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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9360 – Daimler / Geely / JV**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 8 November 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Daimler AG ("Daimler", Germany) and Zhejiang Geely Holding Group Co. Ltd ("Geely", People's Republic of China) acquire, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation, joint control of a newly created joint venture ("JV") by way of a purchase of shares (the "Transaction")[3]. Daimler and Geely are designated hereinafter as the "Parties" or "the notifying Parties".

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

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

3 Publication in the Official Journal of the European Union No C 387, 15.11.2019, p. 17.

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1. THE PARTIES

(2) **Daimler** develops, manufactures and distributes automotive products, mainly passenger cars, trucks, vans and buses. Its business is divided in five divisions: Mercedes-Benz Cars, Daimler Trucks, Mercedes-Benz Vans, Daimler Buses and Daimler Financial Services. The Mercedes-Benz Car division sells passenger cars under the Mercedes-Benz and smart brands.

(3) **Geely** is an automobile manufacturer engaged in the production and sales of passenger vehicles worldwide. Geely has global operations spanning the automotive value chain, from research, development and design to production, sales and service. Geely's headquarter is in Hangzhou, China. Geely owns the Volvo passenger car and Light Commercial Vehicle ("LCV") business.

2. THE TRANSACTION

2.1. Structure of the Transaction

(4) Daimler and Geely will jointly establish and control a full-function JV established in China ("JV") and a wholly owned subsidiary of the joint venture in the EU ("EU Sales JV").

(5) **The JV** will develop, manufacture and distribute the next generation of pure battery electric vehicles ("BEV") models of the smart brand. The JV will initially focus on three small vehicles including a [internal names of target vehicles] ("Target Vehicles"). The manufacture of Target Vehicles will take place in China. The distribution, including the provision of aftersales services, of Target Vehicles in China [details about the distribution in China] with sales due to begin in 2022.

(6) **The EU Sales JV** will be a new sales and marketing company incorporated in the EU by the JV. It will be responsible for the sales and marketing of the Target Vehicles in Europe. [Details about the distribution in Europe].

2.2. Joint control

(7) Pursuant to a Joint Venture Contract ("JVC") signed on 26 March 2019, Daimler and Geely will each acquire shares representing 50% of the total voting rights of the JV and each will appoint three Directors. Decisions in relation to the JV's commercial strategy will be adopted by unanimity or by simple majority with the affirmative vote of at least two directors appointed by each Party. Therefore, Daimler and Geely will jointly control the JV.

2.3. Full function joint venture

(8) The JV will have sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests. Furthermore, the JV will have a market presence, and is intended to operate on a lasting basis.

(a) Geely and Daimler will contribute to the registered capital of the JV in cash, while Daimler will also contribute the "smart" brand. The JV will finance

and operate its business as a stand-alone entity independently from the Parties and assume associated liabilities and risks on its own.

(b) The JV will have its own dedicated management team to carry out the day-to-day operation of the JV. The management team will be organised as follows: one Chief Executive Officer ("CEO") appointed by Geely, one Chief Financial Officer ("CFO") appointed by Daimler, one Chief Operating Officer ("COO") appointed by Geely, and one head of sales, marketing and brand management appointed by Daimler.

(c) The JV may select its own employees, has no obligation to employ staff from the Parties, and will bear the cost of seconded employees. When an employee of either party holds concurrent posts in the JV, the cost of that employee shall be borne by the JV and the respective party pro-rata to the time allocated by the employee between the JV and the party.

(d) There will be links between the JV and its parent companies and both parent companies will provide support to the JV in the manufacturing and distribution of the Target Vehicles. However, the JV will pay its parent companies fees at arms-length basis for the services received. The purchase price for contract products payable by the JV to Geely will be determined on a cost-plus pricing basis and the JV will keep full control of the process. Indeed, the JV will be responsible for commercial negotiations of all the procurement contracts with suppliers (including Geely) of the raw materials and parts, and will define and control quality targets for the Target Vehicles.

(9) In view of the above, the JV is full-functional.

3. EU DIMENSION

(10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4]. 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. The notified operation therefore has an EU dimension.

4. RELEVANT MARKETS

(11) The activities of the Parties overlap horizontally and on a number of markets for (i) the manufacture and sale of new passenger cars and, in particular, the sub-segment of mini (A-segment) cars and small (B-segment) cars[5] and the sub-segment of pure battery electric vehicles ("BEV"), (ii) the wholesale of new passenger cars

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

5 According to the information provided by the Parties, the [internal name of a target vehicle] belongs to the A-segment, and the [internal names of target vehicles] to the B-segment in view of their body style, vehicle length, price threshold and customer basis. According to the Parties, this segmentation normally corresponds to the equivalent segmentation made by IHS (IHS is a service provider for i.e. automotive market segment forecasts).

and light commercial vehicles ("LCVs"), and (iii) the retail sale of new passenger cars and LCVs.

(12) Despite multiple overlaps, the Transaction gives rise only to two horizontally affected markets: (i) wholesale of new passenger cars in Sweden and (ii) retail sale of new passenger cars in Sweden. These markets are mainly affected due to the strong position of Volvo in Sweden (Volvo belonging to Geely).[6]

(13) There is no vertically affected link resulting from the Transaction.[7]

4.1. The market for the manufacturing and supply of passenger cars and LCVs

4.1.1. Product market definition

(14) The Commission has in the past considered separate markets for the manufacturing and supply of passenger cars on the one hand, and of commercial vehicles on the other hand.[8]

(15) For passenger cars, the Commission's decisional practice has defined separate product markets for (i) mini cars, (ii) small cars, (iii) medium cars (iv) large cars, (v) executive cars, (vi) luxury cars (vii) sport cars, (viii) sport utility vehicles ("SUVs") and (ix) multipurpose vehicles.

(16) The Commission has previously considered the further sub-segmentation of the SUV segment into (i) small, (ii) medium and (iii) large SUVs but ultimately left the question open. Furthermore, the Commission left open 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.[9]

(17) For LCVs, the Commission's decisional practice has considered but ultimately left open whether to further sub-segment LCVs into vehicles (i) up to 3.5 tons and (ii) between 3.5-6 tons. The Commission also ultimately left open whether pick-up trucks can be considered passenger cars given that they can be purchased for private use and can transport both goods and people.

(18) The Parties do not contest the above market definition.

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6 Whilst the Parties' activities overlap in: (i) the manufacture and supply of small (B-segment) passenger cars at national or EEA-wide level, (ii) the manufacture and supply of battery electric vehicles ("BEV") at national or EEA-wide level, (iii) the wholesale of new passenger cars and LCVs at EEA-wide level and at national level, and (iv) the retail sale of new passenger cars and LCV at EEA-wide level, at national level, or at local level, none of these overlaps lead to affected markets since the Parties' combined market share remains below 20%, with the exception of two plausible markets: (i) the wholesale of new passenger cars and LCVs in Sweden and (ii) the retail sale of new passenger cars and LCV in Sweden. Since these markets are not affected, they will not be further discussed (with the exception of the two markets in Sweden where the combined market share exceeds 20%).

7 In all markets vertically linked, the Parties' market shares remain below 30%. Overall, the only affected markets under any plausible product and geographic market definition are treated in Section 5.

8 Case M.8449 *Peugeot / Opel* (2017) para 6; COMP/M.1519 Renault / Nissan (1999); COMP/M. 2832 General Motors / Daewoo (2002); COMP/M.5219 VWAG / OFH / VWGI (2008); COMP/M.5518 Fiat / Chrysler (2009).

9 Case M.8449 Peugeot / Opel (2017) paragraphs 7-16.

4.1.2. Geographic market definition

(19) In previous decisions, the Commission has ultimately left open whether the geographic scope of the markets for manufacturing and supply of passenger cars and LCVs is EEA-wide or national in scope.[10]

(20) The Parties do not contest the above market definition.

4.1.3. Conclusion on the market definition

(21) For the purposes of this decision, the Commission considers that the question of the exact product and geographic market definition can be left open, as the Transaction does not lead to affected markets under any plausible product or geographic market definition.

4.2. Wholesale distribution of new passenger cars and LCVs

4.2.1. Product market definition

(22) In previous decisions,[11] the Commission has distinguished between the wholesale and retail distribution of motor vehicles. The Commission has also considered whether the wholesale distribution market should be further segmented between passenger cars and LCVs, leaving this question open.

(23) The Commission also concluded that a further segmentation would not be necessary by type of cars (e.g. mini cars, small cars, medium cars, etc.) because manufacturers normally distribute a model range which covers different market segments under the same distribution channel.

(24) The Parties do not contest the above market definition.

4.2.2. Geographic market definition

(25) The Commission has considered in previous decisions that the market could be EEA-wide or national in scope.[12]

(26) The Parties do not contest the above market definition.

4.2.3. Conclusion on the market definition

(27) For the purposes of this decision, the Commission considers that the question of the exact product and geographic market definition can be left open, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

(28) The only affected market, whether considered at EEA or national level is the market for wholesale distribution of new passenger cars and LCVs in Sweden.[13]

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10 Case M.8449 - *PEUGEOT / OPEL* (2017) para 26.

11 Case M.9462 - *EMIL FREY GROUP / AUTOCOMMERCE / AVTO TRIGLAV / AC-MOBIL*, paras 11-14; Case M.8449 *Peugeot / Opel* (2017) para 28.

12 Case M.9462 - *EMIL FREY GROUP / AUTOCOMMERCE / AVTO TRIGLAV / AC-MOBIL*, paras 19-21; Case M.8449 *Peugeot / Opel* (2017) para 32.

4.3. Retail distribution of new passenger cars and LCVs

4.3.1. Product market definition

(29) At retail level, vehicles are sold to final customers via independent or vertically integrated retailers ("dealers"). In previous decisions,[14] the Commission has considered a further distinction between the wholesale and retail distribution of new passenger cars on the one hand and of new LCVs on the other hand, leaving this question open.

(30) The Commission concluded that a further segmentation would not be necessary by type of cars.

(31) The Parties do not contest the above market definition.

4.3.2. Geographic market definition

(32) In previous cases, the Commission has left open whether the market for retail distribution of new passenger cars is EEA-wide, national or local.[15]

(33) The Parties do not contest the above market definition.

4.3.3. Conclusion on the market definition

(34) For the purposes of this decision, the Commission considers that the question of the exact product and geographic market definition can be left open, as the Transaction will not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

(35) The only affected market, whether considered at EEA, national or local level is the market for retail distribution of new passenger cars and LCVs in Sweden.[16]

5. COMPETITIVE ASSESSMENT

5.1. Wholesale distribution of new passenger cars in Sweden

(36) The market shares of the parties and their competitors were the following in the last year:

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13 Form CO, paragraph 178.

14 Case M.9462 - *EMIL FREY GROUP / AUTOCOMMERCE / AVTO TRIGLAV / AC-MOBIL*, paras 15-16; Case M.8449 *Peugeot / Opel* (2017) para 34.

15 Case M.9462 - *EMIL FREY GROUP / AUTOCOMMERCE / AVTO TRIGLAV / AC-MOBIL*, paras 20-21; Case M.6403 *Volkswagen / KPI Polska / Skoda Auto Polska / VW Bank Polska / VW Leasing Polska* (2011) para 28.

16 Form CO, paragraphs 180-181.

Table 1: Wholesale distribution of passenger cars in Sweden

Company	Sales 2018	
	Units	%
Daimler	[…]	[5-10]
Geely/Volvo	[…]	[10-20]
Combined	**[…]**	**[20-30]**
Volkswagen	[…]	[20-30]
Renault-Nissan Alliance	[…]	[5-10]
Hyundai Kia	[…]	[5-10]
Toyota	[…]	[5-10]
BMW	[…]	[5-10]
Total	**[…]**	**100**

Source: Form CO, Table 9

(37) Due to the limited combined market shares ([20-30]%) of the Parties, the relatively small increment ([5-10]%), as well as the existence of a number of credible competitors in this market, the Transaction does not raise serious doubts as to its compatibility with the internal market. Indeed, Volkswagen Group would remain the market leader post-Transaction ([20-30]%), and other competitors such as Renault-Nissan, Hyundai Group, Toyota, BMW would continue to exert a competitive constraint over the JV.

(38) Respondents to the market investigation considered that the Transaction has no negative impact on competition.[17]

5.2. Retail distribution of new passenger cars in Sweden

(39) The market shares of the parties and their competitors were the following in the last year:

Table 2: Retail distribution of passenger cars in Sweden

Company	Sales 2018	
	Units	%
Daimler	[…]	[5-10]
Geely/Volvo	[…]	[10-20]
Combined	**[…]**	**[20-30]**
Volkswagen	[…]	[20-30]
Renault-Nissan Alliance	[…]	[5-10]
Hyundai Kia	[…]	[5-10]
Toyota	[…]	[5-10]
BMW	[…]	[5-10]
Total	**[…]**	**100**

Source: Form CO, Table 10

(40) Due to the limited combined market shares of the Parties ([20-30]%), the relatively small increment ([5-10]%), as well as the existence of a number of credible competitors on this market, the Transaction does not raise serious doubts as to its compatibility with the internal market. Indeed, Volkswagen Group would remain the market leader post-Transaction with a market share of [20-30]%, and other

17 Non-confidential replies to questionnaire to Customers and to Competitors.

competitors such as Renault-Nissan, Hyundai Group, Toyota, BMW would continue to exert a competitive constraint over the JV.

(41) Respondents to the market investigation considered that the Transaction has no negative impact on competition.[18]

5.3. Other plausible market segments

(42) The Parties have either provided exact markets shares showing no affected markets arise or confirmed that to the best of their knowledge no affected markets arise under any plausible market,[19] other than the affected markets analysed in Sections 5.1 and 5.2. In particular, as regards potential local markets in the retail of passenger cars and LCVs, the Parties have confirmed that to the best of their knowledge local market shares do not deviate significantly from national ones.

(43) Even if the Parties' best estimates were to be wrong, and some locally affected markets arose, the Transaction will not give rise to a significant impediment of effective competition at local level. In all Member States, the national market shares are a good proxy for local strength given that all major car manufacturers distribute and sell cars nationwide (all major car manufacturers have wide distribution and retail networks in addition to independent retailers). As regards the potential wider wholesale or retail markets which encompass passenger cars and LCVs, the Commission notes that neither Geely (Volvo) nor the JV are active in the LCV segment. Therefore, widening the market from passenger cars would merely dilute the combined market shares.

(44) In addition, the Commission notes that respondents to the market investigation considered that the Transaction has no negative impact on competition.

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

18 Non-confidential replies to questionnaire to Customers and to Competitors.

19 Form CO, paragraphs 178-181.