EU- wide or global market, whereas the majority of the participants

---

97 Case M.2825 - *FORTISAG SA/BERNHEIM-COMOFI SA,* paragraph 12.

98 Case M.4613 - *Eurazeo S.A./Apcoa Parking Holdings GmbH,* paragraph 18; see also Case M.7398 - *MIRAEL/FERROVIAUNDHl,* paragraph 30.

99 Form CO, paragraph 196.

100 Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria,* para. 19 et seq.

101 Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria,* para. 21.

of the market investigation assumed a national, or at most supranational, market.[102]

4.2.5.2. Parties' views

(121) In the Parties' view, the precise geographic market definition for charging services can be left open because the proposed Transaction would not give rise to any competition concerns on any of these markets.[103]

4.2.5.3. Commission's assessment and conclusion

(122) In line with its precedents, the Commission considers, for the purpose of this decision, the geographic market for electric mobility services to be at least national in scope, and will consequently carry out its vertical competitive analysis with regard to charging services at national level, as the narrowest plausible geographic market definition.

4.2.6. Passenger cars

4.2.6.1. Commission's practice

(123) In terms of geographic market definition, the Commission has considered the market for passenger cars being EEA-wide or national in scope.[104] The Commission left the market definition open in these cases.

4.2.6.2. Parties' views

(124) In the Parties' view the market for passenger cars is at least EEA-wide in scope.[105]

4.2.6.3. Commission's assessment and conclusion

(125) In line with its precedents, the Commission considers, for the purpose of this decision, the geographic market for passenger cars (both (i) manufacture & supply and (ii) distribution) to be at least national in scope, and will consequently carry out its vertical competitive analysis with regard to passenger cars at national level, as the narrowest plausible geographic market definition.

4.2.7. Financial and operational leasing

4.2.7.1. Commission's assessment

(126) In its previous decisional practice, the leasing market was considered to be national in scope.[106]

---

[102] Case COMP/M.6641 - *Verbund/Siemens/E-Mobility Provider Austria*, para. 30 et seq.

[103] Form CO, paragraph 215.

[104] See e.g Case M.5518 - *Fiat/Chrysler*, paragraph 20; Case M.5518- *Fiat/Chrysler*, paragraph 12; Case M.6403 - *Volkswagen/KPI Polska/Skoda Auto Polska/VW Bank Polska/VW Leasing Polska*, paragraph 19.

[105] Form CO, paragraph 127.

(127) With regard to the automotive sector, in the *Volvo Car Corporation/First Rent A Car* case, the Commission left open whether the geographic market definition for operational and financial leasing is national or EEA-wide in scope.[107]

4.2.7.2. Parties' views

(128) With regard to the geographical market, the Parties note that there are examples of cross-border leasing contracts, however, consumer practice, preferences and language barriers point in the direction of national markets, leaving open whether the geographic scope for financial and operational leasing is national or wider than national.[108]

4.2.7.3. Commission's assessment and conclusion

(129) In line with its precedents, the Commission considers, for the purpose of this decision, the geographic market for financial and operational leasing to be at least national in scope, and will consequently carry out its vertical competitive analysis with regard to financial and operational leasing at national level, as the narrowest plausible geographic market definition.

4.2.8. Full fleet leasing and management services

4.2.8.1. Commission's practice

(130) In its recent decision *Volvo Car Corporation/First Rent A Car*, the Commission left open whether the geographic market is EEA-wide or national in scope.[109]

4.2.8.2. Parties' views

(131) In the Parties' view, the precise geographic market definition of the market for full fleet leasing and management services can be left open for the purpose of the present case since the Proposed Transaction does not raise any concerns on any of these markets.[110]

4.2.8.3. Commission's assessment and conclusion

(132) In line with its precedents, the Commission considers, for the purpose of this decision, the geographic market for full fleet leasing and management to be at least national in scope, and will consequently carry out its vertical competitive analysis with regard to full fleet leasing and management services at national level, as the narrowest plausible geographic market definition.

---

106 See e.g. Case M.8414 – *DNB/Nordea/Luminor Group*, paragraph 71.

107 Case M.8309 – *Volvo Car Corporation/First Rent a Car*, paragraph 33.

108 Reply to RFI 10 of 26.10.2018.

109 Case M.8309 - *Volvo Car Corporation/First Rent A Car*, paragraphs 38 et seqq.

110 Form CO, paragraph 157.

4.2.9. Applications

4.2.9.1. Commission's practice

(133) The geographic scope of the relevant markets for consumer communication services and for mobile productivity apps has been considered to be at least EEA-wide, if not worldwide.[111]

(134) Also the geographic scope for a separate market for consumer communications apps for smartphones has been considered to be EEA-wide, if not worldwide, in scope.[112]

4.2.9.2. Parties' views

(135) With regard to the development and sale of smartphone apps, the Parties submit that the relevant markets should at least be EEA-wide, if not global. According to them, app developers are located all over the world. It is very common that businesses that do not have in-house development capabilities reach out to such third party developers. There might be some restraints when it comes to finding a suitable developer, depending on budget, experience or project size. But generally speaking, a breadth of developers is available to work for third-party projects. In addition, they do not consider that language barriers are a major obstacle for programming an app, thus they believe the geographic market definition should be at least EEA-wide, if not worldwide.[113]

4.2.9.3. Commission's assessment and conclusion

(136) In line with its precedents, the Commission considers it appropriate, for the purpose of this decision, to carry out its vertical competitive analysis with regard to applications (and its market segments) at EEA-wide level. In addition, the Commission also assessed the applications segments at national level, as the narrowest plausible geographic market definition.

5. COMPETITIVE ASSESSMENT

5.1. Legal framework

(137) With regard to horizontal effects, according to paragraph 22(a) of the Horizontal Merger Guidelines,[114] a concentration could raise competition concerns by eliminating important competitive constraint on one or more firms (non-coordinated effects). There are a number of factors which are considered by the Commission in its assessment of non-coordinated effects in horizontal mergers, such as (i) merging firms having large market shares, (ii) merging firms being

[111] Case M.7047 – *Microsoft/Nokia*, paragraph 81.

[112] Case M.7217 – *Facebook/WhatsApp*, paragraph 44.

[113] Reply to RFI 9 of 26.10.2018.

[114] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5 February 2017, p. 5 ("Horizontal Guidelines").

close competitors, (iii) merging entity being able to hinder expansion by competitors.[115]

(138) With regard to vertical effects, according to paragraph 15 of the Vertical Merger Guidelines,[116] there are certain circumstances in which non-horizontal mergers could raise competition concerns. This is because a non-horizontal merger may change the ability and incentive to compete on the part of the merging entity and their competitors in ways that cause harm to consumers.

(139) Accordingly, the Commission will first give an overview of the affected markets and second assess the horizontal effects of the proposed Transaction on four plausible markets, namely (i) all passengers transport services, (ii) short term car rental services including car sharing, (iii) car sharing as a whole (including station-based and free-floating) and (iv) free-floating car sharing. The Commission will then analyse the vertical effects of the proposed Transaction on several markets upstream and downstream with respect of (potential) input and/or customer foreclosure.

5.2. Overview of affected markets

(140) The proposed Transaction gives rise to the following horizontally affected (free-floating) car sharing markets: (i) Berlin, (ii) Cologne, (iii) Dusseldorf, (iv) Hamburg, (v) Munich, (vi) Milan and (vii) Vienna.

(141) In addition, the proposed Transaction gives rise to the following vertically affected markets: (i) manufacture and supply of passenger cars / (free-floating) car sharing, (ii) manufacture and supply of (pure electric powered cars) passenger cars / parking (including hardware payment services), (iii) manufacture and supply of (pure electric powered cars) passenger cars / charging, (iv) financial and operational leasing / (free-floating) car sharing, (v) full fleet leasing and management services / (free-floating) car sharing, (vi) development and sale of smartphone apps / (free-floating) car sharing, (vii) development and sale of multimodal apps/ (free-floating) car sharing, (viii) access to multimodal apps / (free-floating) car sharing, (ix) charging / (free-floating) car sharing.

5.3. Horizontal effects

Mobility Services

5.3.1. All passengers transport services

(142) On a potential market for all (urban) passengers transport services, according to the Parties' estimates,[117] the Parties' combined market share would be [0-5]% in

[115] Paragraphs 24-30 and paragraph 36 of the Horizontal Guidelines.

[116] Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings.

[117] Form CO, paragraph 254 and reply to Q2 of RFI 6 dated 24 October 2018: these estimates are calculated on the basis of 2017 figures on public transport companies' turnover. The Parties submit that the Parties' combined market share is in fact much lower than the figures provided as (i) the Parties' turnover and the turnover of other car sharing providers and (ii) turnover of a number of further competing mobility service providers, other than public transportation companies, e.g. taxi and ride-

Berlin, [0-5]% in Dusseldorf, [0-5]% in Cologne, [0-5]% in Hamburg, [0-5]% in Munich, [0-5]% in Milan and [0-5]% in Vienna.

(143) As a consequence, in the light of the information provided by the Parties, a potential market for all passengers (urban) transport services would not be affected.

5.3.2. Short term car rental services including car sharing

(144) On a potential short-term car rental market (including car sharing), the Parties' combined market shares would be well below 20%, not giving rise to any affected markets. According to their best estimates, their combined market share would be below 20% under any plausible geographic market definition.[118]

(145) In a potential short term car rental segment (including car sharing), there would be many providers, e.g. Sixt, Europcar, Avis, Enterprise, Hertz, Budget, Flinkster, Cambio, book-n-drive, Stadtmobile, Greenwheels and app2drive. All major car rental companies are to a large extent present in the cities in which DriveNow and car2go provide their services. The Parties would continue to face competitive pressure from these car rental services providers post-Transaction.[119]

(146) In addition, according to the Parties, new market entries are expected due to the favourable political and regulatory environment and the expected growth of the market. Moreover, the Parties submit that customers are switching between different providers, preventing companies from increasing prices to a significant extent.[120]

5.3.3. Car sharing as a whole and station based vs free-floating

Parties' activities on a city level

(147) The Parties offer (free-floating) car sharing services in a number of countries within the EEA, namely Austria (Vienna), Belgium (Brussels), Germany (Berlin, Cologne, Dusseldorf, Frankfurt/Main, Hamburg, Munich and Stuttgart), Italy (Florence, Milan, Rome and Turin), Netherlands (Amsterdam), Spain (Madrid), Sweden (Stockholm), United Kingdom (London) and additionally – operated via franchises[121] – in Denmark (Copenhagen), Finland (Helsinki) and Portugal (Lisbon). However, on a narrow geographic market definition based on a city

---

hailing offerings, would have to be included. These are not included in the figures provided, as the Parties claim that they do not have any concrete figures. That being said, the Parties submit that their combined market share would not differ significantly if such additional services would be included in the market volume. In fact, the Parties claim that the Parties' combined market share would even be lower.

118 Form CO, paragraph 120.

119 Form CO, paragraph 120.

120 Form CO, paragraph 120.

121 [INFORMATION ON AGREEMENT].

level, the Parties only overlap in Austria (Vienna), Germany (Berlin, Cologne, Dusseldorf, Hamburg and Munich) and Italy (Milan).

(148) The Parties also plan to enter several new cities inside the EEA within the next three years (until the end of 2021). DriveNow has plans to enter [INFORMATION ON BUSINESS PLANS], whereas car2go is planning to enter [INFORMATION ON BUSINESS PLANS].

(149) These entry plans would result in (direct) potential future overlaps in [INFORMATION ON BUSINESS PLANS]. However, these are plans which are uncertain as to their timing and likeliness. Only Paris (car2go) is confirmed for 2019 by Daimler, and [INFORMATION ON BUSINESS PLANS] (DriveNow) is the most likely entry point for BMW.

Overview of affected markets - implied market shares

(150) As noted in the section on market definition above (paragraph (59) *et seq*.), the competitive assessment of the proposed Transaction must take proper account of the heterogeneous degrees of closeness of competition between different mobility services, including the potential significance of certain out-of-market constraints.

(151) Such an assessment of closeness of competition can be conducted on the basis of the diversion ratios between the merging Parties and alternative providers considered by customers. Generally speaking, higher observed diversion ratios between two services mean that those services are closer substitutes towards one another.

(152) One way of illustrating the competitive positioning of various services from the perspective of customers is to consider which (hypothetical) market shares would be consistent with the observed diversion ratios as shown in Table A. if switching were proportional to market shares. The following table shows these "implied market shares" for the overlap cities Berlin, Cologne, Dusseldorf, Hamburg, Milan, Munich and Vienna.[122]

[122] Mathematically, let d_{ij} denote the observed diversion ratio from service i to service j and let s_i denote the implied market share of service i. If diversion between the Parties is proportional to market shares, the diversion ratios between Party 1 and 2 can be expressed as $d_{12} = s_2/(1 - s_1)$ and $d_{21} = s_1/(1 - s_2)$, respectively. Solving these equations for s_1 and s_2 then yields the implied market shares $s_1 = d_{21}(1 - d_{11})/(1 - d_{12}d_{21})$ and $s_2 = d_{12}(1 - d_{21})/(1 - d_{12}d_{21})$. These formulas result in the Parties' share values presented in Table B. The implied shares of other services are presented for illustrative purposes only. They were constructed in proportion to the size of their respective diversion ratios, as a weighted average of the value given in Table A further above.

	Implied market shares							
	Total	**BER**	**COL**	**DUS**	**HAM**	**MIL**	**MUC**	**VIE**
car2go	[30-40]%	[30-40]%	[30-40]%	[40-50]%	[40-50]%	[30-40]%	[20-30]%	[40-50]%
Drive Now	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Combined	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[50-60]%**	**[60-70]%**	**[40-50]%**	**[50-60]%**	**[60-70]%**
Public transport	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%
Own car	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Bike/scooter	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Free floating	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%
Taxi/Uber	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Rental/station	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Other	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Table B: Hypothetical "implied market shares" consistent with observed diversion ratios between the Merging Parties and other means of transport

(153) As shown in the table, the diversion ratios obtained in the July 2018 customer survey (see paragraph (59)) would be consistent with combined market shares of around [50-60]% on a hypothetical market for all (urban) passenger transport where switching is proportional to market shares. This relatively high market share reflects the fact that customers view the Parties as particularly close substitutes (as noted in the market definition section above, paragraph (59) *et seq.*). It can therefore be concluded that the proposed Transaction would eliminate a particularly important independent constraint for users of the Parties' services. Indeed, while the figures in Table B also reflect a significant degree of competition with various other mobility services, the Parties' implied market shares are appreciably higher than any potential alternative.

(154) This conclusion is also consistent with the results of the market investigation more generally. While other means of transport do not compete as closely as the

Parties do between each other[123], the data shows that they do compete with the Parties and exert non-negligible competitive pressure.

Barriers to entry

(155) Respondents to the market investigation identified several barriers to entry. Some of them are not related to this Transaction such a local regulation, or would not change materially due to the Transaction such as "access to car telemetry" (for monitoring the car by combining a GPS system with on-board diagnostics). Others, however, are increasing as a consequence of this Transaction. One of these barriers to entry is fleet size required to enter a city and the ensuing financial burden to finance such a fleet. The combined fleet of the merged entity would require higher fleet sizes of new entrants in all overlap cities, a barrier particularly pertinent for small, non-OEM related competitors.

(156) Another entry barrier named was access to aggregators, which could also increase as a consequence of this Transaction, as the Parties would promote their own aggregator platform “moovel” and could withdraw their must have content from independent aggregator platforms.

(157) The Commission therefore considers that barriers to entry exist and could become higher as a consequence of this Transaction for at least smaller players. The most important are the capital requirement for a minimum number of cars, which is needed to be visible on the streets, but also access to third aggregator apps, which could also combine different kind of mobility services like car sharing, scooter sharing, car rental and public transport, to be (more) visible online as bookings are usually done either directly via the app of a certain mobility service (car sharing) provider or at least via an third party aggregator's app.

(158) While the above considerations give rise to serious doubts about the impact of the proposed Transaction on competition in five overlap cities, as will be shown in the assessment of all overlap cities, the Commission also recognizes that the potential competitive damage is attenuated by the following factors: (i) constraint imposed mostly by public transport, (ii) limited entry barriers (except for the need to compete against a much larger provider post-merger, which is addressed via the remedy), (iii) expected entry of Volkswagen and others.

5.3.4. Overlap cities - city by city assessment

5.3.4.1. Berlin

(159) In Berlin both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[124]

---

[123] Note that DriveNow's implied market share is smaller than car2go's in almost all cities. This reflects the fact that DriveNow customers are more likely to switch to car2go than vice versa according (see also Table A further above). Arguably, this is due to the fact that customers tend to view DriveNow as the more valuable (and also more expensive) service. Users of car2go are therefore more likely to "substitute down" towards cheaper means of transport, such as public transport, whereas DriveNow customers are more likely to switch to another provider of free floating car services (in particular, car2go).

(160) According to the information provided by Parties, there exist another small free-floating car sharing provider, namely Drive by, with a fleet of [INFORMATION ON FLEET] cars, and six more station-based car sharing providers, namely Flinkster ([INFORMATION ON FLEET] cars), Ubeeqo ([INFORMATION ON FLEET] cars), Greenwheels ([INFORMATION ON FLEET] cars), Stadtmobil ([INFORMATION ON FLEET] cars), Cambio ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars).[125]

(161) Therefore, the total size of Berlin's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [80-90]% for free-floating and station-based car sharing and [90-100]% for (only) free-floating car sharing.

(162) Focusing on revenues, the Parties estimate market shares of [80-90]% for free-floating and station-based car sharing and [90-100]% for free-floating car sharing only.

(163) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* However, parking fees have to be paid on a regular basis and parking permissions are not needed.[126] There also does not exist a minimum or maximum number of cars for free-floating car sharing.[127] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(164) The market investigation has identified entry plans in the market for car sharing services in Berlin by Volkswagen, which could be considered as timely, likely and sufficient to deter or defeat the anticompetitive effect of the proposed Transaction on the free-floating car sharing market in Berlin.[128] Volkswagen stated publicly that the Volkswagen brand starts "We Share" e-mobility car sharing in Berlin with 1,500 e-Golf in the second quarter of 2019, with additional 500 e-up! following later.[129] Furthermore, the market investigation has also identified one additional entry plan, which can be considered at least as timely and likely, and six further entry intentions from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing and related sectors.[130]

---

124 Form CO, Confidential Annex 7.b.

125 Form CO, Confidential Annex 7.b.

126 Reply Senatsverwaltung Berlin to Questionnaire to local authorities, question 7.

127 Reply to Questionnaire to local authorities, questions 10-13.

128 Reply to Questionnaire to OEMs, question 18.

129 See Press Release published on https://www.volkswagenag.com/en/news/2018/08/VW_Brand_We_Share.html.

130 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

(165) In the light of the above, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Berlin as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.2. Cologne

(166) In Cologne both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[131]

(167) According to the information provided by Parties, there exists no other free-floating car sharing provider, but four more station-based car sharing providers, namely Cambio ([INFORMATION ON FLEET] cars), Flinkster ([INFORMATION ON FLEET] cars), Mazda Mobil Carsharing ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars), are present in Cologne.[132]

(168) Therefore, the total size of Cologne's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [50-60]% for free-floating and station-based car sharing and 100% for (only) free-floating car sharing.

(169) Focusing on revenues, the Parties estimate market shares of [50-60]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

(170) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* However, parking fees have to be paid on a regular basis (except for electronic vehicles, which are free).[133] There also does not exist a minimum or maximum number of cars for free-floating car sharing.[134] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(171) The market investigation has identified at least one entry plan which can be considered as timely and likely, but not sufficient, and at least five additional entry intentions in the market for car sharing services in Cologne from several OEMs and other mobility providers, which do have financial resources and/or the

131 Form CO, Confidential Annex 7.b.

132 Form CO, Confidential Annex 7.b.

133 Reply *Stadt Köln* to Questionnaire to local authorities, question 7.

134 Reply to Questionnaire to local authorities, questions 10-13.

expertise for car sharing and related sectors.[135] However, none of them can be considered as timely, likely and sufficient.

(172) Nevertheless, Volkswagen stated publicly that the Volkswagen brand starts "We Share" e-mobility car sharing in Berlin as of 2019.[136] Following the launch in Berlin, "We share" will be initially scheduled to roll out in further major cities in Germany. In parallel, as it is stated in above-referred press release of Volkswagen, they have plans to expand in core European markets and selected cities in North America from 2020. The primary focus will be on cities with a population of over one million, which would be theoretically met e.g. in Cologne.

(173) However, in the light of the above, the Commission considers that the proposed Transaction raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Cologne as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.3. Dusseldorf

(174) In Dusseldorf both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[137]

(175) According to the information provided by Parties, there exists no other free-floating car sharing provider, but five more station-based car sharing providers, namely Greenwheels ([INFORMATION ON FLEET] cars), Stadtmobil ([INFORMATION ON FLEET] cars), Flinkster ([INFORMATION ON FLEET] cars), E-carflex ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] car), are present in Dusseldorf.[138]

(176) Therefore, the total size of Dusseldorf's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [80-90]% for free-floating and station-based car sharing and 100% for (only) free-floating car sharing.

(177) Focusing on revenues, the Parties estimate market shares of [70-80]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

(178) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* Furthermore, there are also parking permissions needed which have to be paid per

---

135 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

136 See Press Release published on https://www.volkswagenag.com/en/news/2018/08/VW_Brand_We_Share.html.

137 Form CO, Confidential Annex 7.b.

138 Form CO, Confidential Annex 7.b.

car on a yearly basis (less expensive for electronic vehicles).[139] However, the market investigation made also clear that the number of parking permissions for free-floating car sharing is not yet limited by the municipality and that there also does not exist a minimum or maximum number of cars for free-floating car sharing.[140] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(179) The market investigation has identified one entry plan which can be considered as timely, likely and close to sufficient, and at least additional five entry intentions in the market for car sharing services in Dusseldorf from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing and related sectors.[141] However, for the purposes of this analysis, none of them can be considered as timely, likely and sufficient because they appear to be in an early stage and no fleet numbers have been disclosed to the Commission.

(180) In the light of the above, the Commission considers that the proposed Transaction raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Dusseldorf as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.4. Cologne/Dusseldorf (as one business area)

(181) The Parties consider Cologne and Dusseldorf as one business area. Only there reserved cars can be picked up in Cologne and parked in Dusseldorf, and vice versa, for an extra fee. The percentage of number of journeys for car2go's vehicles picked up in Cologne and dropped off in Dusseldorf, and vice versa, was approx. [INFORMATION ON PERCENTAGE]% of the total rentals in the Rhineland area in 2017.[142] Approx. [INFORMATION ON PERCENTAGE]% of the total turnover from Cologne and Dusseldorf can be attributed to a drop-off of the cars in the other location. For DriveNow the percentage was approx. [INFORMATION ON PERCENTAGE]% (rentals) and [INFORMATION ON PERCENTAGE]% (turnover).

(182) In Cologne and Dusseldorf (considered as one business area) both Parties would currently be present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[143]

(183) According to the information provided by Parties, there exists no other free-floating car sharing provider, but seven more station-based car sharing providers, namely Cambio ([INFORMATION ON FLEET] cars), Flinkster

139 Reply Landeshauptstadt Düsseldorf to Questionnaire to local authorities, questions 7 and 8.

140 Reply to Questionnaire to local authorities, questions 10-13.

141 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

142 See Form CO, paragraph 63.

143 Form CO, Confidential Annex 7.b.

([INFORMATION ON FLEET] cars), Stadtmobil ([INFORMATION ON FLEET] cars), Greenwheels ([INFORMATION ON FLEET] cars), Mazda Mobil Carsharing ([INFORMATION ON FLEET] cars), E-carflex ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars), are present in this area.[144]

(184) Therefore, the total size of Cologne/Dusseldorf's car sharing market (free-floating and station-based) would be around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction would be [60-70]% for free-floating and station-based car sharing and 100% for (only) free-floating car sharing.

(185) Focusing on revenues, the Parties market shares would be [60-70]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

(186) Although the market investigation has identified two entry plans which can be considered as timely and likely (and several entry intentions), it could not be considered as sufficient anymore.[145]

(187) Therefore, in the light of the above, the Commission considers that the proposed Transaction also raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Dusseldorf/Cologne as one business area as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.5. Hamburg

(188) In Hamburg both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[146]

(189) According to the information (mainly) provided by Parties, there exist no other free-floating car sharing provider, but seven more station-based car sharing providers, namely Cambio ([INFORMATION ON FLEET] cars), Oply ([INFORMATION ON FLEET] cars as of 10/10/2018), Greenwheels ([INFORMATION ON FLEET] cars), Ubeeqo ([INFORMATION ON FLEET] cars), share a star car ([INFORMATION ON FLEET] cars), Flinkster ([INFORMATION ON FLEET] cars), app2drive ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars), are present in Hamburg.[147]

144 Form CO, Confidential Annex 7.b.

145 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

146 Form CO, Confidential Annex 7.b.

147 Form CO, Confidential Annex 7.b.

(190) Therefore, the total size of Hamburg's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [70-80]% for free-floating and station-based car sharing and 100% for (only) free-floating car sharing.

(191) Focusing on revenues, the Parties estimate market shares of [80-90]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

(192) Entry barriers exist, as mentioned above in paragraph (155) *et seq*. However, parking fees have to be paid on a regular basis; parking permissions are not needed.[148] There also does not exist a minimum or maximum number of cars for free-floating car sharing.[149] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(193) The market investigation has identified three entry plans which can be considered as timely, but (probably) not sufficient and likely yet. One of these plans was realized by Oply, operating a fleet of 100 cars as of 10 October 2018.[150] Furthermore, there are at least seven additional entry intentions in the market for car sharing services in Hamburg from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing or related sectors.[151] However, none of them can be considered as timely, likely and sufficient.

(194) Therefore, in the light of the above, the Commission considers that the proposed Transaction raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Hamburg as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.6. Munich

(195) In Munich both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[152]

(196) According to the information provided by Parties, there exists one more free-floating car sharing provider, namely Flexy with a fleet of [INFORMATION ON FLEET] cars, and five more station-based car sharing providers, namely StattAuto ([INFORMATION ON FLEET] cars), Flinkster ([INFORMATION ON

148 Reply Landesbetrieb Verkehr der Hansestadt Hamburg to Questionnaire to local authorities, questions 7 and 8.

149 Reply to Questionnaire to local authorities, questions 10-13.

150 See https://www.carsharing-news.de/oply-kommt-nach-hamburg/.

151 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

152 Form CO, Confidential Annex 7.b.

FLEET] cars), Oply ([INFORMATION ON FLEET] cars), Audi on demand ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars).[153]

(197) Therefore, the total size of Munich's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [60-70]% for free-floating and station-based car sharing and [90-100]% for (only) free-floating car sharing.

(198) Focusing on revenues, the Parties estimate market shares of [60-70]% for free-floating and station-based car sharing and [90-100]% for free-floating car sharing only.

(199) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* Furthermore, there are also parking permissions needed which could be paid per car on a yearly basis (except for electronic vehicles, which are free).[154] However, the market investigation made also clear that the number of parking permissions for free-floating car sharing is not yet limited by the municipality and that there also does not exist a minimum or maximum number of cars for free-floating car sharing.[155] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(200) The market investigation has identified two entry plans which can be considered at least timely and likely, but (probably) not sufficient yet, and seven additional entry intentions from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing and related sectors.[156] However, none of them can be considered as timely, likely and sufficient.

(201) Therefore, in the light of the above, the Commission considers that the proposed Transaction raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Munich as well as on a market definition comprising free-floating and station-based car sharing.

5.3.4.7. Milan

(202) In Milan both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go operates [INFORMATION ON FLEET] cars and DriveNow [INFORMATION ON FLEET] cars.[157]

---

153 Form CO, Confidential Annex 7.b.

154 Reply Landeshauptstadt München to Questionnaire to local authorities, question 7 and 8.

155 Reply Landeshauptstadt München to Questionnaire to local authorities, question 7 and 10-13.

156 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

157 Form CO, Confidential Annex 7.b.

(203) According to the information provided by Parties, there exist two more free-floating car sharing providers, namely Share'ngo with a fleet of [INFORMATION ON FLEET] cars and Enjoy with a fleet of [INFORMATION ON FLEET] cars. Furthermore, there exist three more station-based car sharing providers, namely Ubeeqo with a fleet of [INFORMATION ON FLEET] cars, E-Vai with a fleet of [INFORMATION ON FLEET] cars and Hertz 24/7 with [INFORMATION ON FLEET] cars.[158]

(204) Therefore, the total size of Milan's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [30-40]% for free-floating and station-based car sharing and [30-40]% for (only) free-floating car sharing. The Parties therefore would be – more or less – at the same level like Share'ngo ([30-40]%) and Enjoy ([20-30]%) on the narrowest market for free-floating car sharing.

(205) Focusing on revenues, the Parties estimate market shares of [30-40]% for free-floating and station-based car sharing and [30-40]% for free-floating car sharing only.

(206) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* There are also parking permissions needed which have to be paid per car on a yearly basis (electric vehicles are for free).[159] Furthermore, a minimum number of 400 cars must be provided for free-floating car sharing.[160] However, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(207) The market investigation has identified five entry intentions from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing and related sectors, which could partially be considered as timely.[161] However, none of them can be considered as likely and sufficient.

(208) Nevertheless, in the light of the above, and especially the strong presence of third free-floating car sharing providers, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Milan as well as on a market definition comprising free-floating and station-based car sharing.

158 Form CO, Confidential Annex 7.b.

159 Reply Municipality of Milan to Questionnaire to local authorities, questions 7 and 8.

160 Reply Municipality of Milan to Questionnaire to local authorities, questions 11.

161 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

5.3.4.8. Vienna

(209) In Vienna both Parties are currently present with a fleet of [INFORMATION ON FLEET] cars of which car2go and DriveNow [INFORMATION ON FLEET].[162]

(210) According to the information provided by Parties, there exist no other free-floating car sharing providers, but five more station-based car sharing providers, namely Stadtauto ([INFORMATION ON FLEET] cars), ÖBB Rail&Drive ([INFORMATION ON FLEET] cars), Sharetoo ([INFORMATION ON FLEET] cars), MO.Point ([INFORMATION ON FLEET] cars) and Elfride ([INFORMATION ON FLEET] car).[163]

(211) Therefore, the total size of Vienna's car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will be [90-100]% for free-floating and station-based car sharing and 100% for (only) free-floating car sharing.

(212) Focusing on revenues, the Parties estimate market shares of [90-100]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

(213) Entry barriers do exist, as mentioned above in paragraph (155) *et seq.* However, parking permissions are not needed, but parking fees could be paid on a yearly basis.[164] There also does not exist a minimum or maximum number of cars for free-floating car sharing.[165] Therefore, these cannot be considered as entry barriers, as all free-floating car sharing providers are treated in the same way.

(214) The market investigation has identified one entry plans as timely, but (probably) not sufficient and likely yet, and five additional entry intentions from several OEMs and other mobility providers, which do have financial resources and/or the expertise for car sharing and related sectors.[166] However, none of them can be considered as timely, likely and sufficient.

(215) Therefore, in the light of the above, the Commission considers that the proposed Transaction raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Vienna as well as on a market definition comprising free-floating and station-based car sharing.

---

162 Form CO, Confidential Annex 7.b.

163 Form CO, Confidential Annex 7.b.

164 Reply *Magistrat der Stadt Wien* to Questionnaire to local authorities, questions 7 and 8.

165 Reply to Questionnaire to local authorities, questions 10-13.

166 Replies to Questionnaire to OEMs, question 18. Replies Questionnaire to mobility service providers, question 20.

5.3.5. Potential overlap cities in the future - city by city assessment

5.3.5.1. Paris

(216) In July 2018, Paris' biggest free-floating car sharing provider Autolib' stopped operating its fleet of around 4,000 cars due to huge financial losses. As a result of the failure of Autolib', third party providers of free-floating car sharing try to fill the gap, especially Renault, PSA, but also the Parties. On 4 July 2018, Renault publicly announced to offer free-floating car sharing services in Paris with a starting fleet of 120 cars as of September 2018 to be expanded up to 2,000 cars as of the end of 2019.[167] PSA also announced publicly to offer free-floating car sharing services in Paris with a fleet of 500 cars as of the end of 2018.[168]

(217) The Parties are not currently present in Paris. However, car2go is planning to enter as of January 2019 with a fleet of 400 cars, which [INFORMATION ON FLEET].[169] With regard to DriveNow, the Parties stated that [INFORMATION ON BUSINESS PLANS].[170]

(218) According to the information provided by Parties, there will be three more free-floating car sharing providers at the beginning of 2019, namely Renault (operating 120 cars since October 2018[171]), PSA (500 cars[172]) and Totem mobi ([INFORMATION ON FLEET] cars), and four more station-based car sharing providers, namely Ubeeqo ([INFORMATION ON FLEET] cars), Communauto ([INFORMATION ON FLEET] cars), Zipcar ([INFORMATION ON FLEET] cars) and Zencarz ([INFORMATION ON FLEET] cars).[173]

(219) Therefore, the total size of Paris's future car sharing market (free-floating and station-based) will be around [INFORMATION ON FLEET] and, focusing on the narrowest possible market for (only) free-floating car sharing,

---

[167] See Renault's press release of 04/07/2018, published on https://media.group renault.com/global/en-gb/groupe-renault/media/pressreleases/21213440/la-ville-de-paris-et-le-groupe-renault-partagent-leur-vision-de-nouveaux-services-urbains-de-mobilit.

[168] See PSA's press release of 03/07/2018, published on https://media.groupe-psa.com/en/groupe-psa-finalizes-launch-free2move-paris-sustainable-and-high-quality-carsharing-service.

[169] Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go. Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018 and Confidential Annex – Car sharing fleets – [INFORMATION ON BUSINESS PLANS].

[170] Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018 and Confidential Annex – Car sharing fleets – [INFORMATION ON BUSINESS PLANS].

[171] See Renault's press release of 28/09/2018, published on https://media.group renault.com/global/en-gb/renault/media/pressreleases/21216518/renault-et-ada-lancent-lapplication-moovinparis-by-renault.

[172] See PSA's press release of 03/07/2018, published on https://media.groupe-psa.com/en/groupe-psa-finalizes-launch-free2move-paris-sustainable-and-high-quality-carsharing-service.

[173] Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018 and Confidential Annex – Car sharing fleets – [INFORMATION ON BUSINESS PLANS].

[INFORMATION ON FLEET] cars. The Parties' market share post-Transaction would be [20-30]% for free-floating and station-based car sharing and [30-40]% for (only) free-floating car sharing.

(220) Focusing at the end of 2019, the total size of Paris's future car sharing market (free-floating and station-based) could be around [INFORMATION ON FLEET] and – focusing on the narrowest possible market for (only) free-floating car sharing – [INFORMATION ON FLEET] cars. In such a scenario, the Parties' market share post-Transaction would fall down to [10-20]% for free-floating and station-based car sharing and [20-30]% for (only) free-floating car sharing.

(221) Furthermore, the municipality of Paris also stated that the city is open to more carmakers entering the market to help to boost the car sharing service.[174] Renault, BMW, Daimler as well as Volkswagen had expressed their interest, the municipality said.[175]

(222) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Paris as well as on a market definition comprising free-floating and station-based car sharing.

5.3.5.2. Barcelona

(223) None of the Parties (but also no third free-floating car sharing provider) are currently present in Barcelona.

(224) The Parties flagged that they have [INFORMATION ON BUSINESS PLANS].[176] However, these plans could not be considered as timely or likely, as [INFORMATION ON BUSINESS PLANS]. DriveNow currently also considers it [INFORMATION ON BUSINESS PLANS].[177]

(225) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Barcelona.

---

174 See https://www.bloomberg.com/news/articles/2018-07-04/paris-opens-up-electric-car-sharing-market-after-autolib-failure.

175 *Ibidem.*.

176 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go.

177 Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

5.3.5.3. Madrid

(226) In Madrid only car2go is currently present with a fleet of [INFORMATION ON FLEET] cars.[178] DriveNow [INFORMATION ON BUSINESS PLANS].[179] However, the Parties stated that it is [INFORMATION ON BUSINESS PLANS].

(227) According to the information provided by Parties, there exist two more free-floating car sharing providers, namely Emov with a fleet of [INFORMATION ON FLEET] cars and Zity with a fleet of [INFORMATION ON FLEET] cars. Furthermore, three more station-based car sharing providers are present, namely Bluemove ([INFORMATION ON FLEET] cars), Respiro ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars).[180]

(228) Therefore, the total size of Madrid's future car sharing market (free-floating and station-based) will not change and be around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share pre- and post-Transaction will not change ([20-30]% for free-floating and station-based car sharing and [20-30]% for (only) free-floating car sharing).

(229) Focusing on revenues, the Parties estimate (current) market shares of [20-30]% for free-floating and station-based car sharing and [20-30]% for free-floating car sharing only.

(230) In light of the above, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Madrid as well as on a market definition comprising free-floating and station-based car sharing.

5.3.5.4. Florence

(231) In Florence only car2go is currently present with a fleet of [INFORMATION ON FLEET] cars.[181] DriveNow [INFORMATION ON BUSINESS PLANS].[182] [INFORMATION ON BUSINESS PLANS].[183]

---

178 Form CO, Confidential Annex 7.b.

179 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go.

180 Form CO, Confidential Annex 7.b.

181 Form CO, Confidential Annex 7.b.

182 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go. Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

183 Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

(232) According to the information provided by Parties, there exist three more free-floating car sharing providers, namely Share'ngo ([INFORMATION ON FLEET] cars), Enjoy ([INFORMATION ON FLEET] cars) and Adduma Car ([INFORMATION ON FLEET] cars). Hertz 24/7 is the only station-based car sharing provider, operating only [INFORMATION ON FLEET] car.[184]

(233) Therefore, the total size of Florence's recent car sharing market (free-floating and station-based) is around [INFORMATION ON FLEET] cars and – focusing on the narrowest possible market for (only) free-floating car sharing – [INFORMATION ON FLEET] cars. The Parties' current market share post-Transaction will not change post-Transaction, being [30-40]% for free-floating and station-based car sharing and [30-40]% for (only) free-floating car sharing, and there exists competitive pressure from three additional free-floating car sharing providers.

(234) Focusing on revenues, the Parties estimate (current) market shares of [10-20]% for free-floating and station-based car sharing as well as for free-floating car sharing only.

(235) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Florence as well as on a market definition comprising free-floating and station-based car sharing.

5.3.5.5. Rome

(236) In Rome only car2go is currently present with a fleet of [INFORMATION ON FLEET] cars.[185] DriveNow [INFORMATION ON BUSINESS PLANS].[186] [INFORMATION ON BUSINESS PLANS].[187]

(237) According to the information provided by Parties, there exist two more free-floating car sharing providers, namely Share'ngo ([INFORMATION ON FLEET] cars) and Enjoy ([INFORMATION ON FLEET] cars). Furthermore, there exist two more station-based car sharing providers, namely Mobilita Roma Carsharir ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars).[188]

(238) Therefore, the total size of Rome's recent car sharing market (free-floating and station-based) is be around [INFORMATION ON FLEET] cars and, focusing on

184 Form CO, Confidential Annex 7.b.

185 Form CO, Confidential Annex 7.b.

186 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go. Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

187 Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

188 Form CO, Confidential Annex 7.b.

the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction will not change immediately post-Transaction, being [20-30]% for free-floating and station-based car sharing and [20-30]% for (only) free-floating car sharing.

(239) Focusing on revenues, the Parties estimate (current) market shares of [10-20]% for free-floating and station-based car sharing and [20-30]% for free-floating car sharing only.

(240) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Rome as well as on a market definition comprising free-floating and station-based car sharing.

5.3.5.6. Turin

(241) In Turin only car2go is currently present with a fleet of [INFORMATION ON FLEET] cars.[189] DriveNow [INFORMATION ON BUSINESS PLANS].[190] [INFORMATION ON BUSINESS PLANS].[191] Therefore, DriveNow's entry plan cannot be considered as timely.

(242) According to the information provided by Parties, there exist another free-floating car sharing provider, namely Enjoy with a fleet of [INFORMATION ON FLEET] cars, and two more station-based car sharing providers, namely BlueTorino ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] cars).[192]

(243) Therefore, the total size of Turin's recent car sharing market (free-floating and station-based) will be around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share post-Transaction is actually [40-50]% for free-floating and station-based car sharing and [50-60]% for (only) free-floating car sharing.

(244) Focusing on revenues, the Parties estimate (current) market shares of [30-40]% for free-floating and station-based car sharing and [40-50]% for free-floating car sharing only.

(245) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Turin as

189 Form CO, Confidential Annex 7.b.

190 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go. Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

191 Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018.

192 Form CO, Confidential Annex 7.b.

well as on a market definition comprising free-floating and station-based car sharing.

5.3.5.7. Amsterdam

(246) In Amsterdam only car2go is currently present with a fleet of [INFORMATION ON FLEET] cars.[193] DriveNow [INFORMATION ON BUSINESS PLANS].[194] However, the Parties stated that it´s [INFORMATION ON BUSINESS PLANS].[195]

(247) According to the information provided by Parties, there exist another free-floating car sharing provider, namely Ioniq Car Sharing ([INFORMATION ON FLEET] cars), and four more station-based car sharing providers, namely Greenwheels ([INFORMATION ON FLEET] cars), Connect Car ([INFORMATION ON FLEET] cars), mywheels ([INFORMATION ON FLEET] cars) and Hertz 24/7 ([INFORMATION ON FLEET] car).[196]

(248) Therefore, the total size of Amsterdam's future car sharing market (free-floating and station-based) will not change and be around [INFORMATION ON FLEET] cars and, focusing on the narrowest possible market for (only) free-floating car sharing, [INFORMATION ON FLEET] cars. The Parties' market share pre- and post-Transaction will be [20-30]% for free-floating and station-based car sharing and [70-80]% for (only) free-floating car sharing.

(249) Focusing on revenues, the Parties estimate (current) market shares of [10-20]% for free-floating and station-based car sharing and [60-70]% for free-floating car sharing only.

(250) In the light of the above, the Commission considers that the proposed Transaction does not raises serious doubts as to its compatibility with the internal market on a narrow market definition comprising only free-floating car sharing in Amsterdam as well as on a market definition comprising free-floating and station-based car sharing.

5.3.6. Conclusion on horizontal overlap cities

(251) On the basis of the above, the proposed Transaction would lead to serious doubts on the market for car sharing (and in the market for free-floating car sharing services) in the following five overlap cities: Hamburg, Cologne, Dusseldorf, Munich and Vienna.

---

193 Form CO, Confidential Annex 7.b.

194 Reply of 19/10/2018 to RFIs of 16/10/2018 and 18/10/2018, Confidential Annex 2 – [INFORMATION ON BUSINESS PLANS] – DriveNow and Confidential Annex 3 – [INFORMATION ON BUSINESS PLANS] – car2go.

195 Reply of 22/10/2018 to RFIs of 16/10/2018 and 18/10/2018 and Confidential Annex – Car sharing fleets – [INFORMATION ON BUSINESS PLANS].

196 Form CO, Confidential Annex 7.b.

(252) However, as stated above in paragraphs (59) *et seq.* and (150) *et seq.*, the Commission considers that there are also certain out-of-market constraints exerted by, in particular, the public transport services that are not included in the market for car sharing. The Commission will take these into account in its analysis of the (free-floating) car sharing market.

(253) Moreover, as explained in more detail above, the market investigation confirmed that the car sharing market is in flux with both small (Oply in Hamburg with 100 cars since 10 October 2018) and large […] entries, and many more planned. However, these entries cannot be considered as likely, timely and sufficient enough to remove serious doubts.

(254) These two factors (out-of-market constraints and new entries) mitigate the existing serious doubts without eliminating them completely.

5.4. Vertical effects

5.4.1. Manufacture and supply of passenger cars / (free-floating) car sharing

(255) Both Parties are active in the upstream market for the manufacture and supply of passenger cars in Germany, Austria and Italy and in the downstream market for (free-floating) car sharing in Germany, Austria and Italy.

(256) The Commission will assess whether the Parties will have the ability or the incentive to foreclose access to passenger cars to their rival (free-floating) car sharing providers or the ability or incentive to foreclose their rival OEMs to a customer base.

(257) With regard to the upstream market, in line with its previous decisions, the Commission could also consider a market for wholesale/retail distribution of passenger cars. However, the Commission will carry out the assessment of the vertical effects on the market for the manufacture and supply of passenger cars, given that, according to the Parties' best estimates, the Parties' combined market shares in a market for the wholesale/retail distribution of passenger cars will not exceed or at least will not be significantly different from the Parties' market shares in the market for the manufacture or supply of passenger cars.[197] In addition, if a sub-segment for pure electric powered cars were considered, there would be an affected vertical market in Germany and in Italy. However, the same considerations would apply.

(258) With regard to the downstream market, given that, for the purpose of this decision, the Commission does not consider it appropriate to either consider a market encompassing all passenger transport services or a market for short-term car rental - including (free-floating) car sharing - as the relevant product markets, the assessment of the vertical effects will be carried out on the narrowest-possible relevant market for (free-floating) car sharing.

[197] Annex 2 to the Parties' reply to RFI 6 dated 26 October 2018.

5.4.1.1. Manufacture and supply of passenger cars (*upstream*)

(259) In Germany, the Parties' combined market share post-Transaction is [20-30]% for all cars, [20-30]% for electric cars, [30-40]% for pure electric powered cars, [10-20]% for hybrid cars. In Austria the Parties' combined market shares would be [10-20]% for all cars, [10-20]% for electric cars, [20-30]% for pure electric powered cars, [10-20]% for hybrid cars, and in Italy [5-10]% for all cars, [0-5]% for electric cars, [30-40]% for pure electric powered cars, [0-5]% for hybrid cars.

5.4.1.2. (Free-floating) car sharing (*downstream*)

(260) In Berlin, the Parties' market share post-Transaction will be [80-90]% by number of cars for car sharing as a whole and [90-100]% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [80-90]% for car sharing as a whole and [90-100]% for free-floating car sharing only.

(261) In Cologne, the Parties' market share post-Transaction will be [50-60]% for car sharing as a whole and 100% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [50-60]% for car sharing as a whole and 100% for free-floating car sharing only.

(262) In Dusseldorf, by number of cars the Parties' market share post-Transaction will be [80-90]% for car sharing as a whole and 100% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [70-80]% for car sharing as a whole and 100% for free-floating car sharing only.

(263) In the Cologne/Dusseldorf business area, by number of cars, the Parties' market share post-Transaction would be [60-70]% for car sharing as a whole and 100% for (only) free-floating car sharing. By revenues, the Parties market shares would be [60-70]% for car sharing as a whole and 100% for free-floating car sharing only.

(264) In Hamburg, by number of cars, the Parties' market share post-Transaction will be [70-80]% for car sharing as a whole and 100% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [80-90]% for car sharing as a whole and 100% for free-floating car sharing only.

(265) In Munich, by number of cars, the Parties' market share post-Transaction will be [60-70]% for car sharing as a whole and [90-100]% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [60-70]% for car sharing as a whole and [90-100]% for free-floating car sharing only.

(266) In Milan, by number of cars, the Parties' market share post-Transaction will be [30-40]% for car sharing as a whole and [30-40]% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [30-40]% for car sharing as a whole and [30-40]% for free-floating car sharing only.

(267) In Vienna, by number of cars, the Parties' market share post-Transaction will be [90-100]% for car sharing as a whole and 100% for (only) free-floating car sharing. By revenues, the Parties estimate market shares of [90-100]% for free-floating and station-based car sharing and 100% for free-floating car sharing only.

5.4.1.3. Input foreclosure

(268) With regard to the ability of the Parties to foreclose access to cars by its rivals, the Parties will have no ability to foreclose rival car sharing providers, as the Parties will not have a degree of upstream market power that would allow them to do so, including in the electric cars segment. Electric cars suited for use in car sharing services are not a scarce resource. Every car manufacturer in Europe has already such cars on offer or is starting to do so as of 2019.

(269) With regard to their incentive to engage in such foreclosure strategy, the Parties will not have incentive to foreclose rival car sharing providers, as supply to car rental and car sharing companies is a sizeable source of income for the Parties and, moreover, is an important form of non-paid advertisement, causing the respective vehicles and brands to be more visible in the streets. This could even increase sales of electric cars in future. In addition, no competitor in the car sharing segment could be regarded as being dependent on supplies of cars from the Parties.

5.4.1.4. Customer foreclosure

(270) With regard to ability, the Parties will have no ability to foreclose rival OEMs as each of the Parties is not currently open for the integration of cars by third-party OEMs into their respective fleets. To the contrary, DriveNow's fleet consists exclusively of cars manufactured by BMW and car2go's fleet only of cars manufactured by Daimler. In addition, should the Parties be open, in the future, to integrate cars of third-party OEMs in their own fleet, the number of cars sourced by the Parties would still be too low to have any appreciable effect on the upstream market for the manufacture and supply of passenger cars.

5.4.2. Manufacture and supply of (pure electric powered cars) passenger cars / Parking (including hardware payment services)

(271) Both Parties are active in the upstream market for the manufacture and supply of passenger cars in Germany, Austria and Italy. Only BMW is active in the downstream market for parking in Austria and Germany.

(272) The Commission will assess whether the Parties will have the ability to foreclose access to passenger cars to their rival parking services providers or the ability to foreclose their rival OEMs to a customer base.

5.4.2.1. Manufacture and supply of passenger cars (*upstream*)

(273) The market for the manufacture and supply of passenger cars is discussed in section 5.4.1.1. In this case, it would be affected only if the segment of pure electric powered cars in Germany and in Italy is considered.

5.4.2.2. Parking (*downstream*)

(274) There is no overlap between the Parties in the EEA, as Daimler is not active in the EEA. The Parties were not able to provide reliable market share at city level. However, on a country basis, the Parties' best estimates are the following: less than 5% for Austria and Germany. In a possible sub-segment limited to software/mobile technology, market share would be between 5 and 10% for Austria and Germany.

5.4.2.3. Input foreclosure

(275) With regard to ability, the Parties will have no ability to foreclose rival parking services providers in Germany and Italy as there are various OEMs in the market and it is not necessary to have access to newly produced passenger cars to offer such services.

5.4.2.4. Customer foreclosure

(276) With regard to ability, the Parties will have no ability to foreclose rival OEMs, as the Parties are not important customers in the market for parking services for any of its OEMs rivals.

5.4.3. Manufacture and supply of (pure electric powered cars) passenger cars / charging

(277) Both Parties are active in the upstream market for the manufacture and supply of passenger cars in Germany, Austria and Italy. Only BMW is active in the downstream market for charging in Germany, Austria, Belgium, France and the Netherlands.

(278) The Commission will assess whether the Parties will have the ability to foreclose access to passenger cars to their rival charging services providers or the ability to foreclose their rival OEMs to a customer base.

5.4.3.1. Manufacture and supply of passenger cars (*upstream*)

(279) The market for the manufacture and supply of passenger cars is discussed in section 5.4.1.1. In this case, it would be affected only if the segment of pure electric powered cars in Germany and in Italy is considered.

5.4.3.2. Charging (*downstream*)

(280) BMW offers the ChargeNow services, [INFORMATION ON BUSINESS PLANS]. However, ChargeNow's turnover is marginal (EUR [INFORMATION ON TURNOVER] in the EEA, less than EUR [INFORMATION ON TURNOVER] in Munich, less than EUR [INFORMATION ON TURNOVER] in Berlin, less than [INFORMATION ON TURNOVER] in Hamburg, less than EUR [INFORMATION ON TURNOVER] in Düsseldorf and Cologne in 2017).

5.4.3.3. Input foreclosure

(281) With regard to ability, the Parties will have no ability to foreclose rival charging providers in Germany and Italy as there are various OEMs in the market and it is not necessary to have access to newly produced passenger cars to offer such services.

5.4.3.4. Customer foreclosure

(282) With regard to ability, the Parties will have no ability to foreclose rival OEMs as the Parties are not important customers in the market for charging services for any of its OEMs rivals.

5.4.4. Financial and operational leasing / (free-floating) car sharing

(283) Both Parties are active in the upstream market for financial and operational leasing in Germany, Austria and Italy and in the downstream market for (free-floating) car sharing.

(284) The Commission will assess whether the Parties will have the ability and incentive to foreclose access to financial and operational leasing to their rival (free-floating) car sharing providers or the ability to foreclose their rival financial and operational leasing providers to a customer base.

5.4.4.1. Financial and operational leasing (*upstream*)

(285) The Parties' combined market share in Germany is [20-30]%[198], in Austria [10-20]%[199] and in Italy [5-10]%[200].

5.4.4.2. (Free-floating) car sharing (*downstream*)

(286) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.4.3. Input foreclosure

(287) With regard to ability, the Parties will have no ability to foreclose rival car sharing providers for the following reasons: (i) access to financial and operational leasing is not a pre-condition for offering car sharing services. The Parties estimate that in Germany [INFORMATION ON MARKET ESTIMATES]% of the car sales account for leasing, whilst for Austria the Parties estimate that [INFORMATION ON MARKET ESTIMATES]% account for leasing, (ii) there are other strong providers of financial and operational leasing services in addition to other OEMs, such as banks and car rental companies.

(288) With regard to incentive, the Parties will have no incentive to foreclose rival car sharing providers as financial and operational leasing provided to third parties is a valuable source of income and, for OEMs, there are marketing and advertisement advantages if they supply their cars to car sharing providers.

5.4.4.4. Customer foreclosure

(289) With regard to ability, the Parties will have no ability to foreclose rival suppliers of financial and operational leasing services, given that neither of the Parties is a sufficient important customer for third parties. Each of the Parties has only used services from their parent companies in the past.

---

198 The Parties submit that there would be no significant difference if (i) financial leasing and (ii) operational leasing were to be distinguished. As explained in Section 4.1.7, for the purpose of this decision, the Commission will therefore assess the impact of the transaction on a market for financial and operational leasing.

199 See footnote above.

200 See footnote above.

5.4.5. Full fleet leasing and management services / (free-floating) car sharing

(290) Both Parties are active in the upstream market for full fleet leasing and management services in Germany, Austria and Italy and in the downstream market for (free-floating) car sharing.

(291) The Commission will assess whether the Parties will have the ability and incentive to foreclose access to full fleet leasing and management services to their rival (free-floating) car sharing providers or the ability to foreclose their rival full fleet leasing and management service providers to a customer base.

5.4.5.1. Full fleet leasing and management services (*upstream*)

(292) In Germany, the Parties' combined market share will be [10-20]%[201], in Austria [0-5]%[202] and in Italy [0-5]%[203].

5.4.5.2. (Free-floating) car sharing (*downstream*)

(293) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.5.3. Input foreclosure

(294) With regard to ability, the Parties will have no ability to foreclose rival car sharing providers as (i) full fleet leasing and management services is not a pre-condition for offering car sharing services and (ii) this type of services are widely available in the market.

(295) With regard to incentive, the Parties will have no incentive to foreclose rival car sharing providers given that full fleet leasing and management services provided for third parties is a valuable source of income.

5.4.5.4. Customer foreclosure

(296) With regard to ability, the Parties will have no ability to foreclose rival full fleet leasing and management service providers given that neither of the Parties is a sufficient important customer for third parties. Indeed, neither of the Parties has sourced such type of services from third parties in the past.

5.4.6. Development and sale of smartphone apps / (Free-floating) car sharing

(297) The Parties do not offer and do not intend to offer on their apps online advertising services.

---

[201] The Parties submit that there is no data available for any further segmentation but that, in any event, [INFORMATION ON TURNOVER] (Tables 27-29 Form CO).

[202] See footnote above.

[203] See footnote above.

(298) The Parties do not offer paid smartphone apps at the moment. All smartphone apps relevant for the transaction can be downloaded for free. Only becoming a member of car2go or DriveNow would require the payment of a membership fee. There are also currently no plans to change this business model. The Parties are also no smartphone app developers. They do not offer to programme software for third parties that do not belong to the group of Daimler and BMW respectively.

(299) In the EEA, the Parties offer the following smartphone apps that will also be transferred to the joint ventures: DriveNow app, car2go app, ChargeNow app, Parkmobile app, moovel and mytaxi apps. All aforementioned smartphone apps aim at mediating contracts, e.g. the car2go smartphone app aims at allowing the user to book rides with car2go vehicles. Turnover is thus not generated directly by selling the smartphone app to potential customers but (leaving the registration fee for car2go or DriveNow aside) by the realisation of contracts for the services offered in the respective smartphone app. Along the same line, "moovel transit" works on a commission basis for each transaction booked on the smartphone app. Both Parties are active in the downstream market for (free-floating) car sharing.

(300) The Commission will assess whether the Parties will have the ability to foreclose access to smartphone apps to their rival (free-floating) car sharing providers or the ability to foreclose other companies offering smartphone apps to a customer base.

5.4.6.1. Development / sale of smartphone apps (*upstream*)

(301) At EEA level, according to the Parties' best estimates, the Parties' combined market share would be lower than 30%, whilst in Germany, Italy, Austria the Parties' combined market shares would be below 30% in each territory.

5.4.6.2. (Free-floating) car sharing (*downstream*)

(302) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.6.3. Input foreclosure

(303) With regard to ability, the Parties will have no ability to foreclose rival car sharing providers as there are several companies that can develop/sell smartphone apps.

5.4.6.4. Customer foreclosure

(304) […]The Parties will have no ability to foreclose rival developers/suppliers of smartphone apps given that there are several companies that can be considered customers of services involving the development and sale of smartphone apps.

5.4.7. Development and sale of multimodal apps/ (free-floating) car sharing

(305) The Parties do not offer paid smartphone apps at the moment. As explained above, turnover is thus not generated directly by selling the smartphone app to potential customers but (leaving the registration fee for car2go or DriveNow aside) by the realisation of contracts for the services offered in the respective smartphone app. That being said, Daimler only offers a multimodal app. Both Parties are active in the downstream market for (free-floating) car sharing.

(306) The Commission will assess whether the Parties will have the ability to foreclose rival (free-floating) car sharing providers or the ability to foreclose companies active in the development/sale of multimodal smartphone apps to a customer base.

5.4.7.1. Development /sale of multimodal apps (*upstream*)

(307) BMW does not offer multimodal apps. As a consequence, at EEA level as well as in Germany, according to the Parties' best estimates, the Parties' combined market share would be lower than 30%.

5.4.7.2. (Free-floating) car sharing (*downstream*)

(308) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.7.3. Input foreclosure

(309) With regard to ability, the Parties will have no ability to foreclose rival (free-floating) car sharing providers as there are several companies that can develop and sell multimodal smartphone apps.

5.4.7.4. Customer foreclosure

(310) With regard to ability, the Parties will have no ability to foreclose rival companies active in the development/sale of multimodal smartphone apps as software developers are not dependant on the Parties' car sharing services.

5.4.8. Access to multimodal apps / (free-floating) car sharing

(311) Daimler operates upstream a multimodal app ("moovel") in some of the overlap cities. Both Parties are active in the downstream market for (free-floating) car sharing. The Commission will assess whether the Parties will have i) the ability and the incentive to foreclose access to multimodal apps to their rival (free-floating) car sharing providers as well as ii) the ability or incentive to foreclose other multimodal apps from access to their API. In addition, the Commission will assess the likely impact on effective competition.

5.4.8.1. Access to multimodal apps

(312) Daimler operates the moovel platform which is available in some of the overlap cities. BMW does not offer any multimodal apps in the EEA. As a consequence, at EEA level, as well as in Germany and Austria, according to the Parties' best estimates, the Parties' combined market share would be lower than 30%.

5.4.8.2. (Free-floating) car sharing

(313) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.8.3. Customer foreclosure

(314) With regard to ability, the Parties claim that they will have no ability to foreclose rival car sharing providers given that access to multimodal apps would not be necessary for offering car sharing services as this could be done with individual (provider-owned) apps. However, the Commission considers that, in the light of the fact that multimodal apps are likely to become the gateway to car sharing services, the Parties will have the ability to foreclose rival car sharing providers.

(315) The majority of OEMs and of mobility service providers who responded to the market investigation stated that they are concerned about obtaining access, post-Transaction, to the merged entity's platform for mobility services, i.e. moovel.[204] In addition, the majority of mobility service providers who responded to the market investigation stated that their services are included in apps of third party providers, such as independent integrators or apps of competing mobility providers.[205]

(316) One mobility service provider stated that *"the platform is getting more power against smaller companies to negotiate"*.[206] Another mobility service provider stated that *"[w]hen moovel becomes the platform of choice they will be able to allocate bookings to own partners and / or dictate the prices which are charged […] as well as the commission which moovel might get […]*".[207] Another mobility service provider stated that "*moovel will push their own providers*".[208]

(317) Due to the reasons outlined above, the Commission considers that access to integrators and multimodal apps is important to reach customers. This is likely to increase in the future. As a consequence, the Parties would have the ability to foreclose rival car sharing providers.

(318) With regard to incentive, one mobility service provider that responded to the market investigation stated that "*[…] moovel […] will become big - therefore it will be difficult for smaller platforms […]*".[209] In the light of the above, the Commission considers that, due to the fact that access to the most important integrator platforms is critical for reaching customers and that the Parties, due to their strong position in free floating car sharing services, could turn moovel into the integrator app of choice, the Parties would have the incentive to foreclose rival car sharing providers from reaching customers by denying them access to their moovel platform.

---

[204] Replies to question 19 of questionnaire to OEMs and replies to question 24 of the questionnaire to mobility service providers.

[205] Replies to question 23 of questionnaire to mobility service providers.

[206] Replies to question 24.1 of questionnaire to mobility service providers.

[207] Replies to question 24.1 of questionnaire to mobility service providers.

[208] Replies to question 24.1 of questionnaire to mobility service providers.

[209] Replies to question 24.1 of questionnaire to mobility service providers.

5.4.8.4. Input foreclosure

(319) With regard to ability, the Parties claim that the Parties have no ability to foreclose rival multimodal apps, as BMW and Daimler are only present on very few multimodal apps and at least all other transport providers are conceivable as potential customers of any multimodal app. However, the Commission considers that in the light of the fact that, as confirmed by the market test, the Parties' fleet is a must-have for integrator apps, the Commission considers that the Parties will have ability to foreclose rival multimodal apps.

(320) First, the Parties' combined market share in the downstream market for (free-floating) car sharing is very high in the six overlap cities. Second, the majority of respondents to the market test stated that the Parties' presence on an aggregator app is a must-have.[210] As one respondent to the market test put it: "*an aggregator app only adds value to the consumer […] if meaningful mobility providers are being listed and sufficient availability of vehicles is being provided […]*"[211] Another respondent to the market test stated that *"[…] an aggregator app without [the Parties'] service is not a good selling point for the users and I would not run a shared mobility aggregator without [the Parties] at least in the overlap cities*".[212]

(321) In order to list the Parties' car sharing offering it is necessary for rival integrator apps to have access to Parties' API. Consequently, the Commission considers that the Parties would have the ability to foreclose rival multimodal apps.

(322) With regard to incentive, the merged entity would benefit from such an input foreclosure strategy in two ways. First, it would fortify its downstream position in car sharing at the expense of rival car sharing providers. Second, it could obtain higher fees from other mobility providers which want to be listed on moovel. Consequently, the Commission considers that the Parties will have incentive to foreclose rival multimodal apps.

(323) With regard to the likely impact on effective competition, the ability and the incentive of the Parties to foreclose rival multimodal apps is likely to increase barriers to entry in multimodal apps. This is due to the fact that for an integrator app adds value to the consumer if meaningful mobility providers are listed and sufficient availability of vehicles is being provided.

5.4.9. Charging / (free-floating) car sharing

(324) Only BMW is active in the upstream market for charging in Germany, Austria, Belgium, France and the Netherlands. Both Parties are active in the downstream market for (free-floating) car sharing.

[210] Replies to question 9 of the Market Test.

[211] Replies to question 9.1 of the Market Test.

[212] Replies to question 9.1 of the Market Test.

(325) The Commission will assess whether the Parties will have ability to foreclose access to charging services to rival (free-floating) car sharing providers or ability to foreclose rival charging service providers to a customer base.

5.4.9.1. Charging (*upstream*)

(326) As stated above, BMW offers the ChargeNow services, [INFORMATION ON BUSINESS PLANS]. However, ChargeNow's turnover is marginal (EUR [INFORMATION ON TURNOVER] in the EEA, less than EUR [INFORMATION ON TURNOVER] in Munich, less than EUR [INFORMATION ON TURNOVER] in Berlin, less than [INFORMATION ON TURNOVER] in Hamburg and less than EUR [INFORMATION ON TURNOVER] in Dusseldorf and Cologne).

5.4.9.2. (Free-floating) car sharing (*downstream*)

(327) The market for (free-floating) car sharing is discussed in section 5.4.1.2. The Parties' combined market share will be high in Berlin, Cologne, Dusseldorf, Munich, Vienna and Milan.

5.4.9.3. Input foreclosure

(328) With regard to ability, the Parties will have no ability to foreclose rival car sharing providers as the Parties' presence in the market is limited and, in addition, there are several competitors offering charging services […], such as emobil, Innogy, Vattenfall, New Motion and plugsurfing.

5.4.9.4. Customer foreclosure

(329) With regard to ability, the Parties will have no ability to foreclose rival charging providers, given that the Parties' are not important customers for them.

5.5. Conclusion

(330) For the reasons outlined above, the proposed Transaction would lead to serious doubts as to its compatibility with the internal market on the market for car sharing in the following five overlap cities: Hamburg, Cologne, Dusseldorf, Munich and Vienna. Public transport exerts a certain out-of-market constraint and the market for car sharing is in flux with small and large entries and many more planned which, however, cannot be considered as likely, timely and sufficient enough. Therefore, the Commission considers that these two factors may partially mitigate concerns, but do not remove the existing serious doubts.

(331) The proposed Transaction would also raise serious doubts in the vertically affected market for access to multimodal apps / (free-floating) car sharing due to the fact that the Parties will have the ability and incentive to foreclose rival providers of multimodal apps and rival car sharing providers. Given that multimodal apps are becoming the gateway to car sharing services and that the Parties' car sharing fleet is a must-have for competing multimodal apps in the overlap cities, the proposed Transaction would likely raise barriers to entry in the market for car sharing services and for multimodal apps.

6. PROPOSED REMEDIES

6.1. Analytical framework

(332) Where the Commission considers that a concentration will raise competition concerns, the parties may seek to modify the concentration in order to resolve such competition concerns and thereby gain clearance of their merger.

(333) In Phase I, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out serious doubts within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase I.

(334) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.

6.2. Procedure

(335) In order to render the concentration compatible with the internal market, the Parties have modified the proposed Transaction by entering into the following commitments, submitted on 15 October 2018 and revised on 5 November 2018, which are annexed to this decision and form an integral part thereof.

(336) After an examination and a market test these commitments are considered suitable to entirely remove the serious doubts identified.

(337) The commitments notably aim to lower the barriers of entry for third mobility providers in the overlap cities of Berlin, Cologne, Dusseldorf, Hamburg, Munich and Vienna. Furthermore, the commitments secure that the Parties do not terminate or deny contracts with third aggregator apps in order to launch and expand their own app exclusively so that third party aggregator apps would be cut off immediately.

(338) The Parties commit (i) to remain, under certain conditions, visible on third parties' aggregator platforms and (ii) to allow, under certain conditions, competing mobility service providers to be visible on the Parties' combined Multimodal App ('moovel'). In this spirit, the Parties will (i) grant application programming interface (API) access to third aggregator platforms and (ii) grant access for all interested car sharing providers to their Multimodal App.

(339) In both cases users will be re-directed to the selected mobility service provider's app; booking a third party mobility service providers' car directly on the Parties' aggregator's platform will not be possible. Both commitments apply for three years after their implementation with a possible extension of two more years if

there is no meaningful entry[213]. They are provided free of charge and on a non-discriminatory basis, but subject to certain conditions. The commitments also include provisions for the appointment of a monitoring trustee and provide for the insertion of an arbitration clause in both the (i) Material Terms Partner-Contract and (ii) Material Terms API Agreement (as Annexes to the commitments).

(340) On 16 October 2018 the commitments were subjected to a market test, which was launched on that day.

(341) Overall, the market test provided a positive feedback on the proposed commitments.[214] Any listing, not only on third party aggregator apps, but also on the Parties' multimodal app, would raise the visibility of car sharing service providers, especially for smaller ones, which could be vital for (smaller) car sharing service providers' chance to enter the market with a smaller fleet, to stay on the market or to expand their business. Furthermore, an aggregator app should cover the most attractive mobility services on their platform to attract as many customers as possible, which would be for the purpose of that case the car sharing services of car2go and DriveNow.

(342) However, the (old) threshold for meaningful entry (30%) was criticised as being too low, the contract length for anyone entering into an agreement with the Parties later than one year after the implementation of the commitments in the duration period of the Commitments was deemed too short, and a fast track arbitration was also stated as necessary to avoid lengthy procedures.

(343) After reviewing the market test results, it appeared that the threshold of 30% of the Parties' combined fleet in the previous year in the definition of meaningful entry is not high enough and should be doubled if it is to dispel the serious doubts. Furthermore, a minimum contract term of two years should be granted within the initial duration period of three years, if the individual contracts are signed later than one year after the implementation of the commitments, and the arbitration clause should be fast track.

(344) On 5 November 2018, the Parties submitted a revised version of the given set of commitments addressing these shortcomings of the first set of the Commitments.

[213] Meaningful market entry means that one car sharing provider enters or more car sharing providers enter an overlapping city and reaches/reach more than 60% of the average fleet size of the KITT CS fleet of the preceding calendar year in the respective overlapping city.

[214] See replies of Market test of Commitments, esp. questions 1 and 2.

7. ASSESSMENT OF THE PROPOSED REMEDIES

(345) As set out in the Commission Notice on remedies,[215] the Commission assesses the compatibility of a notified concentration with the internal market on the basis of its effect on the structure of competition in the EU. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the parties may seek to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the merger cleared[216].

(346) The Commission enjoys a broad discretion in assessing whether these remedies constitute a direct and sufficient response capable of dispelling any such doubts.[217]

(347) In assessing whether or not the remedies will restore effective competition, the Commission considers *inter alia* the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise.

(348) In the present case, the Commission considers that proposed commitments as submitted by the Parties on 15 October 2018 and revised on 5 November 2018 addresses all serious doubts identified in the course of the procedure. As such, the Commission comes to the conclusion that the commitments entered into by the Parties are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

(349) Car sharing, as a relatively new mobility solution in cities, is an evolving market as the proposed Transaction and several entry plans/intentions identified by the market investigation proves. However, not all of them do fully meet the criteria of timely, sufficient and likely, with the exception of Berlin. The Commission acknowledges and takes into account that, as confirmed by the market investigation and the July 2018 customer survey (paragraph (59)), regardless of whether the product market is car sharing (including station-based and free-floating car sharing) or only free-floating car sharing, mostly public transport exerts a certain out-of-market constraint. This out-of-market constraint softens, but does not fully alleviate the competition concerns identified. Consequently, the proposed Transaction would raise, on the narrowest possible market of free-floating car sharing, serious doubts, as there would be only one player in the cities of, at least for a certain period of time. In an overall market for car sharing (i.e. including also station-based), the Transaction would also lead to very high market shares in the same cities, and also for a certain period of time.

---

215 OJ C 267, 22.10.2008, p. 1.

216 Article 6.2 of the Merger Regulation.

217 Case T-177/04 *easyJet* v *Commission* [2006] ECR II-1931, paragraph 128 *et seq*.

(350) The Commission considers that given that the Parties would control a large combined fleet in each of the overlap cities, a new entrant would need to start with a relatively large fleet[218] itself to become attractive to users. In order to make entry more likely, the proposed remedy would address the likely effects of the merger by lowering the entry barriers for third mobility service providers, especially smaller ones. This would allow them to start (more) easily competing with the Parties (even with a smaller fleet of cars) in all of the five overlap cities of Cologne, Dusseldorf, Hamburg, Munich and Vienna, where the proposed Transaction would lead to serious doubts on the market for (free-floating) car sharing, but also Berlin, where Volkswagen has not entered the market for (free-floating) car sharing yet.

Being visible face-to-face with the Parties on leading third party aggregator apps

(351) Being visible is one of the keys, not only physically on the streets with a certain number of cars, but also on app(s) as the vehicle can only be searched or identified and reserved through a dedicated smartphone app. This app could either be the (own) app of the car sharing service provider itself, but also – especially for identifying any kind of mobility solutions – a third party (aggregator) app, which combines all kinds of transports.

(352) The more different kinds of transports (like e.g. public transport, car rental and car sharing), but also the more comparable offers within the same market/segment (like e.g. several fleets of different car sharing service providers being visible online face-to-face on a map) are offered with a certain app, the more attractive the app will be. The more attractive the app is, the more people will download and use it logically.

(353) Therefore, third party aggregators do have a keen interest in hosting at least the leading car sharing provider on their apps in order to attract their customers. But nevertheless, it could also be helpful for smaller or new car sharing competitors to be hosted face-to-face to the biggest player in town, especially on the currently leading third party aggregator app. Therefore, the remedies are crucial to ensure that the Parties do not (only) built up their own exclusive aggregator app and terminate any existing third parties' contracts.

Being visible face-to-face with the Parties on their combined Multimodal App

(354) Secondly, due to the fact that the Parties [INFORMATION ON BUSINESS PLANS] and existing contracts with third party aggregators could be terminated, it could be helpful for competing (smaller or new) car sharing providers to be hosted face-to-face on the Parties' app at least for a certain period of time. As the hosting is free of charge and on a non-discriminatory basis, it could be an add on option for smaller (potential) competitors to become more visible online to a major community and to start (more) easily competing with the Parties in all of the five overlap cities of Cologne, Dusseldorf, Hamburg, Munich and Vienna, where the proposed Transaction would lead to serious doubts on the market for (free-floating) car sharing, even with a smaller fleet of cars, but also Berlin, where Volkswagen has not entered the market for (free-floating) car sharing yet.

[218] Investments would not, however, be insurmountable, for a medium or a large company.

(355) Furthermore, the commitments secure that the Parties do not terminate or deny contracts with third aggregator apps in order to launch and expand their own app exclusively so that third party aggregator apps would be cut off immediately in order to create the must have app which would become the gatekeeper.

(356) The Commissions assessment is also reflected in the market test results. As mentioned above in paragraph (341), the market test provided a positive feedback on the proposed commitments. The Commission considers that the proposed commitments would reduce entry barriers especially for smaller players as the enhanced visibility on integrator apps would allow them to start (more) easily in the overlap cities with a smaller fleet of cars, as in the new mobility world it is essential to be visible not only on the streets with a certain number of cars, but also online via attractive (aggregator) app(s), which is offered by the remedies.

Conclusion

(357) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

8. CONDITIONS AND OBLIGATIONS

(358) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its Decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering a notified concentration compatible with the internal market.

(359) Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation

(360) In accordance with the distinction described above, the commitments in Section B of the Annex to this Decision constitute conditions attached to this Decision, as only through full compliance therewith can the proposed changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(361) The full text of the revised Commitments is attached as Annex to this Decision and forms an integral part of it.

9. CONCLUSION

(362) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments annexed to the decision and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B of the commitments annexed to the present Decision and with the obligations contained in the other sections of the said commitments. This Decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

CASE NO. COMP/M.8744 - BMW/DAIMLER/CAR SHARING JV

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), Bayerische Motoren Werke Aktiengesellschaft (including its subsidiaries "**BMW**") and Daimler AG (including its subsidiaries "**Daimler**", and together with BMW the "**Notifying Parties**") hereby provide the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the proposed acquisition of joint control by the Notifying Parties in six joint ventures (all six together the "**JV**"), bringing together the Notifying Parties' mobility services in five business fields, i.e. car sharing services, ride hailing services, parking services, charging services as well as other (on-demand) mobility services (the "**Proposed Transaction**"), compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in the light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Proposed Transaction compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

Section A. Definitions

(1) For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Notifying Parties, including the six joint venture companies and their subsidiaries, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Aggregator Platform(s): any technology platform(s) available on smartphones that establishes a contact between consumers and mobility services like car sharing, ride hailing, public transit ticketing, parking and charging and incorporates at least two different means of transport (e.g. public transport and car sharing).

Car Sharing Vertical or KITT CS: The future car sharing joint venture of the Notifying Parties offering car sharing in the Territory.

Car Sharing Provider(s): any provider(s) of free-floating car sharing services.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature, including but not limited to reports, analyses, compilations, memoranda, summaries, notes, excerpts, intentions, experiences, plans, drawings, designs, findings that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

Control: direct or indirect, sole or joint control pursuant to the Consolidated Jurisdictional Notice and the Merger Regulation.

KITT Multimodal App: the KITT Multimodal App is a technology platform consisting of iOS/Android apps and server components that *inter alia* establishes a contact between consumers and at least two different means of transport (e.g. public transport and car sharing).

Effective Date: the date of adoption of the Decision.

Meaningful Market Entry: one Car Sharing Provider enters or more Car Sharing Providers enter an overlapping city and reaches/reach more than 60% of the average fleet size of the KITT CS fleet of the preceding calendar year in the respective overlapping city.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Parties' compliance with the conditions and obligations attached to the Decision.

OEM: any original equipment manufacturer that also manufactures passenger cars, regardless of legal form and domicile (e.g. Volkswagen).

Separate Businesses: a Car Sharing Provider or any competing business pursuant to para. (6) in which an OEM directly or indirectly holds a stake that is legally and organizationally separate from the Aggregator Platform in which the same OEM directly or indirectly holds a stake; this is the case if the businesses are located in separate legal entities, have no overlapping directors and senior managers and the sharing of information and business coordination is restricted to the level of businesses without joint ownership (arm's length principle); restricted is therefore, *inter alia*, the sharing of API Access and data related to API Access (including the access credentials), analysis of fleet movements of the Notifying Parties or the provision of tools and information that would allow such analysis either by the Car Sharing Provider and/or the competing business and/or any third party for the Car Sharing Provider and/or the competing business as well as the creation of joint business plans or the conduction of joint strategy meetings.

Territory: the six overlapping cities of Berlin, Cologne, Düsseldorf, Hamburg and Munich (all Germany) and Vienna (Austria).

Section B. Commitments

(2) In the Notifying Parties' view, the Proposed Transaction does not significantly impede effective competition and is compatible with the Common Market. This is in particular the case because the relevant market should not be limited to free-floating car sharing but also includes further means of transport. Even if such narrow market definition would be applied, due to the market dynamics, the Proposed Transaction does not raise any competitive concerns. However, in order to address the concerns raised by the Commission and to secure a fast clearance in Phase I, the Notifying Parties are willing to offer the following ("**Commitments**"):

1. Grant application programming interface access to Aggregator Platforms

(3) The Car Sharing Vertical will allow Aggregator Platforms to display certain information by granting access ("**API Access**") to an application programming interface ("**API**") for iOS/Android apps under certain premises.

(4) API Access will be granted in the Territory for a period of three years after closing of the Proposed Transaction.

(5) The Notifying Parties will establish a closed API approach which will work as follows:

- The Aggregator Platforms must explicitly request API Access, i.e. the API is not open to everyone without request;

- API Access will be granted based on specific access criteria (see below);

- API Access can be rejected and/or revoked if the criteria are not met or violated.

(6) The access criteria are as follows:

- The Aggregator Platform has to sign a standard contract (containing at least the provisions set out in **Annex I**) in order to allow the Notifying Parties to know which Aggregator Platforms are using the API and define the rules for such use;

- For the avoidance of doubt: The Aggregator Platform may not be a scientific institute, as data may only be used for the purpose of car sharing activities and the mediation of transport services (and not for other purposes, e.g. data analytics);

- The API does not need to be made available to large technology companies using data in the area of mobility services (like car sharing and ride hailing) or in the areas of data analytics and/or autonomous driving (this also applies to affiliates and companies in which the large technology company (directly or indirectly) owns a stake).

  Aggregator Platforms, directly or indirectly, majority owned by OEM are not excluded from API Access as long as no large technology company has a stake in the Aggregator Platform. Aggregator Platforms are, however, excluded from API Access if the Aggregator Platform and/or an OEM directly or indirectly holding a share in the Aggregator Platform, directly or indirectly, offers car sharing or any service competing with the KITT CS service in the respective overlapping city, irrespective of the brand used. This does not apply in case of Separate Businesses as long as the OEM allows the Notifying Parties to display its car sharing service and/or competing business in the KITT Multimodal App (or any successor thereof) under conditions materially equal to the conditions under the API Access Commitments ("non- discriminatory treatment").

(7) The Notifying Parties will provide the API Access to the Aggregator Platforms for free. As the remedy should not be used by third parties to develop their business models based on investments by the Notifying Parties, but in order to ensure market entry, the Notifying Parties will not be obliged to make any payments to the Aggregator Platforms (e.g. set-up costs, fees or other kind of remunerations).

(8) An Aggregator Platform which fulfills the criteria described above, will get API Access. The API will provide the following information which the Aggregator Platform may use to display the KITT CS service on its platform:

  – Unique identifier to the vehicle;

- Vehicle position (geo coordinates, address);
- Vehicle status (available / not available);
- Vehicle license plate;
- Deep link URL leading to the booking screen for this vehicle in the provider's app;
- Other relevant vehicle attributes: model, color, fuel type and level.

(9) The API may be used by the Aggregator Platform for a deep linking. It will make the display of cars possible (car type, location, availability, price, status of fuel/battery). Based on the API, the Aggregator Platform will be able to show the location of available KITT CS cars in the Territory and the features described above on its platform. The customer will have the possibility to click on a KITT CS car and he will be redirected to the KITT CS app(s)[1] for reservation or booking. It is not envisaged that one can login into one's KITT CS customer account and book the car via the Aggregator Platform. It will also not be possible to open and access cars or to process the payment via the Aggregator Platform.[2]

(10) Provided the access criteria are fulfilled, the Notifying Parties will provide access under these Commitments to the API without undue delay and on non-discriminatory basis. The Notifying Parties will treat all Aggregator Platforms – that seek access based on these Commitments and that fulfill the access criteria – equally, regardless of, inter alia, ownership, size or financing, and in a matter and spirit that will allow these Commitments to work effectively.

2. Grant access for all interested Car Sharing Providers to the KITT Multimodal App

(11) The Notifying Parties will make the KITT Multimodal App available to third party Car Sharing Providers so that they can make visible their car sharing services in the KITT Multimodal App. Access will be made available without a need to pay commissions. Access will be granted in the Territory for a period of three years after closing of the Proposed Transaction.

(12) There is no right of access in the following cases:

- The Car Sharing Provider is Controlled by an OEM; or

1 [Details on App implementation].

2 It would not be competitively advantageous if the Aggregator Platform would provide more than a deep link solution. If booking via the Aggregator Platform would be possible, the Car Sharing Providers would not have any possibility to show their own app/technical platform and their marketing efforts to the consumer.

– The Car Sharing Provider has a fleet of more than 60% of the average fleet size of the KITT CS fleet of the preceding calendar year in the respective overlapping city.

(13) The KITT Multimodal App will be owned and operated by an entity jointly Controlled by the Notifying Parties post-closing.

(14) A third party Car Sharing Provider which does not fall under the exemption above, will be integrated into the KITT Multimodal App after having signed a Partner-Contract (containing at least the provisions set out in **Annex II**). In order to set this up, the third party Car Sharing Provider must transfer data of all vehicles using an API that is defined and provided by the platform. For each vehicle the following information needs to be provided:

– Unique identifier to the vehicle;
– Vehicle position (geo coordinates, address);
– Vehicle status (available / not available);
– Vehicle license plate;
– Deep link URL leading to the booking screen for this vehicle in the third party Car Sharing Provider's app;
– Other relevant vehicle attributes: e.g. model, color, fuel type and level.

(15) The third party Car Sharing Provider will be integrated into the KITT Multimodal App with a deep link. The provider's cars will be displayed (car type, location, availability, price, status of fuel/battery). The consumer can see the cars of the third party Car Sharing Provider on a geographical map. He cannot reserve or book the cars via the KITT Multimodal App. For reservation, booking, opening of the car and payment, the consumer will be redirected to the app of the third party Car Sharing Provider.[3]

(16) Presumably in end of January 2019, a so-called "self-service integration API" will be provided by the KITT Multimodal App. This API will allow for seamless deep link integration with minimal setup costs for third party mobility providers. It will offer:

- Detailed technical documentation on how to integrate with the platform

[3] It would not be competitively advantageous if the Notifying Parties would provide more than a deep link solution. If booking via the KITT Multimodal App would be possible, the third party Car Sharing Provider would lose direct customer contact and not have any possibility to show its own app/technical platform and marketing efforts to the consumer. The information exchange could also become problematic.

- Standardized API that allows any third party provider to integrate by:

  - Registering an account;
  - Uploading and configuring own assets that do not change over time (e.g. images, icons, map markers, standard texts); and
  - Sending regular vehicle status updates to the platform.

(17) Provided the access criteria are fulfilled, the Notifying Parties will provide access to the KITT Multimodal App under these Commitments without undue delay and on non-discriminatory basis. The Notifying Parties will treat all Car Sharing Providers that fulfill the access criteria under these Commitments equally, regardless of, inter alia, ownership, size or financing, and in a matter and spirit that will allow these Commitments to work effectively. The Notifying Parties will not treat KITT CS on the KITT Multimodal App differentially solely because they are Controlled by the Notifying Parties. Differential treatment may, however, exist, for example, due to different technical requirements and different ways of integration for KITT CS and third party Car Sharing Providers.

Section C. Reporting

(18) The Notifying Parties will engage a Monitoring Trustee (see under D. below) that will submit a written report to the Commission in English no later than six months after closing of the Proposed Transaction (or at any other time the Commission requests so). The Monitoring Trustee will describe in the report whether the Notifying Parties are in compliance with the Commitments. Thereafter, the Monitoring Trustee will submit compliance reports every six months (or at any other time the Commission requests so) and a final report within two weeks after the Commitments' period expired.

(19) The Notifying Parties are obliged to provide the Monitoring Trustee with all information reasonably necessary to write his reports.

Section D. Monitoring Trustee

(20) The Monitoring Trustee will be responsible for informing the Commission about the implementation of and compliance with the proposed Commitments by the Notifying Parties. If the Commission can conclude that the mechanisms foreseen in the Commitments will allow the Notifying Parties to effectively enforce them in a timely manner, no permanent monitoring of the

Commitments by the Commission is required according to the Commission's Remedies Notice.[4] The Notifying Parties set-out the relevant procedure below.

I. Appointment procedure

(21) The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. The Notifying Parties commit not to close the Proposed Transaction before the appointment of a Monitoring Trustee.

(22) The Monitoring Trustee shall:

(i) at the time of appointment, be independent of the Notifying Parties and their Affiliated Undertakings;

(ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(iii) neither have nor become exposed to a Conflict of Interest.

(23) The Monitoring Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfillment of its mandate.

Proposal by the Notifying Parties

(24) No later than four weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties propose to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfill the requirements set out in para. 22 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfill its duties under these Commitments; and

(b) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

(25) The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary

4 Remedies Notice, para. 66.

for the Monitoring Trustee to fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Parties shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Parties

(26) If all the proposed Monitoring Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paras. 21 and 25 of these Commitments.

Monitoring Trustee nominated by the Commission

(27) If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission.

II. Functions of the Monitoring Trustee

(28) The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or the Notifying Parties, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

(29) The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;

(ii) propose to the Notifying Parties such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' compliance with the conditions and obligations attached to the Decision;

(iii) act as a contact point for any requests by third parties in relation to the Commitments;

(iv) promptly report in writing to the Commission, sending the Notifying Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties are failing to comply with these Commitments.

III. Duties and obligations of the Parties

(30) The Notifying Parties shall provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require performing its tasks.

(31) The Notifying Parties shall indemnify the Monitoring Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

(32) At the expense of the Notifying Parties, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Parties' approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should the Notifying Parties refuse to approve the advisors proposed by the Monitoring Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors.

(33) The Notifying Parties agree that the Commission may share Confidential Information proprietary to them with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

(34) The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.

(35) For a period of 5 years from the Effective Date the Commission may request all information from the Notifying Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Monitoring Trustee

(36) If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Monitoring Trustee and the Notifying Parties, require the Notifying Parties to replace the Monitoring Trustee; or

(b) the Notifying Parties may, with the prior approval of the Commission, replace the Monitoring Trustee.

(37) If the Monitoring Trustee is removed according to para. 36 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paras. 21-27 of these Commitments.

(38) Unless removed according to para. 36 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. Review clause

(39) The Commission may, prior to the expiry of the Commitments, extend the time period foreseen in (a) the Commitments for granting API Access of the future Car Sharing Vertical to Aggregator Platforms under certain premises and/or (b) the Commitments for granting third party Car Sharing Providers access to the KITT Multimodal App for two years and for individual cities (of the six overlapping cities) only in appropriate cases, on its own initiative. An appropriate case for extension only exists, if within three years no Meaningful Market Entry took place in the respective city.

(40) The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties.

Section G. Entry into force

The Commitments shall be implemented after closing of the Proposed Transaction without delay.

……
(Name of the lawyer) (Name of the lawyer) (Name of the lawyer)

duly authorised for and on behalf of

Bayerische Motoren Werke Aktiengesellschaft and Daimler AG

Annex I: Material Terms of the API Agreement

The API Agreement will be a standard contract containing, inter alia, the following material terms:

- Representations by the Aggregator Platform that all access criteria are fulfilled and right of the Car Sharing Vertical to terminate the API Agreement for good cause if the Aggregator Platform (i) breaches these representations or (ii) no longer fulfills the access criteria.
- As long as the API Agreement is entered into during the initial duration period of three years of the Commitments, it will provide at least for a minimum contract term of two years, in which termination without good cause is not permissible. This only applies if the Aggregator Platform and any affiliated undertaking of the Aggregator Platform have not been previously granted API Access under the API Agreement.
- In case the Separate Businesses exemption is evoked, a covenant of the Aggregator Platform and the OEM directly or indirectly holding a stake in the Aggregator Platform that the Separate Businesses exemption is fulfilled and that the safeguards will remain in place during the contract duration, including an audit right for the Monitoring Trustee or an independent third party, and, upon discretion of the Notifying Parties, the requirement to sign a contract materially similar to the API Agreement that allows the Notifying Parties to display the car sharing activities and/or competing business of the OEM in the KITT Multimodal App.
- Covenant of the Aggregator Platform to use the data provided via the API Access only for a display of such data in the app of the Aggregator Platform and, in particular, not for any other purposes, e.g. data analytics.
- Restriction of the API Access to a deep linking where customers wishing to register or book vehicles are directed to the Car Sharing Vertical app and negative covenants for the Aggregator Platform not to undertake, attempt or allow a reservation, booking or access to the vehicles other than through a link to the Car Sharing Vertical App (deep linking).
- Negative covenant of the Aggregator Platform not to access or attempt to obtain access to any data base or IT system of the Car Sharing Vertical other than data that is provided via the API under the API Agreement and in particular not to obtain or try to obtain access to the Car Sharing IT systems in circumvention of applied data security mechanisms.
- Covenant for the Aggregator to use only the official logo files made available by the Car Sharing Vertical to show an integration into the Aggregator Platform app (fleet vehicles, charging stations, parking spots).
- Customary termination rights for cause (e.g. insolvency, breach of material obligations).
- Adequate penalties for the Aggregator Platform in case of a breach of material provisions, in particular, data protection, data security provision or the above covenants (e.g. Separate Businesses exemption).

- The contract includes key tasks and responsibilities of each party, inter alia the provision of data "as is" for to be defined, non-exclusive usage by the aggregator platform, termination rights, and duration of the contract.
- Appropriate data protection, data security provisions and limitations of liability.
- The right of the Car Sharing Vertical to update the API and to change, update and extend the information provided by the API (Aggregator Platforms will be informed timely to ensure that systems can be properly adjusted) for technical (e.g. technical changes or further development of the Car Sharing app(s) or IT systems) or legal reasons always provided that the requirements mentioned in para. 8 of the Commitments will remain to be fulfilled or that information that serves the same purpose will be provided.
- Exceptions to the availability of the API for maintenance of systems, outages, and act of nature beyond control.
- A fast track arbitration clause for potential legal disputes under the API Agreement.

Annex II: Material Terms of the Partner-Contract

The Partner-Contract will be a standard contract containing, inter alia, the following material terms:

- Representations by the third party Car Sharing Provider that the exemptions are not applicable and access should be given and right to terminate the Partner-Contract for good cause if the third party Car Sharing Provider (i) breaches these representations or (ii) the exemption becomes applicable.
- As long as the Partner-Contract is entered into during the initial duration period of three years of the Commitments, the Partner-Contract will provide for a minimum contract term of two years, in which termination without good cause is not permissible. This only applies if the Car Sharing Provider and any affiliated undertaking of the Car Sharing Provider have not been previously granted access to the KITT Multimodal App under the Partner-Contract.
- Key tasks and responsibilities of each party, inter alia permission for the KITT Multimodal App to integrate a deep link to the third party Car Sharing Provider's app for booking requests, termination rights, and its duration.
- Appropriate data protection and data security provisions.
- Provisions about branding: No branding limitations; own brand logo and name can be used; third party logos will be displayed, provided they are available in the region of the activity.
- Customary termination rights for cause (e.g. insolvency, breach of material obligations).
- Adequate penalties for the Aggregator Platform in case of a breach of material provisions, in particular, data protection and data security provisions.
- A fast track arbitration clause for potential legal disputes under the Partner-Contract.