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II

(Information)

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EUROPEAN COMMISSION

Commission Notice on the EU Guide for Good Hygiene Practices in the production of artisanal cheese and dairy products
(2017/C 440/01)

In accordance with the outcome of the assessment carried out, the Standing Committee on the Plant, Animal, Feed and Food (PAFF) agreed on the publication of the title and references of the following Community guide to good practice, pursuant to Article 9 of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (1).

Title: European Guide for Good Hygiene Practices in the production of artisanal cheese and dairy products

Author: Farmhouse and Artisan Cheese & Dairy Producers European Network (FACE network)

Reference: Revised version of 20 December 2016

https://ec.europa.eu/food/safety/biosafety/food_hygiene/guidance_en


Non-opposition to a notified concentration
(Case M.8685 — Foncière des Régions/Marriott International/Le Méridien Hotel in Nice)
(Text with EEA relevance)
(2017/C 440/02)

On 11 December 2017, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 (1). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,


Non-opposition to a notified concentration  
(Case M.8706 — CVC/Providence/Skybox)  
(Text with EEA relevance)  
(2017/C 440/03)

On 11 December 2017, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 (1). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,


Non-opposition to a notified concentration  
(Case M.8360 — Imerys/Kerneos)  
(Text with EEA relevance)  
(2017/C 440/04)

On 19 June 2017, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 (1). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,


IV
(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

Council conclusions on Health in the Digital Society — making progress in data-driven innovation in the field of health
(2017/C 440/05)

THE COUNCIL OF THE EUROPEAN UNION

RECALLS:

1. That under Article 168 of the Treaty on the Functioning of the European Union a high level of human health protection should be ensured in the definition and implementation of all Union policies and activities, and that Union action should complement the national policies, while respecting the responsibilities of the Member States in the definition of their health policy and for the organisation and delivery of health services and medical care. The Union should encourage cooperation between the Member States in the field of public health and, if necessary, lend support to their action and in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.

2. That the Council has emphasised on several occasions (1) that in response to the common challenges related to health systems’ sustainability, it is important to consider innovative approaches and models of healthcare, moving away from hospital-centred systems towards integrated care, strengthening health promotion and disease prevention and implementing personalised medicine, while recognising the potential of eHealth tools and services.

3. The Council conclusions of 1 December 2009 on a safe and efficient healthcare through eHealth (2).

4. The European Parliament resolution of 19 May 2015 on safer healthcare in Europe: improving patient safety and fighting antimicrobial resistance (3) calling for the Copportunities of eHealth in improving patient safety to be explored, inter alia, via electronic health records and mobile health tools, and for reinforced cooperation to exchange experiences and knowledge between Member States.


7. The Communication from the Commission ‘On effective, accessible and resilient health systems’ (1) adopted on 4 April 2014, recognising the important role of eHealth in supporting the resilience of health systems.

NOTES THAT:

8. Member States are facing common challenges related to the increase in chronic diseases prevalence and limited human and financial resources for ensuring sustainability of their health systems and meeting the growing demands of ageing populations. They are also facing common challenges related to cross-border health threats.

9. Owing to global trends in digitization, modern societies are becoming increasingly information driven with people relying on digital tools in their personal as well as their professional lives. This is also changing the attitudes and expectations of people towards the way healthcare is delivered.

10. New opportunities are arising from big data (2) and improved data analytics capabilities (3), as well as from personalised medicine, use of clinical decision support systems by health professionals and use of mobile health tools for individuals to manage their own health and chronic conditions. New knowledge and skills are needed in the health sector to be able to utilise this potential.

11. Different digital solutions and information systems currently in use in the health and social care systems are often not compatible with each other and do not support data exchange and sharing within national systems as well as across borders (4). This impedes the usability and user-friendliness of these solutions, increases development and maintenance costs and hinders the continuity of care.

12. Barriers to scaling up the potential in digital health and connected care, such as dominance of data silos, lack of interoperability and of common standards for measuring clinical and patient reported outcomes, limited access and use of large databases for research and innovation purposes, lack of funding and financial incentives, fragmented markets across the EU and across the spectrum of services, still exist and progress in implementing the data-driven digital solutions in the health sector remains limited.

EMPHASISES THAT:

13. The health systems need to be continuously adapted to meet the expectations of the citizens and their health and care needs. In this context, it is important to embrace the possibilities of the digital society, to enable people to better understand and manage their own health with easier access to information and digital tools.

14. Citizens’ needs should be at the centre of data-driven healthcare innovation, acknowledging people as active agents in their own health journey and providing them more precise and personalised treatments as well as a more participatory healthcare experience, while supporting the role of health professionals and enhancing their interaction and communication with the patients.

15. Citizens’ right to have access to their own health data is a core principle of the Union data protection acquis. Without prejudice to the national legislation and legal grounds for health data processing, flexible systems and tools are needed enabling citizens to access their own data and information on the use of their data, as well as to manage their consent to processing and sharing their health data, including for secondary use. This will help to give people insight into and better control over the use of their health data, thus promoting trust and transparency, taking into account different attitudes and preferences of people when it comes to accessing and managing their data online (5).

(2) Big Data for Advancing Dementia Research. An Evaluation of Data Sharing Practices in Research on Age-related Neurodegenerative Diseases.
(3) Data-driven Innovation for Growth and Well-being, October 2015, OECD.
(5) According to the Special Eurobarometer 460 ‘Attitudes towards the impact of digitisation and automation on daily life’ (2017), over half of all respondents would like online access to their medical and health records (52 %) and seven in ten respondents (70 %) would be willing to give their health and personal wellbeing data to others. They are the most likely to be willing to share their data with their doctor or health care professional (65 %).
16. Digital solutions should contribute both to more efficient use of healthcare resources and to better targeted, more integrated and safer healthcare. Information sharing between health professionals leads to improved patient safety, reducing the number of avoidable mistakes and adverse events and improving the coordination and continuity of care and better adherence to treatment (1).

17. It is important to enable cross-border exchange of health data within the EU to ensure the continuity of care also across borders, in accordance with the Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare (2).

18. Availability of comparable and high-quality health data for research and innovation enables the creation of new knowledge to prevent diseases, to achieve earlier and more accurate diagnosis and to improve treatment, in particular supporting personalised medicine, and thus contributing to healthcare system development. The possibility to combine data sets from different data sources and across borders is especially important in the field of rare and low-prevalence complex diseases.

19. Cross-border exchange of health data and supporting data infrastructure is fundamental to combating cross-border health threats of biological, chemical, environmental and unknown origin (3) – as well as antimicrobial resistance and healthcare-associated infections. Sharing of quality data and analytics has enormous potential to assist the prevention, early detection, and control of infectious disease outbreaks.

20. A digital single market for information technologies (IT) used in the field of health and the free movement of data can boost the development and implementation of innovative data-driven technological solutions that will result in better health outcomes and improved quality of life for patients, ensuring that services and products are user-friendly, interoperable and safe.

21. The health systems also have a potential as engines for economic growth, offering economic opportunities, especially for the small and medium-sized enterprises developing innovative data-driven digital solutions.

22. Overcoming barriers to scaling up the potential in digital health and connected care requires a comprehensive set of actions building on the opportunities offered by the digital single market and on the principle of free movement of data and the underlying principles outlined in the EU eGovernment Action Plan.

23. In the design and implementation of digital tools in healthcare due consideration needs to be given to quality, safety, security and data protection requirements, as well as ethical aspects and the differences in digital and health literacy, in order to avoid creating further health inequalities. Furthermore, the use of digital tools is important aid to enhancing health literacy, inter alia, by supporting communication between health professionals and patients.

24. Data protection and information security are of the utmost importance to maintain public trust in digital health services. Therefore, swift implementation of the EU legal framework for data protection (4), network information security (5) and secure electronic identification (6) is needed.

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(1) Improving Health Sector Efficiency. The role of Information and Communication. Technologies (OECD, 2010).
25. To maintain confidence and trust in digital health services it is important to raise awareness by developing communication strategies for policymakers, health professionals and citizens regarding the benefits digital health can bring for enhanced quality of healthcare and to provide transparency regarding the use of the health data.

26. Coordination and cooperation in the field of digital health will enable Member States to speed up the implementation of digital innovations in their health systems, to learn from each other and to benefit from the harmonised approaches, in full respect of their national competences. Thus, there is a need to step up practical cooperation among Member States.

27. The EU funding mechanisms play an important role in supporting EU-wide data infrastructures for research and in developing health IT solutions and leveraging Member States’ investments to support their large-scale implementation.

WELCOMES:
28. The good progress made in Member States with the implementation of eHealth and the fact that electronic health record systems and e-prescriptions are already deployed or in the process of being deployed in most Member States (1) (2).

29. The work carried out within the eHealth Network (3) set up under Directive 2011/24/EU and the EU Joint Action to support the eHealth Network, which has proven to be very valuable in coordinating Member States’ efforts in eHealth, facilitating the cross-border exchange of health data within the EU.

30. The progress achieved in the establishment of the European eHealth Digital Service Infrastructure (eHDSI) (4) funded by the Connecting Europe Facility (5) for cross-border exchange of e-prescriptions and patient summaries.

31. The work undertaken by the European Reference Networks (6) to establish a dedicated IT platform for pooling expertise, information exchange and mutual learning, acknowledging the potential of these networks for enhanced data sharing for the purposes of improved diagnosis, as well as for research and innovation, in particular in the area of rare and low prevalence complex diseases.

32. The partnerships and bottom-up initiatives on eHealth launched as part of the European Innovation Partnership on Active and Healthy Ageing (7), which are very important in supporting the transfer of knowledge and best practices between regions and engaging stakeholders across public and private sectors to work together.

33. The Commission Communication on the Mid-Term Review on the implementation of the Digital Single Market Strategy (8), which emphasises the importance of digital transformation in health and care.

34. The engagement and commitment of the stakeholders underlined by the Digital Health Society Declaration adopted at the high-level ‘Health in the Digital Society. Digital Society for Health’ conference, which took place on 16-18 October 2017 in Tallinn, launching multi-stakeholder task forces to work on actions addressing the main challenges of large-scale deployment of digital innovation in the field of health.

INVITES THE MEMBER STATES TO:
35. Continue to implement policies that support digital innovation in the health sector, invest in and make active use of data-driven tools and methodologies which enable the provision of safe and high-quality healthcare services and support sustainable health systems.

(1) From innovation to implementation – eHealth in the WHO European Region (2016, WHO).
(2) Overview of the national laws on electronic health records in the EU Member States (2014).
(3) See https://ec.europa.eu/health/ehealth/policy/network_en
(4) See https://ec.europa.eu/cedigital/wiki/display/CEFDIS/SeHealth+2.0
(6) https://ec.europa.eu/health/ern/policy_en
36. As part of their national strategies and action plans related to digital health:

— provide appropriate digital tools for personal health information management to enable citizens to access and use their own health data, in accordance with the principles laid down in the General Data Protection Regulation, and where appropriate enable secure sharing of health data, as well as integration of user-generated data with medical data.

— implement actions to improve the comparability, accuracy and reliability of health data and to encourage the use of health data to enable more transparent and patient-centred health systems focusing on health outcomes and evidence-based health policy and decision-making, as well as to promote data-driven innovation.

— Review, where relevant and appropriate, existing national legal and administrative frameworks, both to remove obstacles to data exchange and sharing between health professionals for the safety and continuity of care and to enable the use of health data for research and innovation, in full compliance with data protection requirements.

— implement actions to improve the digital skills of citizens and health professionals, inter alia, through offering training to health professionals on the use of digital tools while engaging with citizens and civil society to build public trust and support for data sharing for the benefit of health.

37. Set up sound and robust health data governance frameworks, as outlined in the OECD Recommendations on Health Data Governance (1), to ensure privacy and integrity of health data.

38. Work together to facilitate the necessary convergence in regulatory and governance approaches to the use of health data for research and innovation purposes, by identifying and promoting best practices in the use of appropriate data protection safeguards and in health data governance within the Union, and, if appropriate, engaging with the bodies responsible for data protection for example in the framework of the European Data Protection Board provided for in the General Data Protection Regulation.

39. Make use of regional and bilateral or multilateral collaboration among Member States and, as appropriate, engage with other stakeholders on initiatives that have a clear cross-border nature and can have a significant impact on the implementation of digital solutions in the field of health.

INVITES THE MEMBER STATES AND THE COMMISSION TO:

40. Work together, in particular within the eHealth Network, with the aim of achieving interoperable and user-friendly health information systems which allow connectivity of personal health devices and better interaction and information exchange between health and care providers and patients.

41. Continue and streamline existing work on eHealth standards and interoperability, further developing and extending the European eHealth Interoperability Framework (2), promote the use of international and open standards to avoid proprietary solutions creating vendor lock-in (3), which raises IT development and maintenance costs, and support the exchange of information on governance models to reinforce compliance to standards.

42. Promote the use of common data structures, coding systems and terminologies, as well as common standards for measuring clinical and patient reported outcomes, in order to improve semantic interoperability, quality and comparability of data.

43. Reinforce actions to improve data security, by promoting the development and use of privacy-enhancing technologies and privacy by design, exchanging information on available technical tools and methodologies for secure data exchange between authorised individuals and organisations and for the management of personal health data.

(1) Adopted at the 17 January 2017 OECD Health Ministerial Meeting.

(2) Refined eHealth Interoperability Framework adopted by the eHealth Network in November 2015.

44. Exchange experiences, transfer good practices and develop common approaches to ensure safety, quality, security and interoperability of mobile health tools and applications, while providing appropriate safeguards to increase trust and to support the uptake of these solutions for better health promotion, disease prevention and chronic disease management, taking into account the applicable Union legislation on medical devices, as appropriate.

45. Continue the efforts to successfully implement the European eHealth Digital Service Infrastructure (eHDSI) and consider extending the scope of the cross-border exchange of health data to support exchange of electronic health records accessible to citizens across borders, by identifying and analysing new use-cases that support cross-border healthcare and contribute to the continuity of care.

46. Building on the existing initiatives under the Digital Single Market Strategy such as the European Cloud Initiative (1), the EuroHPC (2) and the European Open Science Cloud, work together with the aim of improving access to larger European datasets, longitudinal data and world-class high performance computing infrastructure for health research and innovation purposes, while ensuring a high level of data protection.

47. Building on the existing national and EU initiatives and public-private partnerships (3), consider creating decentralised data networks and common platforms to enable data integration and analysis in a secure environment, while avoiding unnecessary data storage at a central Union repository, and supporting large-scale cross-border implementation projects, for example in the field of personalised, including genomic, medicine.

48. Continue collaborating on common disease registries and platforms, such as the European Platform for Rare Diseases Registration and the Orphanet database (4), providing crucial interoperability tools for rare diseases research.

49. Work together to improve data infrastructure, analytics and decision support to predict, prevent and control serious cross-border health threats.

50. Make better use of Union funding mechanisms such as the European Fund for Strategic Investments (EFSI) (5), the EU Structural Funds, the Connecting Europe Facility and Horizon 2020 (6) to support large-scale digital health implementation, by improving synergies in the cost-efficient use of EU and national funds and identifying common priorities and investment needs, and develop appropriate funding mechanisms and incentives to support interoperability of digital health infrastructure.

51. Consider agreeing on common criteria and indicators that Member States could use to monitor the progress of digital health adoption and to assess the impact of digital solutions, taking into account existing frameworks (7).

INVITES THE COMMISSION TO:

52. Continue supporting Member States efforts by collecting and assessing good practices and evidence to support the transfer of such practices and by raising awareness with regard to digital health.

53. Support the implementation of the existing EU legislation on data protection, electronic identification and information security in the health sector, inter alia, by identifying good practices and facilitating the exchange of information between Member States, in order to facilitate cross-border data exchange and to take into account the specific needs and requirements of the health sector, while fully respecting Member States’ competences.

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(3) Such as IMI2 Big Data for Better Outcomes programme (http://www.imi.europa.eu/), BBMRI ERIC (http://www.bbmri-eric.eu/) and others
(4) www.epirare.eu/ www.orpha.net
(7) See the Monitoring and Assessment Framework for the EIP on Active and Healthy Ageing (MAFEIP) https://ec.europa.eu/jrc/en/mafeip and the Nordic Council of Ministers report ‘Nordic eHealth Benchmarking’
54. Continue supporting the extension of the eHealth Digital Services Infrastructure to all Member States and to implement new cross-border services, while reinforcing existing work to overcome the technical, semantic and legal challenges and ensuring consistency between different IT infrastructures, in particular the eHDSI and the European Reference Networks’ dedicated IT platform.

55. Continue to support research and innovation in the field of digital health and provide support to scientific institutions and innovative companies developing digital health solutions, especially small and medium-sized enterprises (SMEs).

56. Support the Member States in the development and deployment of interoperable national infrastructure for sharing and exchanging health data, focusing especially on primary and integrated care models, supporting the delivery of efficient and high-quality health services and on the adoption of cross-border data exchange services under the eHDSI at national, regional and local levels.

57. Continue to support Europe-wide public-private partnerships and stakeholder engagement activities such as the European Innovation Partnership on Active and Healthy Ageing, aimed at empowering citizens and facilitating the implementation of the digital single market for digital health and care.
**EUROPEAN COMMISSION**

**Euro exchange rates (1)**

20 December 2017

(2017/C 440/06)

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(1) Source: reference exchange rate published by the ECB.
Opinion of the Advisory Committee on mergers given at its meeting of 21 March 2017 regarding a draft decision relating to Case M.7878 — HeidelbergCement/Schwenk/Cemex Hungary/Cemex Croatia

Rapporteur: Spain

(2017/C 440/07)

Operation

1. The Advisory Committee (11 Member States) agrees with the Commission that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Union Dimension

2. The Advisory Committee (10 Member States) agrees with the Commission that the undertakings concerned by the Transaction are HeidelbergCement and Schwenk.

A minority of Member States (1 Member State) abstains.

3. The Advisory Committee (10 Member States) agrees with the Commission that the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation. A minority of Member States (1 Member State) abstains.

Product and Geographic Markets

4. The Advisory Committee (10 Member States) agrees with the Commission’s definition of the relevant product market for grey cement, leaving open a potential sub-segmentation concerning bagged/bulk cement and different cement types and grades. A minority of Member States (1 Member State) abstains.

5. The Advisory Committee (10 Member States) agrees with the Commission’s definition of the relevant geographic markets for grey cement defining the markets as 250 km catchment areas, leaving open whether such catchment areas should be circular or modified. A minority of Member States (1 Member State) disagrees.

Competitive Assessment

6. The Advisory Committee (10 Member States) agrees with the Commission’s assessment that the Transaction would significantly impede effective competition through non-coordinated effects, which could amount to the creation of a dominant position, in the circular and modified catchment areas of 250 km around Cemex Croatia’s plant in Split. A minority of Member States (1 Member State) disagrees.

7. The Advisory Committee (10 Member States) agrees with the Commission’s assessment that the Transaction would significantly impede effective competition within a substantial part of the internal market. A minority of Member States (1 Member State) disagrees.

8. The Advisory Committee (10 Member States) agrees with the Commission that the final commitments offered by the Parties on 26 January 2017 are insufficient to render the concentration compatible with the internal market. A minority of Member States (1 Member State) disagrees.

Compatibility with Internal Market

9. The Advisory Committee (10 Member States) agrees with the Commission that the Transaction should be declared incompatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(3) and 8(3) of the Merger Regulation and Article 57 of the EEA Agreement. A minority of Member States (1 Member State) disagrees.
Final Report of the Hearing Officer

HeidelbergCement/Schwenk/Cemex Hungary/Cemex Croatia

(M.7878)

(2017/C 440/08)

(1) On 5 September 2016, the Commission received a notification of a concentration ('Proposed Transaction') pursuant to Article 4 of the Merger Regulation by which the undertakings HeidelbergCement and Schwenk ('Notifying Parties') acquire, through their jointly controlled joint venture DDC, joint control within the meaning of Article 3(1)(b) of the Merger Regulation of the whole of the undertakings Cemex Hungary and Cemex Croatia by way of purchase of shares.

(2) On 22 June 2016, pursuant to Article 4(4) of the Merger Regulation, the Commission referred the assessment of the effects on the relevant markets in Hungary to be examined by the Hungarian Competition Authority.

(3) On 10 October 2016, the Commission initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

(4) On 12 December 2016, the Commission adopted a Statement of Objections ('SO') in which it took the preliminary view that the acquisition of Cemex Croatia by HeidelbergCement and Schwenk would significantly impede effective competition in the markets for grey cement in the circular or modified 250 km catchment areas around Cemex's cement plant in Split, Croatia. According to the SO, the Proposed Transaction could create a dominant position, would lead to non-coordinated effects arising from high combined market shares and likely price increases arising from the elimination of competition between HeidelbergCement/DDC and Cemex, as well as from insufficient remaining competition. The SO was notified to HeidelbergCement and Schwenk on 13 December 2016.

(5) The Notifying Parties were granted access to the file on 13, 14 and 15 December 2016 (CD-ROM handover, as well as by means of a quantitative and a qualitative data room exercise), and given until 3 January 2017 to reply to the SO. Subsequent access to the file (by CD-ROM handover or encrypted email form) was provided on 26 January 2017, 20 February 2017, 28 February 2017, 16 March 2017 and 22 March 2017.

(6) Cemex sent its observations to the SO on 2 January 2017, and the Notifying Parties each replied to the SO on 3 January 2017. They all requested to be heard orally.

(7) The formal oral hearing was held on 11 January 2017.

(8) On 18 January 2017, the Commission extended the time limit to review the Proposed Transaction by 5 working days in accordance with Article 10(3) of the Merger Regulation. This time limit was further extended twice, each time by 15 working days: on 26 January 2017, upon the submission of commitments by the Notifying Parties which triggered the extension automatically pursuant to Article 10(3), first paragraph, final sentence, and again on 14 February 2017 by means of another decision under that Article 10(3), second paragraph, third sentence, to allow the Commission to review additional evidence provided by the Notifying Parties on 9 February 2017.


On 25 January 2017 the Commission addressed a letter of facts ('LoF') to the Notifying Parties, informing them about pre-existing evidence that was not yet expressly relied on in the SO but which, on further analysis of the file, the Commission considers relevant to support its arguments, as well as about certain additional evidence brought to the Commission's attention after the adoption of the SO. The Notifying Parties submitted written observations to this LoF on 1, 2 and 3 February 2017. Cemex submitted its written comments on the LoF on 31 January 2017.

In their observations to the LoF, the Notifying Parties and Cemex argued that a letter of facts can only be used to make the parties aware of new evidence obtained after the adoption of the SO, but not to present additional evidence which was already available at the time of the SO. Anything else would partially deprive the oral hearing of its purpose as it would allow the case team to withhold evidence until after the oral hearing. To remedy this alleged problem, the Notifying Parties requested a supplementary oral hearing.

I have rejected the Notifying Parties' request for a supplementary oral hearing. Article 14(1) and (2) of Regulation (EC) No 802/2004 ('Merger Implementing Regulation') only provides for the right to request a formal oral hearing in the written comments on the statement of objections, not in observations on a letter of facts. It is clear from the wording of the LoF, which links each piece of evidence to specific sections and paragraphs of the SO, that this LoF does not contain any new objections compared to those already set out in the SO, but merely identifies further evidence supporting the same objections. The fact that some of this further evidence was already in the file at the time the SO was issued is immaterial, the relevant criterion for distinguishing between a supplementary SO and a letter of facts being whether or not new objections are formulated. There is no evidence that the case team would have deliberately withheld evidence until after the oral hearing, so as to deprive the oral hearing of its purpose.

On 26 January 2017 the Notifying Parties submitted commitments pursuant to Article 8(2) of the Merger Regulation which were market tested from 1 February until 6 February 2017 (the 'Commitments').

In the draft decision, the Commission concludes that the Proposed Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation, through non-coordinated effects, which could amount in particular to the creation of a dominant position in the markets for grey cement in the circular or modified 250 km catchment areas around Cemex's cement plant in Split/Croatia, and that the Commitments do not eliminate the competition concerns entirely, and are therefore insufficient to render the concentration compatible with the internal market. Pursuant to Article 8 of the Merger Regulation, the draft decision therefore declares the Proposed Transaction incompatible with the internal market and the functioning of the EEA Agreement.

I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Notifying Parties and Cemex have been afforded the opportunity of making known their views.

In view of the above I consider that the effective exercise of procedural rights has been respected in this case.


Wouter WILS

Summary of Commission Decision
of 5 April 2017
declaring a concentration incompatible with the internal market and the functioning of the EEA Agreement
(Case M.7878 — HeidelbergCement/Schwenk/Cemex Hungary/Cemex Croatia)
(notified under document C(2017) 1650)
(Only the English version is authentic)
(Text with EEA relevance)
(2017/C 440/09)

On 5 April 2017 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (¹), and in particular Article 8(3) of that Regulation. A non-confidential version of the full Decision, as the case may be in the form of a provisional version, can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES AND THE OPERATION

(1) On 5 September 2016 the Commission received a notification (²) of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings HeidelbergCement AG ('HeidelbergCement', Germany) and Schwenk Zement KG ('Schwenk', Germany) acquire, through their jointly controlled joint venture company Duna-Dráva Cement Kft. (DDC), joint control within the meaning of Article 3(1)(b) of the Merger Regulation of the whole of the undertakings Cemex Hungária Építőanyagok Kft ('Cemex Hungary') and Cemex Hrvatska dd ('Cemex Croatia'), both part of Cemex, S.A.B. de C.V ('Cemex Group'), by way of purchase of shares (the Transaction) (³).

(2) The seller, the target companies and the buyers are all active in the production and distribution of building materials, in particular cement, aggregates, ready-mixed concrete and other related products.

(3) HeidelbergCement is a German producer but carries out its commercial activities globally in more than 40 countries.

(4) Schwenk is a family-held limited partnership whose business is focused on Germany but it also has activities in Central and Eastern Europe.

(5) DDC is a full-function joint venture company equally owned and jointly controlled by HeidelbergCement and Schwenk, which is active in Hungary, Croatia and in parts of the Western Balkans (i.e. Bosnia-Herzegovina, Serbia, Macedonia, Montenegro and Albania, all together referred to as 'the Broader Region'). Outside of Hungary, DDC operates one cement plant and 11 ready-mix concrete plants.

(6) Cemex group is a global building materials company headquartered in Mexico with operations worldwide. Cemex Hungary is mainly active in the production and sale of ready-mix concrete which is only sold in Hungary. Cemex Croatia is active in the production and distribution of grey cement, ready-mix concrete, clinker, and aggregates. Besides its exports to North Africa and the Middle East, Cemex Croatia's activities mainly focus on Croatia and the Broader Region but it also supplies to Italy, Slovenia and Malta. Cemex Croatia has three cement plants and operates four sales terminals in Croatia.

(7) Against the background of a framework agreement with Rohrdorfer Baustoffe Austria AG (which was to acquire Cemex Austria, the mother company of Cemex Hungary), HeidelbergCement and Schwenk acquire, through DDC, the companies Cemex Hungary and Cemex Croatia:

(8) Pursuant to a sale and purchase agreement signed on 11 August 2015, DDC would acquire from Cemex 100 % of the shares in Cemex Croatia.

(9) In a parallel transaction, DDC would acquire 100 % of the shares in Cemex Hungary from Rohrdorfer Baustoffe Austria AG.

(³) For simplicity and unless otherwise specified, in the following HeidelbergCement, Schwenk, DDC, Cemex Hungary and Cemex Croatia are jointly referred to as the 'the Parties'. HeidelbergCement and Schwenk are referred to as 'the Notifying Parties'.
The acquisition of Cemex Croatia and Cemex Hungary by DDC should be considered as a single concentration within the meaning of the Merger Regulation. The economic reality of the agreements is that DDC acquires control of Cemex Hungary and Cemex Croatia. The acquisitions of Cemex Hungary and Cemex Croatia by DDC were pursued at the same time and are linked through the framework agreement between Rohrdorfer and DDC.

The Transaction thus involves the acquisition of joint control of Cemex Hungary and Cemex Croatia by HeidelbergCement and Schwenk (through DDC) by means of purchase of shares. The Transaction constitutes therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. PROCEDURE

The Transaction was announced on 12 August 2015 and notified to the Commission on 5 September 2016.

Before notification, on 22 June 2016, the Commission referred the assessment of the effects on the relevant markets in Hungary to be examined by the Hungarian Competition Authority, pursuant to Article 4(4) of the Merger Regulation. The referral followed a reasoned submission by the Notifying Parties of 25 May 2016, by means of which the Parties requested a partial referral to Hungary. No request was received by either the Notifying Parties or any Member State to refer any other part of the Transaction pursuant to Article 4 or Article 9 of the Merger Regulation.

After the phase I investigation, the Commission concluded that the Transaction raised serious doubts as to its compatibility with the internal market and on 10 October 2016 adopted a decision to initiate phase II proceedings pursuant to Article 6(1)(c) of the Merger Regulation.

Based on the phase II investigation which supplemented the findings of the initial investigation, the Commission issued a Statement of Objections on 12 December 2016.

On 26 January 2017, the Notifying Parties offered commitments pursuant to Article 8(2) of the Merger Regulation in order to dispel the significant impediment to effective competition raised by the Transaction.

The Advisory Committee on Concentrations discussed the draft of the Decision on 21 March 2017 and issued a favourable opinion. The Hearing Officer provided his favourable opinion on the proceedings in his report which was submitted on 30 March 2017.

III. EU DIMENSION

Although the Transaction is implemented through DDC, a full-function joint venture, the Commission concluded that because of their significant involvement in the initiation, organisation and financing of the Transaction, HeidelbergCement and Schwenk are the real players behind the Transaction and thus the ‘undertakings concerned’ on the acquirer’s side.

The legal standard applied is set out in paragraph 147 of the Commission Consolidated Jurisdictional Notice (1):

‘146. Where the acquisition is carried out by a full-function joint venture, with the features set out above, and already operates on the same market, the Commission will normally consider the joint venture itself and the target undertaking to be the undertakings concerned (and not the joint venture’s parent companies).

147. Conversely, where the joint venture can be regarded as a mere vehicle for an acquisition by the parent companies, the Commission will consider each of the parent companies themselves to be the undertakings concerned, rather than the joint venture, together with the target company. This is the case in particular where the joint venture is set up especially for the purpose of acquiring the target company or has not yet started to operate, where an existing joint venture has no full-function character as referred to above or where the joint venture is an association of undertakings. The same applies where there are elements which demonstrate that the parent companies are in fact the real players behind the operation. These elements may include a significant involvement by the parent companies themselves in the initiation, organisation and financing of the operation. In those cases, the parent companies are regarded as undertakings concerned.’

On the basis of an analysis of the Parties’ submissions and internal documents, the Commission made the following findings:

The Transaction was initiated by HeidelbergCement and Schwenk, which identified the Transaction as an attractive business opportunity and decided that DDC should be the acquiring entity.

(22) On 5 May 2015, HeidelbergCement and Cemex initiated high level contacts. An initial discussion concerning the Transaction took place the following day between HeidelbergCement and Cemex representatives. By 6 May 2015, HeidelbergCement had already decided that it would submit an indicative offer and had sought for and obtained Schwenk's agreement to proceed. On that date a meeting -attended exclusively by HeidelbergCement's employees- was held and it was decided that a steering committee would be established and chaired by a HeidelbergCement employee and would include two DDC employees as members. The project manager for the Transaction with overall responsibility for its planning and execution was also nominated and chosen among HeidelbergCement's employees. Subsequently, on 7 May 2015, HeidelbergCement informed DDC about the various decisions it had taken regarding the planning of the Transaction.

(23) HeidelbergCement organised the Transaction, including developing the business case and the transaction structure, preparing the deal valuation and leading the final negotiations with Cemex. Schwenk was kept informed regularly about the organisation of the Transaction by HeidelbergCement and never sought to oppose HeidelbergCement's role in any way while DDC strictly adhered to decisions taken by HeidelbergCement.

(24) HeidelbergCement and Schwenk designed the financing and related corporate structure of the Transaction. HeidelbergCement decided which entity should take loans, whether a new entity should be established for these purposes, which company should be the direct acquirer, which companies' capital should be increased and whether HeidelbergCement through its subsidiary holding DDC would need to inject more funding. Schwenk indicated its willingness to grant a unilateral loan to avoid issuing guarantees towards the banks to secure the financing by DDC. Furthermore, HeidelbergCement selected banks that should be contacted, engaged consultancy firms for the financial due diligence and took decisions on the allocation of debt levels. HeidelbergCement also agreed with Cemex on the final purchase price.

(25) Schwenk's involvement in the Transaction was not limited to the role of a shareholder exercising its mandatory rights in a joint-venture. It agreed to the Transaction, sought and received updates about its progress on a weekly basis and was involved in matters of general strategic importance as well as in the details of the implementation of the Transaction, including membership of a steering committee for the integration of the Transaction. The Commission considers that it is legally irrelevant whether Schwenk may have been involved to a different degree than HeidelbergCement in the Transaction since two parents of a joint venture may have a significant, albeit different, involvement in a concentration.

(26) It follows that the Transaction has a Union dimension within the meaning of Article 1 of the Merger Regulation since the undertakings concerned, HeidelbergCement, Schwenk, Cemex Hungary and Cemex Croatia, have a combined aggregate worldwide turnover of more than EUR 5 000 million and HeidelbergCement and Schwenk each have a Union-wide turnover in excess of EUR 250 million without achieving more than two thirds of their aggregate Union-wide turnover within one and the same Member State.

IV. THE RELEVANT MARKETS

(27) The Commission has raised objections as regards the effects of the Transaction with respect to the supply of grey cement in the circular and modified 250 km catchment areas around Cemex Croatia's plant in Split. The relevant product and geographic markets are defined as follows:

a. Product market: Grey cement

(28) The Commission considers that the exact sub-segmentation of the grey cement market (bagged versus bulk cement, between different cement types and grades) can be left open since the Transaction will lead to a significant impediment of effective competition under all plausible product market definitions.

(29) The competitive assessment, however, takes into account: (i) the fact that bulk cement represents 70 % of sales in Croatia; (ii) the fact that some suppliers are able only to supply bagged cement for logistical reasons; (iii) the differentiation of suppliers in terms of cement classes; and (iv) the particular relevance of cement type CEM II in Croatia.

b. Geographic market: Circular and modified catchment areas around the Parties' cement plants

(30) Grey cement is a heavy and bulky but rather low-value product which limits the distances to which it can economically be transported. Accordingly, competitive conditions will change gradually for customers in different locations. The Commission has in the past defined the relevant geographic markets as circular catchment areas around production plants.
The Commission considers that in the case at hand the appropriate radius for the circular catchment areas around the Parties’ plants should be 250 km geodesic distance. This conclusion is based on the data of the Parties and other suppliers regarding delivery distances by rail and road in Croatia. The Commission has also further refined the 250 km catchment area around Cemex’ plant in Split to reflect the specific delivery distances to individual customers and the actual road network conditions in different parts of the catchment areas. Under that modified approach, the catchment area around the Split plant is defined as the area reached by travelling 359 road km and results in excluding mainly Slavonia (in north-eastern Croatia) where Cemex makes limited sales due to the distance to be travelled.

The Commission has reached the conclusion that it can be left open whether the relevant market should be defined as: (i) circular catchment areas of 250 km around the Parties’ plants; or (ii) modified 250 km catchment areas around the Parties’ plants given that the Transaction would significantly impede effective competition under both alternative market definitions. The Commission has also reached the conclusion that it can be left open whether those two alternative market definitions should include non-EEA territory (in particular Bosnia-Herzegovina) as in any event, the competitive assessment focusses only on the parts of the relevant markets in the EEA.

V. COMPETITIVE ASSESSMENT

The Commission has reached the conclusion that the Transaction will significantly impede effective competition through non-coordinated effects, which could amount in particular to the creation of a dominant position, in the circular and modified catchment areas of 250 km around Cemex Croatia’s plant in Split.

This conclusion is based on the following elements:

a. The combined market shares of the Parties and the market share increments in the markets will be high


Because of geographic variations within the relevant catchment areas, the market share of the merged entity in the southern region of Croatia, Dalmatia, is significantly higher at [70-80]-[80-90] %. The largest remaining competitor, LafargeHolcim, accounted for [10-20]-[20-30] %, whereas Titan, an importer from Serbia, amounted to [5-10]-[10-20] %.

b. The Parties are close competitors

Cemex Croatia is the largest supplier in Croatia whereas HeidelbergCement (via DDC’s plants in Kakanj/Bosnia-Herzegovina, and Beremend/Hungary and via Italcementi’s plant in Trieste/Italy) has been by far the largest importer into Croatia accounting for [50-60] % of the overall import volume.

DDC is a close competitor of Cemex Croatia. Its plant in Bosnia is geographically the closest plant to Cemex Croatia in Split and DDC has been aggressively targeting Cemex’s customers. Moreover, the Parties are each other’s closest competitors south-east of Split, where domestic producer LafargeHolcim is active to a limited extent with only a few customers due to high transport costs.

DDC is an important competitive force in Croatia because of its policy to increase sales volume and to further expand into Croatia, in particular Dalmatia. The Transaction would see DDC transform from an expanding importer in Croatia into the largest Croatian incumbent, and customers could no longer benefit from the competitive pressure from those imports.
(41) The Transaction will also entail loss of competitive constraint from Italcementi -now controlled by HeidelbergCement. Italcementi is an important competitive force in western Croatia where DDC's presence is more limited.

c. **Current domestic suppliers and importers will not sufficiently constrain the Parties**

(42) Apart from the Parties, the main suppliers of grey cement in the relevant catchment areas are domestic suppliers LafargeHolcim, which operates one cement plant in Koromačno (western coastal Croatia), and Nexe, a local supplier headquartered in Našice (Slavonia), and importers by land which include Asamer (plant located in Lukavac in Bosnia-Herzegovina), Titan (plant located in Kosjerić, Serbia), W&P, (plant in Anhovo, Slovenia), and Colacem (plants in Italy and Albania).

(43) The distance to reach the customers concerned by the Parties' overlap entails both higher transport costs and a lower degree of security of supply of cement. This puts more remote suppliers, be it domestic suppliers or importers, at a competitive disadvantage compared to the Parties, which have their production facilities located closest to each other's catchment area.

(44) Other factors such as lower market acceptance for imported cement from certain production countries, and reduced ability to engage into barter trading and to assess the creditworthiness of customer also affect negatively potential entrants or importers.

(45) On the basis of a detailed analysis of each of the competitors (domestic suppliers and importers by land), viewed individually and collectively, the Commission has reached the conclusion that the remaining competitors will not sufficiently constrain the merged entity after the Transaction. In particular, LafargeHolcim's cement terminal in Dalmatia is capacity constrained and the remaining competitors do not have sufficient incentives to expand supply after the Transaction. The remaining competitors are not currently active in the markets to a significant extent, including in its most concentrated parts in Dalmatia, and have also not expanded in neighbouring regions which are closer to their production plants, despite the opportunity to gain higher margins than currently achievable in the relevant markets in Croatia.

(46) Sea-based imports do not currently constrain the Parties and will not sufficiently constrain the merged entity after the Transaction due to transport costs and security of supply disadvantages and since no terminals are available on the Croatian coast for the import of bulk cement.

d. **There are no potential competitors whose market entry would be sufficiently likely, timely and sufficient**

(47) Other potential land-based importers, such as Turkish companies Cimsa and Limak, will not be able to deliver cement in the relevant market due to the high transport costs entailed by the road distance between its production facilities and Croatia. Furthermore, while an Italian cement producer has considered the possibility of building a production plant in Croatia, that potential project is unlikely to grow into an effective competitive force within a sufficiently short period of time.

e. **The threat of reactions from the merged entity will deter entry and expansion in the relevant market**

(48) The incentives of actual or potential competitors to expand or enter the supply of grey cement in the relevant market is curbed by possible future actions by the merged entity concerning (i) the targeting of specific customer groups of the would-be entrant or (ii) litigation strategies aimed in particular at importers. Past behaviour suggests that both Cemex Croatia and DDC have often considered and resorted to reactions to deter the threat of competitive entry by making such entry less profitable and more difficult.

f. **The Transaction is likely to result in quantifiable price increases**

(49) The Commission found that contemporaneous documents prepared by top management of DDC in tempore non suspeto indicate that the Transaction will lead to price increases for grey cement.

g. **Substantial part of the internal market**

(50) The circular and modified catchment areas of 250 km around Cemex Croatia's plant in Split constitute a substantial part of the internal market because they are sizable in terms of surface (exceeding 30 000 km²) and inhabitants (more than 2 million inhabitants), their annual cement consumption respectively represents 58-66 % of Croatian cement consumption and they are characterised by cross-border trade.
VI. COMMITMENTS

(51) On 26 January 2017, the Notifying Parties submitted commitments to address the competition concerns identified in the Statement of Objections.

a. Description of the commitments

(52) The commitments aim at facilitating market entry of a competitor by granting access to a cement terminal in Metkovic in Dalmatia.

(53) The terminal – which is a storage facility for bulk and bagged cement with truck, vessel and (potentially in the future) rail access – is owned by the Croatian state, operated by the port of Ploce and currently leased by Cemex Croatia, but currently used only for sporadic sales. The current lease has a […]-year duration that still runs until the end of […] and a rental fee of around EUR […]. Pursuant to the commitments, the terminal would be leased by a competitor (new lessee) who could start selling cement through the terminal.

(54) More specifically, the Parties have undertaken the following commitments:

(55) First, to terminate the lease by Cemex Croatia and waive Cemex Croatia’s […].

(56) Second, to find a suitable new lessee with the ability and incentive to effectively compete on a long-term basis with DDC in Southern Croatia and ensure the conclusion of a new lease agreement for at least […] years at terms which are substantially similar to the terms of the existing lease.

(57) Third, to procure that DDC provides the new lessee support in a number of matters. DDC will provide the new lessee with all customer records for certain Croatian customers of DDC. DDC will also provide logistic support to the new lessee by providing the contact details of transport companies used by Cemex Croatia and, at the option of the new lessee, […]. Finally, DDC will maintain, at the option of the new lessee, a back-up facility of cement per year for the benefit of the new lessee at the Split plant which the lessee can use (i) at any time after giving at least a certain number of days prior notice and (ii) at a price set after following a specific process, approved by the Trustee.

(58) Fourth, not to implement the Transaction before the new lessee and the port have entered into a final binding new lease agreement and the Commission has approved the new lessee and the terms of the new lease agreement.

b. Assessment of the undertakings submitted

(59) The Commission has come to the conclusion that the Commitments are insufficient to render the concentration compatible with the internal market.

(60) First, the Commitments have severe structural deficits so that the competition concerns are not eliminated entirely and there are uncertainties and risks as to their effective and timely implementation. The Commitments leave the merged entity's market position nearly unchanged, combining their entire cement production capacity in the relevant market and leading to a significant increase in their joint production capacity. The Commitments do not concern the divestiture of a viable business but offer a mere business opportunity to the new lessee to start its own cement business in Dalmatia from scratch. That mere opportunity involves high uncertainty and does not have an equivalent effect as a divestiture.

(61) Second, there is a low likelihood of finding a suitable lessee.

(62) In the first place, there is considerable uncertainty that any new lessee – including the companies Titan and Asamer which the Parties have presented to the Commission as the best placed potential lessees – would likely and timely grow into a viable competitor that could compete effectively with the merged entity on a lasting basis. This is because all potential lessees suggested by the Parties are likely to be significantly less competitive than DDC. Furthermore, Titan has decided not to pursue the negotiation of the lease further after learning about the details of the business proposition.

(63) In the second place, the Commission cannot conclude with the requisite degree of certainty that Asamer – who has signed a lease agreement for the Metković terminal with the Port of Ploče on 13 March 2017 (conditional among other things on the clearance of the Transaction by the Commission) - is able to develop its grey cement business in the relevant markets as a viable competitive force that would compete effectively with the merged entity on a lasting basis: (i) Asamer faces significant cost-to-market disadvantages compared to DDC, (ii) it is not clear how Asamer intends to overcome likely difficulties in refilling the terminal by truck or by rail to a sufficient extent, (iii) the Commission cannot enforce any investments in infrastructure of the Metković terminal to ensure that Asamer would reach sufficient sales volumes, and (iv) Asamer has in the past shown a lack of aggressiveness in competing with the Parties.
(64) Third, the remedy appears insufficient in scale. The capacity at the Metković terminal is likely to be insufficient for any new lessee to grow into a viable competitive force that could compete effectively with the merged entity on a lasting basis. This is because the seasonality of demand in the area as well as the logistical challenges in supplying cement to the terminal limit its effective capacity. Furthermore, due to the vicinity of the Metković terminal to Bosnia and Montenegro, it is unlikely that the capacity of the terminal would be exclusively allocated to Croatia. Finally, additional spare capacity would be required at the Metković terminal to enable the New Lessee to compete effectively.

(65) Fourth, there are shortcomings in the modalities of the commitments’ implementation. There are no clauses in the commitments that provide a safeguard in case the lessor, the Port of Ploče, does not agree to the potential new lessee or the Notifying Parties do not find a suitable potential new lessee. In addition, there are no clauses stipulating that the Parties will be deemed not to have complied with the commitments if no suitable lessee has been approved within the deadline. There is thus a risk that there would be an indefinite period of finding a suitable lessee, potentially negatively affecting the Cemex Croatia business.

VII. CONCLUSION

(66) For the reasons mentioned above, the decision concludes that the proposed concentration will significantly impede effective competition through non-coordinated effects, which could amount in particular to the creation of a dominant position, in the circular and modified catchment areas of 250 km around Cemex Croatia’s plant in Split.

(67) Consequently the concentration was declared incompatible with the internal market and the functioning of the EEA Agreement, in accordance with Articles 2(3) and Article 8(3) of the Merger Regulation.
PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of the impending expiry of certain anti-dumping measures
(2017/C 440/10)

1. As provided for in Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (1), the Commission gives notice that, unless a review is initiated in accordance with the following procedure, the anti-dumping measures mentioned below will expire on the date mentioned in the table below.

2. Procedure

Union producers may lodge a written request for a review. This request must contain sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Should the Commission decide to review the measures concerned, importers, exporters, representatives of the exporting country and Union producers will then be provided with the opportunity to amplify, rebut or comment on the matters set out in the review request.

3. Time limit

Union producers may submit a written request for a review on the above basis, to reach the European Commission, Directorate-General for Trade (Unit H-1), CHAR 4/39, 1049 Brussels, Belgium (2) at any time from the date of the publication of the present notice but no later than three months before the date mentioned in the table below.

4. This notice is published in accordance with Article 11(2) of Regulation (EU) 2016/1036.

<table>
<thead>
<tr>
<th>Product</th>
<th>Country(ies) of origin or exportation</th>
<th>Measures</th>
<th>Reference</th>
<th>Date of expiry (1)</th>
</tr>
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</table>

(1) The measure expires at midnight of the day mentioned in this column.

(2) TRADE-Defence-Complaints@ec.europa.eu
Notice of initiation of an anti-subsidy proceeding concerning imports of electric bicycles originating in the People's Republic of China

(2017/C 440/11)

The European Commission (‘the Commission’) has received a complaint pursuant to Article 10 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (¹) (‘the basic Regulation’), alleging that imports of electric bicycles, originating in the People's Republic of China, are being subsidised and are thereby causing material injury to the Union industry.

1. **Complaint**
The complaint was lodged on 8 November 2017 by the European Bicycle Manufacturers Association (‘EBMA’) on behalf of producers (‘the complainants’) representing more than 25 % of the total Union production of electric bicycles.

2. **Product under investigation**
The product subject to this investigation is cycles, with pedal assistance, with an auxiliary electric motor (‘the product under investigation’).

3. **Allegation of subsidisation**
The product allegedly being subsidised is the product under investigation, originating in the People's Republic of China (‘the country concerned’), currently falling within CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10). These codes are given for information only.

The complaint includes sufficient evidence that the producers of the product under investigation from the country concerned have benefitted from a number of subsidies granted by the Government of the People's Republic of China.

The alleged subsidy practices consist, inter alia, of (1) direct transfers of funds and potential direct transfers of funds or liabilities, (2) government revenue foregone or not collected, and (3) government provision of goods or services for less than adequate remuneration. The complaint contained evidence, for example, of various grants as subsidies for environmental protection and subsidies for technology, innovation and development; provision of loans and credit lines provided by State-owned banks and other financial institutions at preferential terms, and provision of export credits and export guarantees and insurance by State-owned banks and other financial institutions; income tax reductions and exemptions, import tariff rebates and VAT exemptions and rebates; and government provision of land and energy for less than adequate remuneration. The complainants allege that the above measures are subsidies since they involve a financial contribution from the Government of the People's Republic of China or other regional and local governments (including public bodies) and confer a benefit to the exporting producers of the product under investigation. They are alleged to be limited to certain enterprises or industry or group of enterprises and are therefore specific and countervailable. On this basis the alleged subsidy amounts appear to be significant for the country concerned.

In view of Article 10(2) and (3) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission's assessment on all the evidence at its disposal and on the basis of which the Commission initiates the investigation. This memorandum can be found in the file for inspection by interested parties.

The Commission reserves the right to investigate other relevant subsidy practices.

4. **Allegation of injury and causation**
The complainants have provided sufficient evidence that imports of the product under investigation from the country concerned have increased overall in absolute terms and have increased in terms of market share.

The evidence provided by the complainant shows that the volume and the prices of the imported product under investigation have had, among other consequences, a negative impact on the quantities sold and the market share held by the Union industry as well as on the Union's prices that could not been raised to a reasonable level due to the downwards price pressure of the imported product under investigation resulting in substantial adverse effects on the overall performance of the Union industry.

5. **Procedure**

Having determined, after informing the Member States, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 10 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether these subsidised imports have caused or threaten to cause injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against the Union interest.

The Government of the People’s Republic of China has been invited for consultations.

5.1. **Investigation period and period considered**

The investigation of subsidisation and injury will cover the period from 1 October 2016 to 30 September 2017 (‘the investigation period’). The examination of trends relevant for the assessment of injury will cover the period from 1 January 2014 to the end of the investigation period (‘the period considered’).

5.2. **Procedure for the determination of subsidisation**

Exporting producers (1) of the product under investigation from the country concerned and the authorities of the country concerned are invited to participate in the Commission investigation. Other parties from which the Commission will seek relevant information to determine the existence and amount of countervailable subsidies conferred upon the product under investigation are also invited to cooperate with the Commission to the fullest extent possible.

5.2.1. **Investigating exporting producers**

**Procedure for selecting exporting producers to be investigated in the country concerned**

(a) **Sampling**

In view of the potentially large number of exporting producers in the country concerned and involved in this proceeding, and in order to complete the investigation within the statutory time limits, the Commission may limit the exporting producers to be investigated to a reasonable number by selecting a sample (this process is also referred to as ‘sampling’). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary, and if so, to select a sample, all exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties have to do so within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with information on their company(ies) requested in Annex I to this Notice.

In order to obtain information it deems necessary for the selection of the sample of exporting producers, the Commission will also contact the authorities of the country concerned and may contact any known associations of exporting producers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this Notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the exporting producers may be selected based on the largest representative volume of exports to the Union which can reasonably be investigated within the time available. All known exporting producers, the authorities of the country concerned and associations of exporting producers will be notified by the Commission, via the authorities of the country concerned if appropriate, of the companies selected to be in the sample.

In order to obtain information it deems necessary for its investigation with regard to exporting producers, the Commission will send questionnaires to the exporting producers selected to be in the sample, to any known association of exporting producers, and to the authorities of the country concerned.

All exporting producers, selected to be in the sample, and the authorities of the country concerned will have to submit a completed questionnaire within 37 days from the date of notification of the sample selection, unless otherwise specified.

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(1) An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via a third party, including any of its related companies involved in the production, domestic sales or exports of the product under investigation.
Without prejudice to the application of Article 28 of the basic Regulation companies that have agreed to their possible inclusion in the sample but are not selected to be in the sample will be considered to be cooperating (‘non-sampled cooperating exporting producers’). Without prejudice to section (b) below, the countervailing duty that may be applied to imports from non-sampled cooperating exporting producers will not exceed the weighted average amounts of subsidisation established for the exporting producers in the sample (1).

(b) Individual amount of countervailable subsidisation for companies not included in the sample

Non-sampled cooperating exporting producers may request, pursuant to Article 27(3) of the basic Regulation, that the Commission establish their individual subsidy amount. The exporting producers wishing to claim an individual amount of subsidisation must request a questionnaire and return it duly completed within 37 days of the date of notification of the sample selection, unless otherwise specified.

However, exporting producers claiming an individual subsidy amount should be aware that the Commission may nonetheless decide not to determine their individual subsidy amount if, for instance, the number of exporting producers is so large that such determination would be unduly burdensome and would prevent the timely completion of the investigation.

5.2.2. Investigating unrelated importers (2) (3)

Unrelated importers of the product under investigation from the country concerned to the Union are invited to participate in this investigation.

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as ‘sampling’). The sampling will be carried out in accordance with Article 27 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties must do so within 15 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified, by providing the Commission with the information on their company(ies) requested in Annex II to this Notice.

In order to obtain information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this Notice in the Official Journal of the European Union, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under investigation originating in the country concerned in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

(1) Pursuant to Article 15(3) of the basic Regulation, any zero and de minimis amounts of countervailable subsidies and amounts of countervailable subsidies established in the circumstances referred to in Article 28 of the basic Regulation shall be disregarded.

(2) Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex I to the questionnaire for these exporting producers. In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558), two persons shall be deemed to be related if: (a) they are officers or directors of the other person's business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In this context ‘person’ means any natural or legal person.

(3) The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of subsidisation.
5.3. Procedure for the determination of injury and investigating Union producers

A determination of injury is based on positive evidence and involves an objective examination of the volume of the subsidised imports, their effect on prices on the Union market and the consequent impact of those imports on the Union industry. In order to establish the situation of the Union industry, Union producers of the product under investigation are invited to participate in the Commission investigation.

Investigating Union producers

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as ‘sampling’). The sampling is carried out in accordance with Article 27 of the basic Regulation.

The Commission has provisionally selected a sample of Union producers. Details can be found in the file for inspection by interested parties. Interested parties are hereby invited to consult the file (for this they should contact the Commission using the contact details provided in section 5.7 below). Other Union producers, or representatives acting on their behalf, that consider that there are reasons why they should be included in the sample must contact the Commission within 15 days of the date of publication of this Notice in the Official Journal of the European Union. All interested parties wishing to submit any other relevant information regarding the selection of the sample must do so within 21 days of the publication of this Notice in the Official Journal of the European Union, unless otherwise specified.

All known Union producers and/or associations of Union producers will be notified by the Commission of the companies finally selected to be in the sample.

In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

5.4. Procedure for the assessment of Union interest

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached, pursuant to Article 31 of the basic Regulation, as to whether the adoption of anti-subsidy measures would not be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 31 of the basic Regulation will only be taken into account if supported by factual evidence at the time of submission.

5.5. Other written submissions

Subject to the provisions of this Notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of publication of this Notice in the Official Journal of the European Union.

5.6. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.7. Instructions for making written submissions and sending completed questionnaires and correspondence

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing a) the Commission to use the information and data for the purpose of this trade defence proceeding and b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.
All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' (1). Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

Parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 29(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document ‘CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES’ published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Email addresses: TRADE-AS646-EBIKES-SUBSIDY@ec.europa.eu
TRADE-AS646-EBIKES-INJURY@ec.europa.eu

6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 28 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 28 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

(1) A 'Limited' document is a document which is considered confidential pursuant to Article 29 of Regulation (EU) 2016/1037 and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).
A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

For further information and contact details interested parties may consult the Hearing Officer’s web pages on DG Trade’s website http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/

8. **Schedule of the investigation**

The investigation will be concluded, pursuant to Article 11(9) of the basic Regulation within 13 months of the date of the publication of this Notice in the Official Journal of the European Union. In accordance with Article 12(1) of the basic Regulation, provisional measures may be imposed no later than nine months from the publication of this Notice in the Official Journal of the European Union.

9. **Processing of personal data**

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (1).

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ANNEX I

"Limited" version ('')

Version 'For inspection by interested parties'

(tick the appropriate box)

ANTI-SUBSIDY PROCEEDING CONCERNING IMPORTS OF ELECTRIC BICYCLES ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA

INFORMATION FOR THE SELECTION OF THE SAMPLE OF EXPORTING PRODUCERS IN THE PEOPLE'S REPUBLIC OF CHINA

This form is designed to assist exporting producers in the People's Republic of China in responding to the request for sampling information made in point 5.2.1(a) of the notice of initiation.

Both the "Limited" version and the version 'For inspection by interested parties' should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

- Company name
- Address
- Contact person
- Email address
- Telephone
- Fax

2. TURNOVER AND SALES VOLUME

Indicate the turnover in the accounting currency of the company during the period from 1 October 2016 to 30 September 2017 ('the investigation period') for sales (export sales to the Union for each of the 28 Member States separately and in total, and domestic sales) of electric bicycles as defined in the notice of initiation and the corresponding volume. State the currency used.

<table>
<thead>
<tr>
<th>Pieces</th>
<th>Value in accounting currency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export sales to the Union, for each of the 28 Member States separately and in total, of the product under investigation, manufactured by your company</td>
<td>Total:</td>
</tr>
<tr>
<td></td>
<td>Name each Member State (''):</td>
</tr>
<tr>
<td>Domestic sales of the product under investigation, manufactured by your company</td>
<td></td>
</tr>
</tbody>
</table>

(1) Add additional rows where necessary.


(2) The 28 Member States of the European Union are: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.
3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES (*)

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under investigation. Such activities could include but are not limited to purchasing the product under investigation or producing it under sub-contracting arrangements, or processing or trading the product under investigation.

Please list also all related companies involved in the production and/or selling of one or more of the following inputs used in the production of the product under investigation:

- engine (either hub or centre),
- battery,
- bicycle parts,

<table>
<thead>
<tr>
<th>Company name and location</th>
<th>Activities</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. OTHER INFORMATION

a) Please provide an English version of the company's annual report and/or annual accounts for 2016.

b) Please indicate the total amount of your company's investments relating to the product under investigation for the years 2014, 2015, 2016 and the period from 1 October 2016 to 30 September 2017 (in the accounting currency of the company).

<table>
<thead>
<tr>
<th>(Specify the currency used)</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>1.10.2016 to 30.9.2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total amount of investments</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c) Please indicate with regard to engine (either hub or centre), battery, and bicycle parts the percentage of the imported inputs used for the production of the product under investigation versus the same inputs produced locally for the investigation period. Only for the locally produced inputs please fill in the table below with regard to the main suppliers:

<table>
<thead>
<tr>
<th>Company name and location</th>
<th>State owned (Yes/No)</th>
<th>Share of State ownership</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

d) Please indicate whether in 2014, 2015, 2016 and the period from 1 October 2016 to 30 September 2017 you generated electricity yourself and, if so, what was the percentage of such generation compared to the electricity purchased in the Chinese relevant market.

e) Please list the land use rights granted to your company used in your manufacturing activities for the production of the product under investigation.

f) Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

(*) In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558), two persons shall be deemed to be related if: (a) they are officers or directors of the other person's business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In this context 'person' means any natural or legal person.
5. INDIVIDUAL AMOUNT OF SUBSIDISATION

The company declares that, in the event that it is not selected to be in the sample, it would like to receive a questionnaire and other claim forms in order to fill these in and thus claim an individual amount of subsidisation in accordance with section 5.2.1(b) of the notice of initiation.

☐ Yes ☐ No

6. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission’s findings for non-cooperating exporting producers are based on facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:
ANNEX II

ANTI-SUBSIDY PROCEEDING CONCERNING IMPORTS OF ELECTRIC BICYCLES ORIGINATING IN THE PEOPLE’S REPUBLIC OF CHINA

INFORMATION FOR THE SELECTION OF THE SAMPLE OF UNRELATED IMPORTERS

This form is designed to assist unrelated importers in responding to the request for sampling information made in point 5.2.2 of the notice of initiation.

Both the ‘Limited’ version and the version ‘For inspection by interested parties’ should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

| Company name |  |
| Address |  |
| Contact person |  |
| Email address |  |
| Telephone |  |
| Fax |  |

2. TURNOVER AND SALES VOLUME

Indicate the total turnover in euros (EUR) of the company, and the turnover and weight or volume for imports into the Union (\(^1\)) and resales on the Union market after importation from the People’s Republic of China, during the period from 1 October 2016 to 30 September 2017, of electric bicycles as defined in the notice of initiation and the corresponding weight or volume.

| Total turnover of your company in euros (EUR) | Pieces | Value in euros (EUR) |
| Imports of the product under investigation from the People’s Republic of China into the Union |  |  |
| Resales on the Union market after importation from the People’s Republic of China of the product under investigation |  |  |

\(^1\) This document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. The 28 Member States of the European Union are: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.
3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES (*)

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under investigation. Such activities could include but are not limited to purchasing the product under investigation or producing it under sub-contracting arrangements, or processing or trading the product under investigation.

<table>
<thead>
<tr>
<th>Company name and location</th>
<th>Activities</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission’s findings for non-cooperating importers are based on the facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

(*) In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558), two persons shall be deemed to be related if: (a) they are officers or directors of the other person’s business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half-blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In accordance with Article 5(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1), ‘person’ means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts. In this context ‘person’ means any natural or legal person.
PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration
(Case M.8720 — Jones Lang LaSalle/intu properties/The Chapelfield Partnership)
Candidate case for simplified procedure
(Text with EEA relevance)
(2017/C 440/12)

1. On 8 December 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (1). This notification concerns the following undertakings:
   — LaSalle Investment Management (‘LaSalle’, United Kingdom),
   — intu properties plc (‘intu’, United Kingdom),
   — Chapelfield shopping centre (‘Chapelfield’, United Kingdom), currently indirectly wholly owned by intu.

Intu and LaSalle acquire within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation joint control over Chapelfield.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:
   — for intu: real estate investment trust, largely focused on shopping centre ownership, management and development across the United Kingdom and, to a more limited extent, in Spain,
   — for LaSalle: real estate investment management firm. It is an indirect, wholly-owned subsidiary of Jones Lang LaSalle Incorporated,

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (2) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:
M.8720 — Jones Lang LaSalle/intu properties/The Chapelfield Partnership

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email:
COMP-MERGER-REGISTRY@ec.europa.eu

Fax
+32 22964301

Postal address:
European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Prior notification of a concentration
(Case M.8597 — APG/Ardian/Portfolio)
Candidate case for simplified procedure
(Text with EEA relevance)
(2017/C 440/13)

1. On 13 December 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (1).

This notification concerns the following undertakings:

— APG Asset Management N.V. (‘APG’, the Netherlands), controlled by Stichting Pensioenfonds ABP,
— Ardian S.A.S. (‘Ardian’, France),
— A portfolio of 10 companies (the ‘Portfolio’, Spain, Italy and France).

APG and Ardian acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of a portfolio of 10 companies.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for APG: provider of services such as executive consultancy, asset management, pension administration, pension communication and employer’s services on behalf of collective pension schemes,
— for Ardian: private equity group comprised of various management companies and investment funds which invest in companies involved in a wide range of business (such as healthcare, infrastructure, energy, consumer goods or new technologies sectors) throughout the world,
— for the Portfolio: 10 companies active in the transport infrastructure sector (Spain and France), the energy infrastructure sector (France and Italy) and in the operation of a hospital concession (Italy).

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 (2) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. The following reference should always be specified:

M.8597 — APG/Ardian/Portfolio

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

E-mail:
COMP-MERGER-REGISTRY@ec.europa.eu

Fax
+32 22964301

Postal address:
European Commission
Directorate-General for Competition
Merger Registry
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
OTHER ACTS

EUROPEAN COMMISSION

INFORMATION NOTICE — PUBLIC CONSULTATION

Geographical indications proposed by Japan to be protected in the EU

(2017/C 440/14)

Within the framework of negotiations with Japan for a Free Trade Agreement (hereafter ‘the Agreement’) including a chapter on Geographical Indications, the Japanese authorities have presented, for protection under the Agreement, the attached list of Geographical Indications. The European Commission is currently considering whether these Geographical Indications shall be protected under the future Agreement as Geographical Indications within the meaning of Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The Commission invites any Member State or third country or any natural or legal person having a legitimate interest, resident or established in a Member State or in a third country, to submit oppositions to such protection by lodging a duly substantiated statement.

Statements of opposition must reach the Commission within two months of the date of publication of this notice. Statements of opposition should be sent to the following email address: AGRI-A4@ec.europa.eu

Statements of opposition shall be examined only if they are received within the time limit set out above and if they show that the protection of the name proposed would:

(a) conflict with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product;

(b) be wholly or partially homonymous with that of a name already protected in the Union under Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (1), or contained in the agreements the Union has concluded with the following countries:

— SADC EPA States (comprising Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa) (2)

— Switzerland (3)

— Korea (4)

— Central America (5)

— Colombia, Peru and Ecuador (6)

(5) Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (OJ L 346, 15.12.2012, p. 3).
(6) Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part (OJ L 354, 21.12.2012, p. 3) and Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador (OJ L 356, 24.12.2016, p. 3).
in the light of a trade mark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;

(d) jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice.

(e) or if they can give details from which it can be concluded that the name for which protection is considered is generic.

The criteria referred to above shall be evaluated in relation to the territory of the Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected. The possible protection of these names in the European Union is subject to the successful conclusion of these negotiations and subsequent legal act.

### List of Geographical Indications

<table>
<thead>
<tr>
<th>Geographical indications proposed by Japan to be protected in the EU</th>
<th>Product category</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘八丁味噌’ (Hacho Miso)</td>
<td>Other products of Annex I to the Treaty (spices etc.) — seasoning</td>
</tr>
<tr>
<td>‘奥飛騒山之村寒干大根’ (Okuhida Yamanomura Kanboshi Daikon)</td>
<td>Fruits, vegetables and cereals, fresh or processed — dried radish</td>
</tr>
<tr>
<td>‘上庄さといも’ (Kamisho Satoimo)</td>
<td>Fruits, vegetables and cereals, fresh or processed — taro</td>
</tr>
<tr>
<td>‘岩手野村田荒海ホタテ’ (Iwatenodamura Araumi Hotate)</td>
<td>Fresh fish, molluscs and crustaceans and products derived therefrom — scallop</td>
</tr>
<tr>
<td>‘桜島小みかん’ (Sakurajima Komikan)</td>
<td>Fruits, vegetables and cereals, fresh or processed — mandarin</td>
</tr>
<tr>
<td>‘若狭小浜小鯖さささ漁’ (WakisaoObama Kodai Sasazuke)</td>
<td>Fresh fish, molluscs and crustaceans and products derived therefrom — preserved sea bream</td>
</tr>
</tbody>
</table>


(5) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (OJ L 161, 29.5.2014, p. 3).


(7) List provided by the Japanese authorities in the framework of the negotiations, registered in Japan.
<table>
<thead>
<tr>
<th>Geographical indications proposed by Japan to be protected in the EU <em>(1)</em></th>
<th>Product category</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘琉球もろみ酢’ (Ryukyu Moromisu)</td>
<td>Other products of Annex I to the Treaty (spices etc.) — rice malt vinegar</td>
</tr>
<tr>
<td>‘近江牛’ (Omi Gyu)/’Omi Beef’</td>
<td>Fresh Meat (and offal) — beef</td>
</tr>
<tr>
<td>‘宮崎牛’ (Miyazaki Gyu)/’Miyazaki Wagyu’/’Miyazaki Beef’</td>
<td>Fresh Meat (and offal) — beef</td>
</tr>
<tr>
<td>‘鹿児島黒牛’ (Kagoshima Kuroushi)/’Kagoshima Wagyu’</td>
<td>Fresh Meat (and offals) — beef</td>
</tr>
<tr>
<td>‘入善ジャンボ西瓜’ (Nyuzen Jumbo Suika)/’Nyuzen Jumbo Watermelon’</td>
<td>Fruits, vegetables and cereals, fresh or processed — watermelon</td>
</tr>
<tr>
<td>‘香川小原紅早生みかん’ (Kagawa Obara Beniwase Mikan)</td>
<td>Fruits, vegetables and cereals, fresh or processed — mandarin</td>
</tr>
<tr>
<td>‘辺塚だいだい’ (Hetsuka Daidai)</td>
<td>Fruits, vegetables and cereals, fresh or processed — citrus fruits</td>
</tr>
<tr>
<td>‘堂上蜂屋柿’ (Dojo Hachiya Gaki)</td>
<td>Fruits, vegetables and cereals, fresh or processed — dried Japanese persimmon</td>
</tr>
<tr>
<td>‘小川原湖産大和しま’ (Ogawarako-san Yamato Shijimi)/’Lake Ogawara Brackish water clam’</td>
<td>Fresh fish, molluscs and crustaceans and products derived therefrom — freshwater clam</td>
</tr>
<tr>
<td>‘みやぎサーモン’ (Miyagi Salmon)/’Miyagi Salmon’</td>
<td>Fresh fish, molluscs and crustaceans and products derived therefrom — fish</td>
</tr>
</tbody>
</table>

*(1)* Transcriptions between brackets are given only for information purposes.