



EUROPEAN COMMISSION

Brussels, 16.6.2022
C(2022) 4268 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: Case M.10534 - TRATON / AKTIEBOLAGET VOLVO / DAIMLER TRUCK / JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the

Dear Sir or Madam,

- (1) On 6 May 2022 the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Traton SE (“Traton”, Germany), Aktiebolaget Volvo PUBL (“Volvo”, Sweden) and Daimler Truck AG (“Daimler Truck”, Germany) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly created joint venture (“the JV”, Netherlands).³ Traton, Volvo and Daimler Truck are designated hereinafter as the “Notifying Parties” or the “Parties”.

1. THE PARTIES

- (2) **Daimler Truck** of Germany, is active in the manufacturing and sale of trucks and buses. The entity ultimately and wholly controlling Daimler Truck is Daimler Truck Holding AG. In turn, Daimler AG (in the meantime renamed Mercedes-Benz Group AG) holds a non-controlling stake of approx. 35% of the share capital of Daimler Truck Holding AG. Under the Merger Regulation, Mercedes-Benz Group AG and Daimler Truck AG are separate undertakings. Mercedes-Benz Group AG is in charge of passenger cars, commercial vans, mobility services and related activities, while Daimler Truck AG is in charge of light, medium and heavy-duty trucks and buses and related activities.
- (3) **Traton** of Germany is solely controlled by Volkswagen AG, which holds 89.72% of the equity in Traton.⁴ Traton primarily operates through its MAN, Scania, Navistar and Volkswagen Caminhões e Ônibus units.
- (4) **Volvo** of Sweden is publicly listed on the Nasdaq OMX Nordic Exchange. No undertaking or person controls Volvo within the meaning of Article 3 of the Merger Regulation. Through its shareholdings in companies of the Volvo group of companies, Volvo is globally active in the manufacture and sale of trucks, buses, construction equipment and engines. In the EEA, it primarily operates through the brands Volvo and Renault Trucks.

2. THE OPERATION

- (5) On 4 July 2021, the Parties signed a Memorandum of Understanding to establish the jointly controlled JV, in which each of the Parties will directly or indirectly hold equal shares. The Parties signed the Joint Venture Agreement on 15 December 2021.
- (6) The Parties will each hold (directly or indirectly) 33.33% of the newly incorporated JV’s shares and have equal shareholder and governance rights, granting them joint control over the JV. Important strategic matters such as, [...].⁵

replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

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

³ Publication in the Official Journal of the European Union No C 197, 16.5.2022, p. 7.

⁴ The remaining 10.28% of the equity of Traton are publicly traded.

⁵ The Supervisory Board will be composed [...]. Each Party will appoint [...].

- (7) The JV will be active as a charge point operator, which will build and operate a publicly accessible, high-performance charging network for battery electric heavy-duty trucks and coaches along and close to major motorways and logistical points of interest in selected European countries. As its first priority, [...]. As its second priority, [...]. Private home depot charging will not be within the scope of the JV. Fast-charging will then subsequently be supplemented by overnight charging. The JV's commercial offer will focus on battery electric heavy-duty trucks but will also be open for coaches. Its geographical focus will be on twelve core countries in Europe.⁶ The JV plans to start operations in 2022, subject to the granting of the necessary regulatory approvals.
- (8) The JV will be full-function, as it will perform on a lasting basis all the functions of an autonomous economic entity. The JV will have sufficient resources to operate independently on a lasting basis on the market, with its own personnel and management team. The JV will operate as an autonomous entity on the market, and transactions with the Parties will be at arm's length terms. In fact, the Parties have agreed to an initial funding of the JV as required for the start-up period following closing of the Transaction. The total investment by the Parties is EUR 500 million and the JV may request additional financing from the Parties.⁷ The JV will hire its own staff. In the initial business case calculations, the JV will have approx. [...] by 2026 and [...] by 2027. Eventually, the JV's management will determine the exact number of employees.⁸ The JV will have three corporate bodies: the Management Board, the Supervisory Board and the Shareholders' Meeting. The management team of the JV will be solely dedicated to the JV's activities and will have no affiliation with any of the Parties.⁹ Further, the activity of the JV will go beyond a specific function for the Parties. The Parties have agreed that the JV will be operationally self-sufficient, independent and operate as an autonomous entity.
- (9) The Transaction will therefore result in a concentration pursuant to Articles 3(1) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Daimler Truck EUR 36 012 million; Traton EUR 250 200 million; Volvo EUR 33 744 million)¹⁰. Each of them has a Union-wide turnover in excess of EUR 250 million (Daimler Truck [...]; Traton [...]; Volvo [...]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

⁶ For example [...].

⁷ Form CO, paragraph 150.

⁸ Form CO, paragraph 151.

⁹ Form CO, paragraph 152-153.

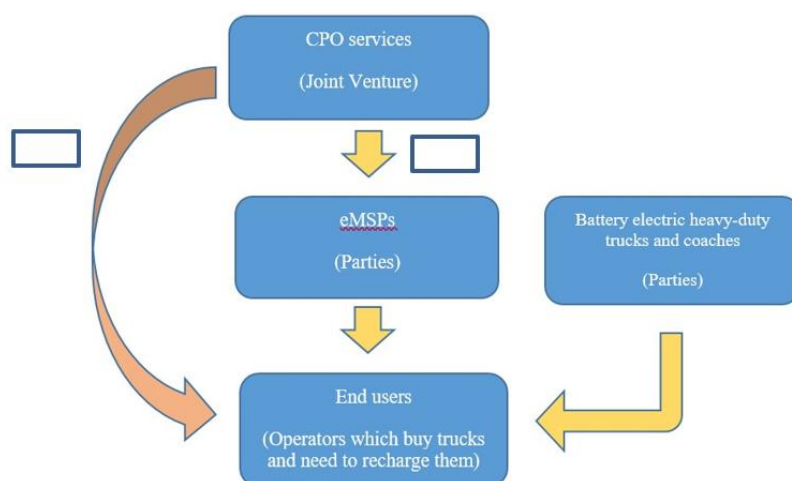
¹⁰ Turnover calculated in accordance with Article 5 of the Merger Regulation.

4. RELEVANT MARKETS

4.1. The value chain of charging services for battery electric trucks and coaches

- (11) The markets for public charging services for battery electric trucks and coaches are nascent markets where the Parties or other market participants are not currently active to any material degree nor own any significant relevant assets. For this reason, among others, the transition to battery electric trucks and coaches is currently progressing slowly. However, as soon as a first, reliable charging infrastructure becomes available, the sales of these electric vehicles and investments in additional charging infrastructures are expected to grow quickly.
- (12) The value chain for charging services for battery electric vehicles include (i) charge point operators (“CPOs”, such as the JV) that build and operate the charging infrastructure and sell charging services, (ii) electric mobility service providers (“eMSPs”) that enter into contracts with end users offering the end users access to charging services of different CPOs as well as payment services, (iii) aggregators or operators of roaming networks that allow eMSPs to offer their customers to charge their electric vehicles at public charge points that are not part of the charging network of a particular eMSP and (iv) end-users of battery electric trucks and coaches that need to charge their vehicles on the road.
- (13) Figure 1, below, shows that the Parties are active at multiple levels of the value chain. They are, in fact, the shareholders of the JV which acts as a CPO;¹¹ they will each have an independent eMSP,¹² which markets the JV’s (and other CPO’s) charging services to truck and coach operators; finally, the Parties are also active on a neighbouring market, where they manufacture and sell battery electric trucks and coaches to end users.

Fig. 1 - The value chain of the charging infrastructure for battery electric heavy-duty trucks and coaches



¹¹ The percentages [...] and [...] indicate the approximate split of the JV’s services between eMSPs and end users.

¹² Form CO, paragraph 23.

The Transaction therefore concerns the following activities:

- Installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (CPO services);
- Provision of electric mobility services, provided by electric mobility service providers (eMSP);
- Manufacturing and supply of battery electric heavy-duty trucks;
- Manufacturing and supply of battery electric coaches.

4.2. Installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (CPO services)

4.2.1. Product market definition

4.2.1.1. Previous Commission decisions

- (14) There is no prior Commission practice regarding charging networks for battery electric heavy-duty trucks or coaches. However, the Commission has in the past dealt with markets for e-mobility and charging infrastructure for other electric vehicles. In most of the decisions, the Commission has left open the precise product market definition, noting in 2012 that the e-mobility sector was rapidly developing and could be subject to radical changes in the coming years.¹³ In its decision *Hitachi/ABB* in 2020, the Commission left open the need to define the market for charging infrastructure in terms of the type of electric vehicle that is charged at the charging stations.¹⁴
- (15) In its decisions *E.ON/INNOGY* and *ENEL X/VW*, the Commission differentiated various products markets that are directly related to charging infrastructure for electric vehicles: (i) Wholesale supply of electric vehicle charging stations; (ii) Retail supply of electric vehicle charging solutions; and (iii) Installation and operation of electric vehicle charging solutions.¹⁵
- (16) In *E.ON/INNOGY*, the Commission divided the market for installation and operation of electric vehicle charging solutions into public and private electric vehicle charging solutions. As regards private electric vehicle charging solutions, the Commission did not segment the market further. As regards public electric vehicle charging solutions, the Commission took the view that the installation and operation of public charging stations on-motorways and off-motorways are separate markets.¹⁶ The Commission further separated the market of public electric vehicle charging stations on motorways into (i) installation and operation of fast public electric vehicle charging solutions; and

¹³ Commission decision of 20.09.2012, Case M.6641, *Verbund/Siemens/E-Mobility Provider Austria*, paragraph 12.

¹⁴ Commission decision of 28.05.2020, Case M. 9447, *Hitachi/ABB (Power Grid Division)*, paragraph 137.

¹⁵ Commission decision of 17.09.2019, Case M.8870, *E.ON/INNOGY*, paragraph 206; Commission decision of 17.09.2021, Case M.10311, *ENEL X/VWFL/JV*, paragraph 27.

¹⁶ Commission decision of 17.09.2019, Case M.8870, *E.ON/INNOGY*, paragraph 190.

(ii) installation and operation of ultra-fast (≥ 150 KW) public electric vehicle charging solutions.¹⁷

- (17) In *ENEL X/VW*, the Commission analysed the market for the installation and operation of public ultra-fast charging stations for electric vehicles.¹⁸

4.2.1.2. The Notifying Parties' view

- (18) In the Notifying Parties' view, it is not necessary to form a definitive view on market definition in this area. According to the Notifying Parties, the markets for the charging of battery electric heavy-duty trucks and coaches are nascent and expanding with increasing speed. Therefore, the Notifying Parties argue, it is yet unknown how they will look like in the future.
- (19) The Notifying Parties consider that, to the best of their knowledge, based on the distinctions considered in Commission practice, the relevant product market could be described as the market for installation and operation of fast and ultra-fast public charging solutions on and off-motorways for battery electric heavy-duty trucks and coaches.

Charging solutions for passenger cars vs trucks and coaches

- (20) The Notifying Parties recognize that the installation and operation of charging solutions for heavy-duty trucks and coaches may need to be distinguished from the installation and operation of charging solutions for passenger cars (including due to the different space requirements of trucks and cars). Further, the Notifying Parties expect that trucks and coaches will require higher charging power of up to one megawatt, and that truck specific standards, e.g. megawatt charging standard, will be developed in the next few years.

Fast vs ultra-fast charging

- (21) The Notifying Parties submit that the market for installation and operation of public charging solutions does not need to be further segmented in regular/fast charging stations, on the one hand, and ultra-fast charging stations on the other hand. For the operation of trucks and coaches, it would be most efficient to use the regulated breaks for charging (either 45 minutes or the overnight break of 9 hours). Ultra-fast charging technologies (which will allow the recharging of the battery within the 45 minutes regulated breaks) will require charging power of >500 kW (probably ca. 750 kW) and are a few years away from being widely introduced to the market. The maximum charging power currently available is 350 kW. Therefore, in the view of the Notifying Parties, any precise sub-segmentation by charging speed done today would be conjecture.¹⁹

¹⁷ *E.ON/INNOGY*, paragraph 190. The KW indicated in this decision are relevant only for passenger cars, while a different KW power is applicable to heavy-duty trucks.

¹⁸ Commission decision of 17.09.2021, Case M.10311, *ENEL X/VWFL/JV*, paragraph 20.

¹⁹ Form CO, paragraph 225.

- (22) The Notifying Parties submit that it is not necessary to form an opinion about market definition in this not yet existing area of economic activity because the competitive assessment is unlikely to differ depending on the precise market definition adopted.²⁰

Public vs private charging

- (23) The Notifying Parties take the view that the segmentation between private and public charging points might also apply to charging solutions for heavy-duty trucks and coaches.²¹

On vs off motorways

- (24) According to the Notifying Parties, it may not be necessary to distinguish between charge points on and off-motorways to fully capture market conditions.²²
- (25) The Notifying Parties consider that such sub-segmentation regarding the location is not required for the installation and operation of public charging solutions for heavy-duty trucks and coaches. According to the Notifying Parties, the charging stations will be established on the most favourable routes as defined by factors such as expected battery usage, data on truck stopping locations and frequencies, cost, site conditions and policy considerations. Nevertheless, the Notifying Parties consider that the precise market definition can be left open for the purpose of the present case.²³

4.2.1.3. Commission assessment

- (26) The results of the market investigation seems to indicate a distinction between private and public charging points, with private charging points being installed at truck deposits off-motorway and public charging points being operated on-motorway.²⁴
- (27) The results of the market investigation indicate a distinction between, on the one hand, charging services for electric passenger cars and, on the other hand, charging services for electric trucks and coaches. None of the competitors and only one of the customers responding to the market investigation consider that end-users can use charging infrastructures for electric passenger cars, battery electric trucks, and coaches interchangeably. The main reason provided is the lack of space. Indeed, even if charging plugs for cars and trucks are compatible, parking spaces are usually sized for passenger cars and cannot accommodate medium or long haul heavy-duty trucks²⁵.²⁶ Another consideration is time. As one respondent explained, “*heavy-duty trucks drivers are on a payroll when charging and need to have a quick and secured assess*

²⁰ Form CO, paragraph 226.

²¹ Form CO, paragraph 228.

²² Form CO, paragraph 231.

²³ Form CO, paragraph 232.

²⁴ Reply of a competitor to Q1 to Competitors, question 9.1: “*The relevant sites for truck charging points outside highways and main roads are most likely to be deposits for trucks, in order for trucks to charge during the night or during loading/offloading. Those sites are mostly private. On the main roads and highways, the relevant sites would be existing service and rest areas. On service areas for 45 minutes break, it can be considered that there would be no alternative other than to stop on the highway and that thus this activity would be seen as a specific activity. Even though there would be different networks infrastructure (private deposit, public overnight, public for a 45 minutes break), it is not impossible that the same operators offer those different charging solutions*”.

²⁵ Some small short-haul truck may fit in these spaces.

²⁶ Replies to Q1 to Competitors, question 8. Replies to Q2 to Customers, question 7.

to the charging. Hauling companies won't accept waiting time/delay due to a saturation of charging points by passenger cars: segregating uses between PC/LCV [passenger cars/light commercial vehicles] and HDT [heavy-duty trucks] would be relevant".²⁷

- (28) In addition, the market investigation provided mixed replies as to the possibility to draw a distinction between charging stations on- and off-motorways. Most market participants replied "it depends".²⁸ On the one hand, one respondent explained, the *"number of ad-hoc locations on motorway are limited. It is probable that truck drivers, for long haul segment, will prefer to charge on high-way (not having to exit) at locations benefiting from necessary services (free quality wifi, restroom, possibility to eat, access restaurant/restroom, service unit for truckers, roof..) with as straight as possible access road, 'drive-through' parking bay"*.²⁹ On the other hand, it was pointed out that the *"distinction is not appropriate, as truck drivers' decision will mostly be driven by the lowest price for charging. Also, truck drivers are already used to leave highways for truck parks"*.³⁰
- (29) The market investigation was also not entirely conclusive as regards a potential distinction between fast and ultra-fast charging stations and triggered mixed replies from competitors.³¹ For example, a competitor explained that *"ultra fast charging would be available for 45 minutes breaks with ~1 MW chargers, and that "slow" charging for trucks would be available through 100 kW chargers for 9 hours night breaks. It is likely that these public infrastructures be operated by the same kind of operators"*.³² Another respondent indicated that *"Ultra-fast charging (UFC) addresses different use cases (en-route charging with short stops), regular fast charging (FC) requires longer charging sessions; this is reflected in the charging locations (UFC for short stops en-route, FC for longer stops, e.g. at logistic depots)"*.³³ In reply to the same question as to the possible distinction between the two charging modes, customers provided prevalently affirmative answers.³⁴ The main reason provided for the distinction between fast and ultra-fast charging is economic and relates to the total cost of ownership (TCO) of a vehicle, as one respondent explained: *"Longer charging times impact the down time of an asset. Hence, the longer the asset is down, the weaker the business case is for it. Therefore, to make a viable business case that would allow a shift to electric trucks, charging needs to go as fast as possible. If charging time is not fast enough, this could affect the business case and it may not be sufficient to run a landside supply chain on electric trucks"*.³⁵
- (30) The Commission considers that the product market definition for (public) charging services can ultimately be left open because the Transaction does not raise serious doubts regardless of the product market definition adopted.

²⁷ Reply of a competitor to Q1 to Competitors, question 8.1.

²⁸ Replies to Q1 to Competitors, questions 9 and 9.1. Replies to Q2 to Customers, questions 8 and 8.1.

²⁹ Reply of a competitor to Q1 to Competitors, question 9.1.

³⁰ Reply of a competitor to Q1 to Competitors, question 9.1.

³¹ Replies to Q1 to Competitors, questions 11 and 11.1.

³² Reply of a competitor to Q1 to Competitors, question 11.1.

³³ Reply of a competitor to Q1 to Competitors, question 11.1.

³⁴ Replies to Q2 to Customers, questions 9 and 9.1.

³⁵ Reply of a customer to Q2 to Customers, question 9.1.

4.2.2. Geographic market definition

4.2.2.1. Previous Commission decisions

- (31) In previous cases, the Commission considered that the relevant geographic market for fast and ultra-fast charging stations on motorways could be either local or national with local elements.³⁶ Concerning fast and ultra-fast charging stations off-motorways, the Commission found that this service could possibly have a local dimension, similarly to traditional fuel stations.³⁷ In both cases, however, the Commission ultimately left the exact market definition open.

4.2.2.2. The Notifying Parties' view

- (32) In the Notifying Parties' view, the geographic market definition can be either national or EEA-wide but it can ultimately be left open. Nevertheless, the Parties assume that most of the CPOs in the heavy-duty truck and coach sector and their direct customers (eMSP for heavy-duty trucks and coaches) will be active across the EEA or at least offer services in several Member States. Moreover, in the present case, the focus is primarily on heavy-duty truck and coach operators, many of whom are active across the EEA.³⁸
- (33) In any event, the Notifying Parties submit that at this stage, when there is no public charging infrastructure for battery electric heavy-duty trucks or coaches at all, it is not appropriate to consider or analyse certain routes or areas in isolation. The entrants will consider how best to develop the network across Europe.³⁹

4.2.2.3. Commission assessment

- (34) The market investigation has provided mixed views as to the geographic scope of the market for CPO services.⁴⁰ On the one hand, respondents refer to route-specific markets and indicate that *“there will be strong competition for the best charging spots on the main transport routes in Europe”*⁴¹ and that *“all the high volume routes between the countries, ports and airports will be where competition for charging stations are [sic] the highest”*.⁴² Another respondent even states that the markets would be dependent on a specific location, as *“[c]ost and therefore price will vary from one region to another”*. On the other hand, respondents indicate that the relevant market could be national in scope, explaining that *“differences are mainly because of incentive schemes for electricity & charging applied in different countries”*⁴³ and that *“within EEA countries, market players will have a level playing field as they will have the same national regulation (taxes, connection costs...)”. However, these conditions will differ from one EEA country to the other”*.⁴⁴ Based on such mixed feedback from market participants, the Commission considers that the geographic market definition could likely be either local or route-specific. For the purposes of this case, however,

³⁶ Commission decision of 17.09.2019, in Case M.8870 – *E.ON/Innogy*, paragraph 200.

³⁷ *E.ON/Innogy*, paragraph 203.

³⁸ Form CO, paragraph 234.

³⁹ Form CO, paragraph 235.

⁴⁰ Replies to Q1 to Competitors, question 13. Replies to Q2 to Customers, question 10.

⁴¹ Reply of a competitor to Q1 to Competitor, question 13.1.

⁴² Reply of a customer to Q2 to Customers, question 10.1.

⁴³ Reply of a customer to Q2 to Customers, question 10.1.

⁴⁴ Reply of a competitor to Q1 to Competitor, question 13.1.

the Commission considers that the exact geographic market definition can be left open, as the Transaction does not raise serious doubts, regardless of the market definition adopted.

4.3. Provision of electric mobility services

4.3.1. Product market definition

- (35) Customers subscribe to the services of eMSPs in order to get access to public charging infrastructure. These subscription services include access to fast, and ultra-fast charging stations and typically include additional services such as payment services. The Notifying Parties are not aware of any company active as an eMSP with a dedicated service for heavy-duty truck or coach charging at this point in time. eMSP services, however, are ancillary to charging services and the Commission expects that, similarly to the latter, they will become widely used by operators of battery electric trucks and coaches, once the transition to such electric vehicles takes place.

4.3.1.1. Previous Commission decisions

- (36) In a previous case, the Commission concluded that eMSP services constitute a separate product market and considered, but ultimately left open, a possible segmentation between eMSPs for fast or ultra-fast charging technology.⁴⁵

4.3.1.2. The Notifying Parties' view

- (37) The Notifying Parties agree that the supply of subscription services to access public charging stations in general is a separate market but they do not consider it appropriate to further segment the market by charging technology (regular vs fast vs ultrafast). This is because there is no difference from a supply-side perspective in contracting regular, fast or ultra-fast charging stations and the technical solutions to grant access to customers via the IT back-end do not differ for any of these charging stations according to the Notifying Parties.⁴⁶
- (38) The Notifying Parties, in conclusion, submit that it is not necessary to form an opinion about market definition in this not yet existing area of economic activity because the competitive assessment is unlikely to differ depending on precise market definition.⁴⁷

4.3.1.3. Commission assessment

- (39) The results of the market investigation identified a separate product market for eMSP services for electric trucks and coaches, which can include a number of features (e.g. in-app/telematic display of charging point location, reservation, billing, payment, trouble shooting, etc.).⁴⁸
- (40) Based on the above, the Commission considers that a separate market exists for eMSP services for electric trucks and coaches, but that the exact market definition may, for

⁴⁵ *E.ON/Innogy*, paragraph 212.

⁴⁶ Form CO, paragraph 244.

⁴⁷ Form CO, paragraph 249.

⁴⁸ Replies to Q1 to Competitors, question 14. Replies to Q2 to Customers, question 11.

the purposes of this decision, be left open, as the Transaction does not raise serious doubts regardless of the market definition adopted.

4.3.2. Geographic market definition

4.3.2.1. Previous Commission decisions

- (41) In *E.ON/Innogy*, the Commission considered the relevant geographic market to be national in scope, based on the circumstance that providers were only active in the Member State in question (Germany), were active across the entire national territory and implemented nation-wide pricing policies.⁴⁹

4.3.2.2. The Notifying Parties' view

- (42) In the Notifying Parties' view, the geographic market definition can be either national or EEA-wide but it can ultimately be left open. The Notifying Parties assume that most of the suppliers will be active across the EEA.⁵⁰

4.3.2.3. Commission assessment

- (43) The results of the market investigation are mixed with respect to the scope of the relevant geographic market. Competitors have not provided a precise answer, possibly due to the fact that this market is still at a nascent stage and it is difficult to predict its development.⁵¹ Customers have provided mixed, but slightly more indicative replies, pointing to possible differences between countries, such as the cost of and access to electricity or the existence of subsidies.⁵²
- (44) Based on the above, the Commission considers that the geographic scope of the relevant market could be national, although the exact market definition may be left open, as the outcome of the assessment will not change, regardless of the market definition adopted.

4.4. Manufacturing and supply of battery electric heavy-duty trucks

4.4.1. Product market definition

4.4.1.1. Previous Commission decisions

- (45) There is no prior Commission practice regarding the market for manufacturing and supply of battery electric heavy-duty trucks. However, the Commission has in the past considered the structure of the market for manufacturing and supply of diesel trucks. The Commission has categorised trucks into three different product markets depending on the truck's weight. It has thus defined a separate market for the manufacturing and supply of heavy-duty trucks, in which it has categorised heavy-

⁴⁹ *E.ON/Innogy*, paragraph 212.

⁵⁰ Form CO, paragraph 250.

⁵¹ Replies to Q1 to Competitors, questions 15 and 15.1. Replies to Q2 to Customers, question 11.

⁵² Replies to Q2 to Customers, questions 12 and 12.1.

duty trucks with a gross weight of more than 16 tons, as opposed to light-duty trucks (gross weight below 5/6 tons) and medium-duty trucks (5/6-16 tons).⁵³

4.4.1.2. The Notifying Parties' view

- (46) The Notifying Parties are of the view that the heavy-duty trucks market has not known any evolution that should call into question the Commission's conclusions in previous decisions, so that an overall market for heavy-duty trucks should be considered.⁵⁴
- (47) The Notifying Parties also expect that, in the future, both from a supply- and demand-side perspective, heavy-duty trucks with various powertrains and traction energy sources (*i.e.* fuel vs electric trucks; hydrogen fuel cells vs batteries) will be substitutable. According to the Notifying Parties, most customers will view heavy-duty trucks with different technologies as substitutable for some time, since CO₂ regulation is mainly directed at the truck original equipment manufacturers (OEMs) but not at the end customers. At the same time, for individual customers, there may be self-imposed or external restrictions limiting the choice of driveline technologies for their particular use cases (e.g. zero emission pledges or local regulation requiring zero emission vehicles).
- (48) Nevertheless, the Notifying Parties consider that the product market definition can in any event be left open.⁵⁵

4.4.1.3. Commission assessment

- (49) The market investigation focused on the category of heavy-duty trucks, considering the scope of the JV's activities.
- (50) The results indicated that customers would tend not to differentiate between trucks based on various powertrain and/or power sources or that, at best, they would only differentiate in order to accommodate specific use cases.⁵⁶ For example: *"fuel-cell electric vehicles could offer some advantages over battery-electric vehicles, especially with respect to refueling time, range and (less) payload restrictions. They could therefore become particularly relevant for use cases which require long ranges and heavy payloads. With their relatively higher flexibility, they could also be less reliant on a dense infrastructure network (as is required for BEV). However, their future market share and the composition of the fleet will also depend on external factors, such as the availability of competitively priced hydrogen"*.⁵⁷
- (51) Based on the above, the Commission considers that a separate market exists for heavy-duty trucks, possibly including trucks with various powertrain technologies and/or energy sources, but that the exact market definition may be left open for the purposes of this decision, as the Transaction does not raise serious doubts regardless of the market definition adopted.

⁵³ Commission decisions M.9857 – *Volvo/Daimler/JV*, recital 36; M.8449 – *Peugeot/Opel*, recital 21; M.4336 – *Man/Scania*, recital 16; M.1980 – *Volvo/Renault*, recital 14; M.1672 – *Volvo/Scania*, recitals 16-18.

⁵⁴ Form CO, paragraph 254.

⁵⁵ Form CO, paragraph 255.

⁵⁶ Replies of competitors to Q1 to Competitors, question 16.1.

⁵⁷ Reply of a customer to Q2 to Customers, question 13.1.

4.4.2. Geographic market definition

4.4.2.1. Previous Commission decisions

- (52) In previous decisions regarding the manufacturing and supply of diesel heavy-duty trucks, the Commission has considered that the geographic market is national in scope.⁵⁸ In more recent decisions, the Commission has left open whether the market is national, regional or EEA-wide in scope.⁵⁹

4.4.2.2. The Notifying Parties' view

- (53) The Notifying Parties consider that there are a number of elements pointing to a regional or EEA-wide market, namely: (i) the technical requirements for heavy-duty trucks are similar throughout the EEA; (ii) there are no major differences in customer preferences between countries in the EEA; (iii) larger fleet customers increasingly reach out to the OEMs to negotiate framework agreements valid across the EEA. Nevertheless, the Notifying Parties consider that the exact geographic market definition can in any event be left open.⁶⁰

4.4.2.3. Commission assessment

- (54) The Commission considers that the geographic scope of the relevant market could be at least national in scope, although the exact market definition may be left open, as the outcome of the assessment will not change, regardless of the market definition adopted.

4.5. Manufacturing and supply of battery electric coaches

4.5.1. Product market definition

4.5.1.1. Previous Commission decisions

- (55) There is no prior Commission practice regarding the market for manufacturing and supply of battery electric coaches. However, the Commission has in the past segmented the market for diesel buses based on their end use, into (i) city buses, (ii) inter-city buses and (iii) coaches.⁶¹
- (56) The Commission considered that these three types of buses are designed for a specific type of travel service. While city buses are designed for public transport in urban areas, inter-city buses are designed for public transport in rural districts and public inter-city travel. Coaches are preliminarily intended to service the leisure market, mainly for long distance tourist travel. Due to these different types of travel, the technical characteristics of these buses are different. Indeed, coaches tend to be taller

⁵⁸ Commission decisions M.1980 – *Volvo/Renault*, recitals 20 and following; M.1672 – *Volvo/Scania*, recitals 31 and following.

⁵⁹ Commission decisions M.6267 – *Volkswagen/Man*, recital 19; M.4336 – *Man/Scania*, recital 44.

⁶⁰ Form CO, paragraphs 257-258.

⁶¹ Commission decisions M.4336 – *Man/Scania*, recitals 26-30; M.2201 – *Man/Auwärter*, recitals 13-17; M.1980 – *Volvo/Renault*, recitals 17-18; M.1672 – *Volvo/Scania*, recitals 214 and following; M.477 – *Mercedens-Benz/Kässbohrer*, recital 14.

than inter-city buses and are equipped in a more comfortable manner, with special storage space for luggage, toilets, air conditioning and television screens.⁶²

4.5.1.2. The Notifying Parties' view

- (57) The Notifying Parties expect that, in the future, both from a supply- and demand-side perspective, coaches with various powertrains and traction energy sources will be substitutable, so that an overall market for coaches should be considered. Nevertheless, the Notifying Parties consider that the product market definition can in any event be left open.⁶³

4.5.1.3. Commission assessment

- (58) The market investigation provided mixed replies and overall was not conclusive as to whether the market for coaches should be further segmented according to the powertrain or the energy sources. This is because, in the same way as for battery electric heavy-duty trucks and as set out in paragraph (50), such a distinction might depend on customer-specific use cases.⁶⁴
- (59) Based on the above, the Commission considers that a separate market exists for coaches, possibly including various powertrains and power sources, but that the exact market definition may be left open for the purposes of this decision, as the Transaction does not raise serious doubts regardless of the market definition adopted.

4.5.2. Geographic market definition

4.5.2.1. Previous Commission decisions

- (60) While previously the market for diesel buses was considered national in scope,⁶⁵ the Commission has more recently pointed towards an increasing trend of Europeanisation.⁶⁶ In *Man/Scania*, the Commission considered that its market investigation confirmed a trend towards wider geographic markets for coaches because certain manufacturers apply a single recommended price list across the EEA and several technical and regulatory requirements are similar across the EEA. The Commission ultimately left open the final geographic market definition however.⁶⁷

4.5.2.2. The Notifying Parties' view

- (61) The Notifying Parties submit that the relevant geographic market is EEA-wide. Nevertheless, the Notifying Parties consider that the exact geographic market definition can in any event be left open.⁶⁸

⁶² Commission decisions M.4336 – *Man/Scania*, recitals 26-30; M.2201 – *Man/Auwärter*, recitals 13-17; M.1980 – *Volvo/Renault*, recitals 17-18; M.1672 – *Volvo/Scania*, recitals 214 and following; M.477 – *Mercedens-Benz/Kässbohrer*, recital 14.

⁶³ Form CO, paragraph 262.

⁶⁴ See replies to Q2 to Customers, questions 13, 13.1, 14 and 14.1.

⁶⁵ Commission decisions M.1672 – *Volvo/Scania*, recitals 233 and following; M.477 – *Mercedens-Benz/Kässbohrer*, recital 39.

⁶⁶ Commission decisions M.2201 – *Man/Auwärter*, recital 20.

⁶⁷ Commission decisions M.4336, *Man/Scania*, recitals 50-51 and 55-56.

⁶⁸ Form CO, paragraph 264.

4.5.2.3. Commission assessment

- (62) The Commission considers that the geographic scope of the relevant market could be at least national in scope, although the exact market definition may be left open, as the outcome of the assessment will not change, regardless of the market definition adopted.

5. COMPETITIVE ASSESSMENT

5.1. Assessment of horizontal non-coordinated effects

5.1.1. Introduction

- (63) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger may entail horizontal and/or vertical effects.⁶⁹
- (64) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises such effects in accordance with the Horizontal Merger Guidelines.⁷⁰
- (65) The Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: *"A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market"*.⁷¹
- (66) In cases where the merging parties are not (yet) active in a certain sector, the Horizontal Merger Guidelines provide also for the assessment of the risk of loss of potential competition. In particular, paragraph 60 of the Guidelines provides that *"For a merger with a potential competitor to have significant anti-competitive effects, two basic conditions must be fulfilled. First, the potential competitor must already exert a significant constraining influence or there must be a significant likelihood that it would grow into an effective competitive force. Evidence that a potential competitor has plans to enter a market in a significant way could help the Commission to reach*

⁶⁹ Vertical effects are those deriving from a concentration where the undertakings concerned are active on different or multiple levels of the supply chain. A concentration may involve both types of effects.

⁷⁰ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31,05.02.2004.

⁷¹ Horizontal Merger Guidelines, paragraph 24.

*such a conclusion. Second, there must not be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure after the merger”.*⁷²

- (67) Furthermore, under Article 2(4) of the Merger Regulation, to the extent that the creation of a joint venture constituting a concentration pursuant to Article 3 of the Merger Regulation has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 101(1) and (3) of the Treaty, with a view to establishing whether or not the operation is compatible with the internal market. Under Article 2(5) of the Merger Regulation, in making this appraisal, the Commission shall take into account in particular: (i) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and (ii) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

5.1.2. Horizontal non-coordinated effects in the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (CPO services)

- (68) None of the parties is currently active in the market for CPO services. In fact, the incorporation of the JV has the purpose of pooling the Parties’ investments (approx. EUR 500 million in aggregate or EUR 167 million each) and industrial efforts in this sector, in order to spur the transition to electric vehicles.⁷³
- (69) The Parties’ decision to invest in a charging network and to stimulate sales of electric vehicles mainly depends on economic considerations, in relation to their need to avoid administrative fines for failure to meet the applicable regulatory thresholds for CO₂ emissions.
- (70) In this respect, in fact, regulations by the EU stipulate that emissions of new heavy-duty vehicles should be reduced by 15% in 2025 and 30% in 2030 compared to a baseline of CO₂ emissions calculated for the period mid-2019 to mid-2020. As per Regulation (EU) 2019/1242, OEMs are required to pay a per-vehicle penalty of EUR 4 250 for each gCO₂/t-km of excess emissions in 2025. From 2030 onwards, the fines increase to EUR 6 800/gCO₂/t-km.⁷⁴
- (71) Based on this fee schedule, the Notifying Parties estimate that missing the target set out by the Regulation (EU) 2019/1242 by 1 percentage point will lead to a substantive fine in 2025. Such fine, which depends on the size and the composition of the fleet, will further increase in 2030, but, already in 2025, will be higher than the investment each party is making in the JV.⁷⁵ In July 2021, each of the European OEMs still had a substantial way to go to reach the target set out by the European Commission.⁷⁶

⁷² Horizontal Merger Guidelines, paragraph 60.

⁷³ Form CO, paragraph 164.

⁷⁴ Form CO, paragraph 103.

⁷⁵ Form CO, paragraph 104.

⁷⁶ Form CO, paragraph 104.

- (72) According to the Notifying Parties, sales of battery electric vehicles play a key role in reaching the EU emission targets and thus avoiding fines that could threaten the viability of the Parties' businesses. There is therefore a clear link between the Parties' ability to sell such electric vehicles to customers and the avoidance of steep regulatory fines. Given this link, it is in the Parties' interest to build a charging infrastructure that best supports the sale of battery electric vehicles. From a customer perspective, on the other hand, all things being equal, the purchase of an electric truck or coach is more attractive if there are more accessible charging points.⁷⁷
- (73) On the basis of the above considerations, the Commission considers that each of the Notifying Parties had an economic incentive to invest in the installation and operation of charging points. Nonetheless, the Notifying Parties have decided to pool their resources in the JV. Therefore, the Commission has assessed whether, in pooling the Notifying Parties' investments, the JV has in fact reduced potential competition between the Notifying Parties, that would have otherwise competed to install and operate charging networks most efficiently.
- (74) The Commission observes, first, that none of the Parties already exerts a significant constraining influence and that there is no significant likelihood that it would grow into an effective competitive force. The Notifying Parties are not currently active in the provision of the CPO services that the JV will provide [...].
- (75) Second, as explained in detail in section 5.2.2.1, the pre-notification contacts with market players and the results of the market investigation⁷⁸ confirm that post-transaction there will likely be a sufficient number of other potential competitors, which could maintain sufficient competitive pressure on the JV. In addition, the Commission considers that the emergence of alternative providers of CPO services is also likely in light of the demand-side features of the market. In this regard, customers responding to the market investigation, have indicated that the number of charging points the JV intends to build (approx. 1 700) will be insufficient to address their needs.⁷⁹ Furthermore, the same customers have indicated that, in order to start relying confidently on battery electric vehicles, they do not want to be locked only with the JV,⁸⁰ but they expect to be able to charge their vehicles with at least one other charging point operator. The vast majority of customers responding to the market investigation have indicated that having access to multiple alternative charging networks for battery electric (heavy-duty) trucks and coaches will be "very important" in the future.⁸¹

⁷⁷ Form CO, paragraph 105.

⁷⁸ Replies to Q2 to Customers, question 21.2.

⁷⁹ Replies to Q2 to Customers, question 19.1.

⁸⁰ See replies to Q2 to Customers, question 16 and 16.1. When asked if they would find convenient a bundle including charging services and electric trucks, the majority of respondents replied "it depends". One respondent explained that "*It could be interesting to have a package but it should not be an obligation to recharge within the package deal if the network does not fit with the needs and / or the price condition is better at a time with a eMSP*". A customer, replying to Q2, question 17.2, explained that "*We don't want to use only this network in the future. We encourage the choice of multiple suppliers that could be OEM, eMSP, Energy Suppliers*".

⁸¹ Replies to Q2 to Customers, questions 17 and 17.1. One respondent explained that it "*believes that access to multiple charging networks will maximise the opportunity of electromobility without increasing duty times or kilometers*".

- (76) Therefore, even assuming that the JV's investment will be sufficient to start the transition to electric heavy-duty trucks and coaches, the Commission considers that such transition is less likely to take place successfully, unless and until at least one CPO alternative to the JV enters the market, giving customers the possibility to multi-home. This need for alternative CPOs is well summarised in the reply of a customer: *"The access of alternative charging network is a key condition to develop our electric fleet"*. Another added: *"The more options the better. (...) this gives back some of the flexibility and makes the use of BEVs more attractive"*.⁸²
- (77) Based on the above considerations, the Commission considers that neither of the two prongs set forth in paragraph 60 of the Horizontal Merger Guidelines is satisfied. Therefore, the Commission concludes that the Transaction does not raise serious doubts as a consequence of horizontal, non-coordinated effects in relation to the restriction of potential competition.

5.1.3. Horizontal non-coordinated effects: unilateral standard setting by the JV

- (78) A minority of respondents to the market investigation has raised the concern that the JV, being the first CPO active on the market, might use its position to impose technical standards for charging battery electric trucks and coaches. They fear that the JV, as a first mover in the market for charging services, would have market power sufficient to impose technical standards to the rest of the market (including competitors and customers) unilaterally.
- (79) The Commission does not consider that such a risk for unilateral standard setting by the JV exists, for the following reasons.
- (80) First, as explained in detail in section 5.2.2.1 below, the Commission considers that the initial roll-out of a charging infrastructure by the JV is not sufficient to confer significant market power to it. Therefore, the JV would lack the commercial strength to implement a standard unilaterally. Secondly, the Commission considers that the roll-out of the JV's infrastructure is a necessary, but not sufficient condition, to raise customers' confidence and encourage them to transition to battery electric trucks and coaches. Indeed, the market investigation has confirmed that the other necessary condition is the possibility to multi-home. The adoption of a closed technology standard would run counter to such customers' demand. Third, such concern is not shared by other market participants. In this regard, one respondent indicated that *"proprietary charging might....scare off buyers"*. Another replied that such risk *"seems a bit theoretical"*. According to another statement the *"JV will strive for maximum utilisation"*. Another dismissed such a risk, arguing that *"industry standards are quite strong and it would be unpopular with customers"*.⁸³ Also, one of the customers indicated that *"I think there is a difference between the possibility or the purpose of doing so. What will be the advantage? Can also scare customers away. I think we should work towards interoperability of charging, the same as current fuel stations. All cars can refuel at Shell, Texaco, Esso, BP... competition is on service, sustainability, prices... not on the possibility to use a particular vehicle and a fuel provider. This will overcomplicate the eco system"*.⁸⁴

⁸² Replies to Q2 to Customers, question 17.1.

⁸³ Replies to Q1 to Competitors, question 24.1.

⁸⁴ Replies to Q2 to Customers, question 22.1.

- (81) Along the same lines, a respondent to the market investigation argued that the JV will represent [most] of the votes in the main trade association for truck manufacturers (ACEA), leaving little scope for dissenting opinions. This could translate into limited charger-truck interoperability for end customers of non-JV OEMs.⁸⁵
- (82) In this respect, the Commission notes that ACEA is not the only forum for discussing standards. The Parties, indeed, are active in multiple standard-setting bodies and organisations (e.g. CharIn, HoLa, Pilotlade, REEL 2, Nefton, etc)⁸⁶ where the Parties interact with multiple stakeholders and whose activities are instrumental to completing the transition to electric trucks and coaches. The Commission further observes that the AFIR⁸⁷ regulatory proposal foresees common technical specifications of charging infrastructure in order to ensure interoperability.⁸⁸ In this respect, the Commission considers that the possible voting leadership of the JV within ACEA, alone, is not sufficient to influence standard-setting processes for charging infrastructures. To the contrary, standard-setting will necessarily require the JV to interact with multiple partners in a number of projects and bodies.
- (83) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market, due to the possible unilateral imposition of technical standards by the JV.

5.1.4. Horizontal coordinated effects: spill-over effects of the JV

- (84) By pooling together the Parties' resources and industrial efforts, the JV could increase the possibility that the Parties engage in unlawful collusion. For example, the Parties could use information they obtain in their quality of shareholders of the JV, to coordinate their commercial policies in the markets for eMSP services and/or the market for battery electric trucks and coaches, where they remain independent competitors.
- (85) The Commission considers, based on the analysis of such factors, that the JV does not increase the risk of collusion between the parties, for the reasons explained below.
- (86) First, the Commission notes that the Parties will remain independent competitors in the OEM market, which is their core business. Also, the Transaction does not modify the structure of such market. The Parties maintain the same market shares and they continue to face competition by OEMs which are not part of the JV, such as Iveco and DAF. Second, once they enter the eMSP services market, the Parties will be independent competitors also on that market, where they are likely to face competition by oil and gas and energy companies. These competitors have a completely different business model and different competitive strategies, which will make it complex to achieve a common coordination strategy with them and to uphold a common coordination strategy between the Parties. Third, the characteristics of demand are not conducive to collusion. In fact, with respect to the market for battery electric trucks and coaches, customers operate multi-brand fleets. In the market for eMSP services,

⁸⁵ Replies to Q1 to Competitors, question 29.1.

⁸⁶ See Form CO, Annexes 6.3a, 6.3b and 6.3c.

⁸⁷ Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, COM/2021/559 final.

⁸⁸ Art. 19 (1) and (2), Annex II AFIR.

customers have shown the intention to multi-home and expect to be able to charge their vehicles with multiple providers.⁸⁹ In both markets, such features of demand would further complicate the achievement of a common commercial strategy by the Parties.

- (87) Based on the above considerations, therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market, due to an increased risk of collusion nor to any other merger-specific horizontal effect.

5.2. Vertical and conglomerate foreclosure effects

5.2.1. Legal framework

- (88) In this Section, the Commission will assess whether the Transaction would give rise to foreclosure in any of the markets that are vertically affected as well as those that are closely related (conglomerate effects).
- (89) A merger is said to result in vertical foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.⁹⁰ Two forms of vertical foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to result in foreclosure of upstream rivals by restricting their access to a sufficiently large customer base (customer foreclosure).
- (90) Input foreclosure may occur when post-Transaction, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' cost by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition.⁹¹
- (91) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete.⁹²

⁸⁹ Reply of a customer to Q2 to Customers, question 16.1: *"It could be interesting to have a package [note: truck and charging services] but it should not be an obligation to recharge within the package deal if the network does not fit with the needs and/or the price condition is better at a time with a eMSP"*. Reply of a customer to Q2 to Customer, question 17.1: *"The respondent believes that access to multiple charging networks will maximise the opportunity of electromobility without increasing duty times or kilometers"*.

⁹⁰ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 265 18.10.2008 (Non-Horizontal Merger Guidelines), paragraph 29.

⁹¹ Non-Horizontal Merger Guidelines, paragraph 31.

⁹² Non-Horizontal Merger Guidelines, paragraph 58.

- (92) In addition to vertical foreclosure effects, the Commission will also assess potential foreclosure effects arising from the merged entity's or Parties' ability post-Transaction, to leverage a strong market position from one market to another (neighbouring or closely related) market by means of tying or bundling or other exclusionary practices (conglomerate effects). While these practices often do not have anticompetitive effects, they may lead to a reduction in actual or potential rivals' ability or incentive to compete, which may reduce the competitive pressure on the merged entity allowing it to increase prices.⁹³
- (93) In assessing the likelihood of an anticompetitive input or customer foreclosure scenario as well as a conglomerate foreclosure scenario, the Commission examines the three following cumulative elements: first, whether the merged entity would have the ability to foreclose access to inputs, to downstream markets by reducing its purchases from its upstream rivals or to otherwise foreclose its rivals; second, whether it would have the incentive to do so; and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream, tied or bundled market intertwined.⁹⁴
- (94) As set out in Figure 1 above, the Transaction gives rise to a vertical link between the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (upstream) and the provision of eMSPs (downstream). The Transaction furthermore gives rise to conglomerate links between the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches/eMSP services on the one hand and the manufacturing and sale of battery electric trucks and coaches on the other hand.
- (95) Accordingly, in this specific case, the Commission considers that the possible input foreclosure (total or partial)⁹⁵ or tying and/or bundling strategies of the charging network infrastructure of the JV could be instrumental not only to improve the Parties' position in the vertically-related market for eMSP services (vertical effects), but also in the neighbouring market for battery electric trucks and coaches (conglomerate effects). Considering that such conglomerate effects would arise as a consequence of, or be applied in support of, such a vertical input foreclosure strategy, the Commission will assess potential vertical input foreclosure effects arising from the JV's activities as a CPO together with potential conglomerate foreclosure effects.
- (96) Similarly, in this case, the Commission considers that the possible customer foreclosure (total or partial) of alternative CPOs by the Parties, in order to improve the JV's position in the CPO market, may be applied together with conglomerate foreclosure strategies (namely, by bundling or tying the Parties' battery electric trucks and/or coaches with the CPO services of the JV; giving preference to the JV in their navigation systems; or pre-installing their own eMSP certificates in their vehicles). Consequently, the Commission will assess potential vertical customer foreclosure

⁹³ Non-Horizontal Merger Guidelines, paragraph 93.

⁹⁴ Non-Horizontal Merger Guidelines, paragraph 59.

⁹⁵ Total input foreclosure refers to a situation where the JV adopts such measures (e.g. degradation of technical interoperability) that prevent customers from accessing the JV's charging infrastructure, when using eMSP services or battery electric trucks provided by the Parties' competitors. Partial input foreclosure, on the other hand, refers to a situation where customers can access and use the JV's charging infrastructure, but will pay higher price or experience lower quality, when using eMSP services or battery electric trucks or coaches provided by the Parties' competitors.

effects arising in connection with the Transaction together with potential conglomerate foreclosure effects.

5.2.2. Market power in the vertically affected markets and in the markets giving rise to conglomerate links

- (97) The following subsections will assess whether the merged entity and/or the Parties are likely to have a significant degree of market power post-Transaction in any of the vertically affected markets and in the markets giving rise to conglomerate links.

5.2.2.1. Market power in the market for the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (CPO services)

- (98) As a prerequisite to have the ability to engage in a vertical input foreclosure strategy or to engage in foreclosure through conglomerate bundling or tying strategies, the merged entity must have a significant degree of market power in the upstream market or one of the bundling/tying markets, respectively.⁹⁶
- (99) Market shares provide a useful first indication of the market structure and the Parties' potential market power therein.⁹⁷ Whereas the Commission will normally rely on current market shares in its competitive analysis,⁹⁸ in the case at hand, the market for CPO services is not developed yet. Therefore, the Commission relies on data provided by the Parties with regard to their own plans and those of the industry as well as on data available through, academic studies, industry reports and the Commission's market investigation with potential CPO-competitors. On that basis, the Commission has attempted to approximate the likely development of the overall size of the CPO market for battery electric trucks and coaches, the JV's market share therein, as well as the presence and market shares of potential competitors to the JV post-Transaction.
- (100) According to the Parties, already by 2025, approximately 40 000 battery electric medium and heavy duty vehicles are expected to be in operation in Europe. By 2030 this figure is expected to increase to approximately 270 000. The Parties claim that charging these expected battery electric heavy duty truck and coach fleets in the EU and UK will require 10 000-15 000 public and destination charging points by 2025 and 40 000-50 000 charging points by 2030 in the EU and UK. About two thirds of these must be high-power (>500 kW) chargers.⁹⁹
- (101) These estimates of public charging needs are based on a 2021-position paper by the European Automobile Manufacturer's Association (ACEA). The estimates are not a prediction of the likely number of charging points that will be installed in the EU by 2025 and 2030, but rather they are the ACEA's estimates of the charging points needed to successfully transition to a battery electric fleet of medium and heavy duty vehicles of the above-mentioned size.¹⁰⁰ This assessment is mostly reinforced by a

⁹⁶ Non-Horizontal Merger Guidelines, paragraphs 35 and 99.

⁹⁷ Horizontal Merger Guidelines, paragraph 14.

⁹⁸ Horizontal Merger Guidelines, paragraph 15.

⁹⁹ Form CO, paragraphs 8-9, based on European Automobile Manufacturers' Association (ACEA), Position Paper (2021), Heavy-duty vehicles: Charging and refueling infrastructure requirements, page 2, see Annex 7.1a) to the Form CO.

¹⁰⁰ ACEA, Position Paper (2021), Heavy-duty vehicles: Charging and refueling infrastructure requirements, page 5, see Annex 7.1a) to the Form CO.

more detailed ACEA study of 2022, according to which there will likely be a need for 13 000 public charging points for battery electric heavy duty trucks and another 3 000 for battery electric coaches in the EU by 2025.¹⁰¹ According to the study, this number would have to rise to 45 000 public fast charging points for battery electric heavy-duty trucks and 4 000 for battery electric coaches in the EU by 2030.¹⁰² Of these 45 000 truck-charging points, the study suggests that 24 000 public fast charging points will have to be installed along the Trans-European Transport (TEN-T)¹⁰³ core network alone.¹⁰⁴ However, this assumption is based on a scenario where both currently available Combined Charging System (CCS) chargers, and the yet to be developed Megawatt Charging System (MCS) chargers would be installed. In a scenario where only charging points using MCS technology would be installed, the ACEA study of 2022 estimates that the number of required public fast charging stations would be much smaller, namely only 11 000 EEA-wide.¹⁰⁵

(102) The Parties also cite a 2020 study by Price Waterhouse Cooper (PWC) to confirm their overall market size assumptions. According to this study, a transport fleet fully reliant on battery electric trucks would require 1 400 high power charging stations Europe-wide (including the UK and Switzerland).¹⁰⁶ Although the Parties state that this would amount to 42 000 charging points, assuming that each station were to consist of 30 charging points each,¹⁰⁷ there is nothing in the PWC-study that supports that claim. In addition, even if battery electric vehicles are to play a significant part of the electrification of the EU transport sector, it is yet unclear what share of the vehicles will be battery electric (vis-à-vis other technologies, such as fuel cell vehicles).

(103) The Commission considers that it cannot exclude that the number of charging points needed in the EU by 2025 and 2030 could potentially be along the lines of the Parties' claims, with regards to the ACEA study. The market investigation however also revealed that the overall size of the market could be considerably smaller. According to a forecast by a potential CPO competitor, the overall number of public on the road charging points (excluding overnight charging) to be built for urban, regional and long-haul delivery vehicles is 3 681 by 2025 and 16 157 by 2030 (predominantly long-haul).¹⁰⁸ In addition, the Commission also added up the number of charging stations that the JV and its potential competitors intend to build in the EEA, based on

¹⁰¹ ACEA, Research Whitepaper (2022), European EV Charging Infrastructure Masterplan, pages 15 & 16, see Annex 7.1c) to the Form CO.

¹⁰² ACEA, Research Whitepaper (2022), European EV Charging Infrastructure Masterplan, pages 15 & 16, see Annex 7.1c) to the Form CO.

¹⁰³ The Trans-European Transport Network (TEN-T) policy addresses the implementation and development of a Europe-wide network of railway lines, roads, inland waterways, maritime shipping routes, ports, airports and railroad terminals. The ultimate objective is to close gaps, remove bottlenecks and technical barriers, as well as to strengthen social, economic and territorial cohesion in the EU. The current TEN-T policy is based on Regulation (EU) 1315/2013. The TEN-T core network includes the most important connections, linking the most important nodes, and is to be completed by 2030.

¹⁰⁴ ACEA, Research Whitepaper (2022), European EV Charging Infrastructure Masterplan, page 36, see Annex 7.1c) to the Form CO.

¹⁰⁵ ACEA, Research Whitepaper (2022), European EV Charging Infrastructure Masterplan, page 36, see Annex 7.1c) to the Form CO.

¹⁰⁶ PWC, Making zero-emission trucking a reality, Truck Study 2020: Routes to decarbonizing commercial vehicles, page 17, see Annex 7.1.b) to the Form CO.

¹⁰⁷ Form CO, footnote 121.

¹⁰⁸ Non-confidential reply by a respondent to RFI I to potential CPO competitors, question 1b).

the responses received in the market investigation. According to those calculations, the overall number of charging stations which will be built in the EEA may be considerably smaller than 15 000 by 2025 and 40 000-50 000 by 2030, respectively.¹⁰⁹

- (104) According to the Parties, the joint venture agreement foresees a minimum of 1.700 high-performance charging points to be built by the JV on or close to highways as well as at logistical points of interests and publicly accessible private destination points¹¹⁰ until 2027.¹¹¹ Of these, [...] are likely to be built within the EEA.¹¹² In addition the Parties have confirmed that depending on price developments for inputs, involvement of third parties, market development and availability of public funding, it cannot be excluded that the JV can build more than 1.700 charge points at some point in the future.¹¹³
- (105) According to the Parties, there are a number of companies that have announced that they are likely to enter the electric commercial vehicle charging segment. The Parties specifically name Chargepoint Holdings Inc., Fastned, Allego, BP, Shell, VINCI, Total Energies, GoFast, Leap24, Iberdrola and Iveco in combination with Enel X as potential or likely other investors in the CPO market for battery electric trucks or coaches.¹¹⁴ The market investigation revealed that there are indeed other companies which are likely to significantly invest in public charging networks for battery electric trucks and coaches in the EEA, by 2025 and 2030. The market investigation suggests that several of these competing networks may be of similar or even considerably larger size than that of the JV.¹¹⁵ Such development is further corroborated by the fact that the CPO market for electric passenger vehicles has seen a significant number of investors. Indeed, there are also a number of competitors alongside Ionity, which is active as a CPO created by passenger vehicle OEMs.¹¹⁶
- (106) Based on the above projections and expectations, the Parties have provided market share estimates by EEA-country for the time period from the start of the JV's activities up to 2030, according to which, in the market for the installation and operation of public charging solutions for battery electric heavy duty trucks and coaches, the JV would only exceed a market share of [20-30]% in Sweden and would never obtain a market share of [30-40]% or more in any EEA country in this time period. In fact, in addition to Sweden, the Parties expect the market shares of the JV to exceed [10-20]% at any point in this time period only in Denmark (max. [10-20]%), France (max. [10-20]%) and Portugal (max.[10-20]%).¹¹⁷ This would result in no vertically affected markets.

¹⁰⁹ Confidential responses by various respondents to RFI I to potential CPO competitors as well as Q1 to Competitors, questions 2 and 3.

¹¹⁰ These are charging points at private destination points, such as a logistical depot of a given company, but which can be used not only by that company, but also by the public, which renders it publicly accessible, alongside the rest of the charging points that can be built in other locations (highways or logistical points).

¹¹¹ Form CO, paragraph 164 and 198.

¹¹² Reply to RFI 1 to the Parties, paragraph 2. The remaining approximately [...] charging stations are currently intended to be built in [...].

¹¹³ Reply to RFI 1 to the Parties, paragraph 1.

¹¹⁴ Form CO, paragraph 400.

¹¹⁵ Confidential responses by various respondents to to RFI I to potential CPO competitors as well as Q1 to Competitors, questions 2 and 3.

¹¹⁶ Reply by a competitor to Q1 to Competitors, question 25.

¹¹⁷ Form CO, Annex 7.4-a).

- (107) Whereas the results of the market investigation (see above) suggest that the actual market share of the JV may be higher than these figures, they also confirm that it is unlikely that the JV would obtain a market share of 30% or higher on the CPO market for battery electric trucks and coaches in the EEA.¹¹⁸
- (108) According to an OEM-competitor of the Parties, despite these market shares, the JV could potentially still have market power in some locations. The competitor argues that, due to the localized nature of end-customers' charging needs, every charging station could potentially be considered to have a degree of market power on its own, which means that the JV may have the ability to engage in local or partial foreclosure.¹¹⁹ However, the market investigation revealed that alternative investors include companies which are willing to invest throughout the EEA and therefore there is insufficient evidence to conclude that there will be lack of competition locally.¹²⁰
- (109) Therefore, the expected market share of the JV does not indicate that the JV is likely to have a significant degree of market power in the markets for the installation and operation of public charging solutions for battery electric heavy duty trucks and coaches in the EEA.¹²¹
- (110) In addition, while the market investigation suggests that the JV may continue to invest in the creation of its public charging network beyond the initial 1 700 charging points (see above), the Parties' rationale for creating the JV seems to suggest otherwise. According to the Parties, the JV is intended to be a kick-start to the public heavy duty truck and coach charging infrastructure in the EEA, which will prompt other investors to follow.¹²² Therefore, this rationale tends to suggest that should this purpose have been achieved and a sufficient charging infrastructure be in place in the EEA, the Parties may also decide to focus on their core-businesses as OEMs and may not continue to invest into the construction of further charging points via the JV.
- (111) Furthermore as regards the JV's market power, whereas according to the market investigation, the JV is likely to enjoy a considerable competitive advantage due to the fact that it will be one of the first investors in the CPO market for battery electric trucks and coaches (first-mover advantage), the investigation pointed out that this also comes with disadvantages.
- (112) Indeed, on the one hand, market investigation respondents explain that the JV will have a significant competitive advantage as first mover because there is likely to be a limited supply of real estate/land available along the most desirable or strategic locations for public fast charging infrastructure, in particular along the TEN-T corridor.¹²³ In addition, the build-up of public fast charging infrastructure for heavy duty trucks and coaches, in particular the installation of the yet to be developed MCS standard, is likely to require a significant build-out of the energy-grid capacity at the

¹¹⁸ Due to the nascent stage of the CPO market, the market investigation was not able to generate market share results broken down by EEA-country or smaller geographic market.

¹¹⁹ Letter by a competitor of 15 February 2022, paragraph 1.1.3.

¹²⁰ Confidential responses by various respondents to to RFI I to potential CPO competitors as well as Q1 to Competitors, questions 2 and 3.

¹²¹ Horizontal Merger Guidelines, paragraph 17.

¹²² Form CO, paragraph 114.

¹²³ Replies to Q1 to Competitors, questions 18.3 19 and 52; Replies to Q2 to Customers, question 18; Letter by a competitor of 15 February 2022, paragraph 1.1.5.

specific site of a charging station.¹²⁴ First-movers are also likely to have an advantage vis-à-vis competitors in this regard, as they will likely encounter significantly shorter waiting times for the build-out of the necessary grid-capacity for their charging stations.¹²⁵ In addition, respondents to the market investigation suggested that the JV may benefit from increased brand awareness, a larger choice of potential business partners, increased purchasing power with regard to electricity and a disproportionate influence on standardization discussions in the industry, due to its frontrunner status in the CPO market for battery electric trucks and coaches.¹²⁶

(113) However, on the other hand, it appears from the market investigation that being an early investor is also likely to carry downsides for the JV, such as an inability to benefit from economies of scale in the production and installation of charging equipment early on, and the inability to learn from competitor's mistakes.¹²⁷ Furthermore, some potential competitors of the JV are likely to have the ability to overcome the above-mentioned additional barriers to entry created by the JV's early mover advantage. In particular, oil and gas companies as well as companies operating highway concessions are likely to have privileged access to land along highways and attractive locations. Furthermore, energy companies are likely to have potentially privileged access to the energy grid and superior know-how compared to the JV. Respondents to the market investigation confirmed that such players may have more experience in the CPO market than the JV as well.¹²⁸ Lastly, the award of concessions along highways is likely going to fall under EU rules which will mean that access will be granted pursuant to competitive criteria,¹²⁹ thereby further limiting a potential early-mover advantage of the JV with regard to land-access.

(114) Moreover, and as set out in paragraph (75) above, the emergence of alternative providers of CPO services is also likely in light of the demand-side features of the market and the need to have alternative CPOs to sustain the transition to battery electric heavy-duty trucks and coaches.

(115) On balance, neither the results of the market investigation nor other evidence support a conclusion that the JV is likely to enjoy significant market power in the future in the market for the installation and operation of charge points for battery electric trucks and coaches in the EEA.

5.2.2.2. Market power in the markets for the manufacturing and supply of battery electric heavy-duty trucks and coaches as well as electric mobility services

(116) As a prerequisite to have the ability to engage in a customer foreclosure strategy or to engage in conglomerate bundling or tying strategies, the merged entity must have a significant degree of market power in the downstream market or one of the bundling/tying markets, respectively.¹³⁰

¹²⁴ Replies to Q1 to Competitors, questions 9, 13, 18, 18.3, 18.4

¹²⁵ Replies to Q1 to Competitors, questions 18.3, 18.4, 19; Letter by a competitor of 15 February 2022, paragraph 1.1.5.

¹²⁶ Reply by a competitor to Q1 to Competitors, question 19; Letter by a competitor of 15 February 2022, paragraph 1.1.5.

¹²⁷ Confidential reply by a competitor to Q1 to Competitors, question 19.

¹²⁸ Reply by a competitor to Q1 to Competitors, question 52.

¹²⁹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

¹³⁰ Non-Horizontal Merger Guidelines, paragraphs 61 and 99.

5.2.2.2.1. Manufacturing and sale of battery electric trucks

- (117) The markets for the manufacturing of battery electric trucks in the EEA are still under development. All three Parties have concrete plans to enter these markets and are currently all developing battery electric trucks individually. There are however currently no actual sales, turnover or market share figures available for any of these markets.
- (118) The Notifying Parties have therefore provided estimates on a possible future development of the segment of battery electric heavy duty trucks. The market shares estimates provided by the Notifying Parties assume that the aggregate share of the Parties' will be equivalent to their 2020 share in the diesel heavy-duty truck segment in a given country. The estimates further assume that all major OEMs will introduce battery electric heavy duty trucks and that there will be market entrants to the truck market, as well. In particular, the Notifying Parties name Nikola, Tesla, Volta, BYD, and DAF as potential entrants. To account for new entrants, the share estimate assumes [...]. According to the Notifying Parties however, these estimates concern a degree of uncertainty, as the future market development will very much depend on a variety of uncertain factors, such as the availability of public funding, charging infrastructure development, battery technology development, electricity/diesel prices, and other factors.¹³¹

Country	TRATON (market shares by volume in %)	VOLVO (market shares by volume in %)	Mercedes Truck (market shares by volume in %)	Aggregate shares (by volume in %)
Belgium	[30-40]	[20-30]	[10-20]	[70-80]
Bulgaria	[20-30]	[30-40]	[5-10]	[60-70]
Denmark	[40-50]	[20-30]	[20-30]	[90-100]
Germany	[30-40]	[10-20]	[30-40]	[80-90]
Estonia	[40-50]	[30-40]	[10-20]	[80-90]
Finland	[40-50]	[30-40]	[10-20]	[90-100]
France	[20-30]	[40-50]	[10-20]	[70-80]
Greece	[20-30]	[5-10]	[30-40]	[70-80]
Ireland	[30-40]	[30-40]	[5-10]	[70-80]
Italy	[20-30]	[10-20]	[10-20]	[50-60]
Croatia	[40-50]	[20-30]	[10-20]	[80-90]
Latvia	[40-50]	[50-60]	[0-5]	[90-100]
Lithuania	[10-20]	[30-40]	[10-20]	[60-070]
Luxembourg	[20-30]	[20-30]	[20-30]	[70-80]
Malta	[N/A]	[N/A]	[N/A]	[N/A]
Netherlands	[20-30]	[20-30]	[10-20]	[60-70]
Austria	[50-60]	[10-20]	[10-20]	[80-90]
Poland	[30-40]	[20-30]	[10-20]	[70-80]
Portugal	[20-30]	[30-40]	[10-20]	[70-80]

¹³¹

Form CO, paragraph 288.

Romania	[20-30]	[20-30]	[20-30]	[60-70]
Sweden	[40-50]	[40-50]	[5-10]	[90-100]
Slovakia	[20-30]	[20-30]	[20-30]	[70-80]
Slovenia	[40-50]	[20-30]	[10-20]	[80-90]
Spain	[20-30]	[20-30]	[10-20]	[70-80]
Czechia	[30-40]	[10-20]	[20-30]	[70-80]
Hungary	[20-30]	[20-30]	[10-20]	[60-70]
Cyprus	[30-40]	[5-10]	[30-40]	[70-80]
EU TOTAL	[30-40]	[20-30]	[10-20]	[70-80]

Country	TRATON (market shares by volume in %)	VOLVO (market shares by volume in %)	Mercedes Truck (market shares by volume in %)	Aggregate shares (by volume in %)
Iceland	[50-60]	[10-20]	[20-30]	[90-100]
Norway	[50-60]	[30-40]	[10-20]	[90-100]
Switzerland	[30-40]	[20-30]	[20-30]	[80-90]
EEA + Switzerland TOTAL	[30-40]	[20-30]	[10-20]	[70-80]

Source: Annex 9.1a to the Form CO

(119) Based on these estimates, the Parties would have a combined market share above [50-60]% in every EEA country (where data is available). This would by itself indicate the existence of a dominant market position by the Parties.¹³²

(120) The market investigation confirmed that a market participant's competitive strength in diesel trucks will likely carry over into the market for the manufacturing and sale of battery electric trucks, or at least be a strong indicator for their market position in the electric truck market.¹³³ Furthermore, competitors responding to the market investigation indicated that they expect the three Parties respectively to be the three strongest players in the market for the manufacturing and sale of battery electric trucks in the EEA, ahead of their main current diesel competitors, Iveco and DAF.¹³⁴ In addition, all competitors having expressed a view, considered the barriers to entry in the markets for manufacturing and sale of battery electric trucks in the EEA to be either high or very high, in particular due to the need for significant investments to enter, the existence of significant regulatory barriers and the high customer expectations in terms of service network and ancillary services.¹³⁵ Accordingly, competitors ranked the expected competitive strength of potential new entrants to the market such as Nikola, Tesla and Hyundai considerably lower than that of the Parties,

¹³² Horizontal Merger Guidelines, paragraph 17.

¹³³ Replies to Q1 to Competitors, question 34. Letter by a competitor of 15 February 2022, paragraph 1.1.2.

¹³⁴ Replies to Q1 to Competitors, question 34.

¹³⁵ Replies to Q1 to Competitors, question 35.

DAF and Iveco.¹³⁶ Furthermore, an OEM-competitor explicitly stated that it expects the Parties to have market power in the EEA markets.¹³⁷

(121) However, while it is likely that the Parties will become the three largest and most competitive players in the EEA markets for the manufacturing and sale of battery electric trucks respectively, when assessing potential market power for the purpose of vertical or conglomerate foreclosure strategies, it is important to note that the Parties will remain entirely separate entities. This will have to be taken into account both with regard to their ability and incentive to engage in any foreclosure strategies.

(122) In sum, the Commission concludes that the Parties combined would likely have a significant degree of market power in the market for the manufacturing and sale of battery electric trucks in every EEA country in the future, but that the competitive assessment needs to take into account that the Parties are not combining their activities in battery electric trucks in the EEA. As regards individual market power, the Commission concludes that Traton and possibly also (albeit to a lesser extent) Volvo and Daimler Truck are likely to hold market power in battery electric trucks in some of the EEA countries in the future. That said, each of them will continue to face competition from established OEMs, namely the other Parties as well as DAF and Iveco, as well as from potential entrants, among them Tesla.

5.2.2.2.2. Manufacturing and sale of battery electric coaches

(123) The markets for the manufacturing of battery electric coaches in the EEA are still under development.¹³⁸ According to estimates provided by the Parties, the battery electric coach market will commence [...]. None of the Parties have yet publicly announced any plans to launch new products in the electric coach segment. [...]. The Parties furthermore claim that all major OEMs will introduce battery electric coaches and that it is very likely that there will be further market entrants in Europe, including by competitors in this segment which currently have no or very limited presence in the European market, such as Yutong, BYD, Ebusco and King Long.

(124) Based on these assumptions and the Parties individual estimate of its own future sales in the EEA, the Parties have submitted the following market share estimates for their own companies:

Country	TRATON (market shares by volume in %)	VOLVO (market shares by volume in %)	Mercedes Benz Truck (market shares by volume in %)	Aggregate shares (by volume in %)
Belgium	[10-20]	[0-5]	[40-50]	[60-70]
Bulgaria *	-	-	-	-
Denmark	[30-40]	[0-5]	[40-50]	[80-90]
Germany	[30-40]	[0-5]	[50-60]	[80-90]
Estonia	[30-40]	-	[0-5]	[30-40]

¹³⁶ Replies to Q1 to Competitors, question 34.

¹³⁷ Letter by a competitor of 15 February 2022, paragraph 1.1.1

¹³⁸ Form CO, paragraphs 290-292.

Country	TRATON (market shares by volume in %)	VOLVO (market shares by volume in %)	Mercedes Benz Truck (market shares by volume in %)	Aggregate shares (by volume in %)
Finland	[5-10]	[60-70]	[10-20]	[80-90]
France	[10-20]	[0-5]	[20-30]	[40-50]
Greece	[40-50]	-	[30-40]	[70-80]
Ireland	[0-5]	[20-30]	[10-20]	[30-40]
Italy	[5-10]	[0-5]	[10-20]	[20-30]
Croatia	[10-20]	-	[10-20]	[20-30]
Latvia	[0-5]	-	[90-100]	[90-100]
Lithuania	[0-5]	-	[50-60]	[60-70]
Luxembourg	[0-5]	-	[60-70]	[70-80]
Malta*	-	-	-	-
Netherlands	[5-10]	[0-5]	[30-40]	[40-50]
Austria	[0-5]	[0-5]	[30-40]	[40-50]
Poland	[10-20]	[0-5]	[30-40]	[50-60]
Portugal	[30-40]	[10-20]	[40-50]	[90-100]
Romania	[20-30]	-	[30-40]	[50-60]
Sweden	[20-30]	[40-50]	[20-30]	[90-100]
Slovakia	-	-	[10-20]	[10-20]
Slovenia	[10-20]	-	[70-80]	[80-90]
Spain	[30-40]	[10-20]	[20-30]	[70-80]
Czech Republic	[10-20]	-	[10-20]	[30-40]
Hungary	[10-20]	[10-20]	[5-10]	[30-40]
Cyprus*	-	-	-	-
EU TOTAL	[10-20]	[5-10]	[30-40]	[50-60]
Iceland*	-	-	-	-
Norway	[10-20]	[70-80]	[10-20]	[90-100]
Switzerland	[5-10]	[10-20]	[20-30]	[40-50]
EEA+Switzerland	[10-20]	[5-10]	[30-40]	[50-60]

Source: Annex 9.1a to the Form CO

* No data available

(125) Based on these estimates, the Parties would have a combined market share above [50-60]% in Belgium, Denmark, Germany, Finland, Greece, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Sweden, Slovenia, and Spain, as well as Norway. This would by itself indicate the existence of a dominant market position by the Parties.¹³⁹ Furthermore, the Parties would have a combined market share above [40-50]% in France, the Netherlands and Austria. Market shares at this level may still indicate a dominant position,¹⁴⁰ or at least be an indicator of significant market power. With the exception of Italy, these countries cover all of the “core-countries” in the

¹³⁹ Horizontal Merger Guidelines, paragraph 17.

¹⁴⁰ Horizontal Merger Guidelines, paragraph 17.

EEA where the JV plans to focus its initial roll-out of its charging network.¹⁴¹ The market investigation confirmed that a market participant's competitive strength in diesel coaches will likely carry over into the market for the manufacturing and sale of battery electric coaches, or at least be a strong indicator of their market position in the electric coach market.¹⁴² Moreover, competitors responding to the market investigation indicated that they expect the three Parties respectively to be the three strongest players in the markets manufacturing and sale of battery electric coaches in the EEA, ahead of their main current diesel competitors Iveco and DAF.¹⁴³ In addition, all competitors having expressed a view considered the barriers to entry in the markets for the manufacturing and sale of battery electric coaches in the EEA to be either high or very high, in particular due to the need for significant investments to enter, the existence of significant regulatory barriers and the high customer expectations in terms of service network and ancillary services.¹⁴⁴ Accordingly, competitors ranked the expected competitive strength of potential new entrants to the market considerably lower than that of the Parties, DAF and Iveco.¹⁴⁵

(126) However, while it is likely that the Parties will become the three largest and most competitive players in the EEA markets for the manufacturing and sale of battery electric coaches respectively, when assessing potential market power for the purpose of vertical or conglomerate foreclosure strategies, it is important to note that the Parties will remain entirely separate entities. This will have to be taken into account both with regard to their ability and their incentive to engage in any foreclosure strategies.

(127) In sum, the Commission concludes that the Parties combined would likely have a significant degree of market power in the market for the manufacturing and sale of battery electric coaches in every EEA country in the future, but that the competitive assessment needs to take into account that the Parties are not combining their activities in battery electric coaches in the EEA. As regards individual market power, the Commission concludes that each of the Parties is likely to hold market power in battery electric coaches in some of the EEA countries in the future. That said, each of them will continue to face competition from established OEMs, namely the other Parties as well as DAF and Iveco, as well as from potential entrants.

5.2.2.3. Market power in the market for electric Mobility Services for battery electric trucks and coaches

(128) The market for electric mobility services for battery electric trucks and coaches is yet to develop. The Parties have stated that they will become active on this market as eMSPs.¹⁴⁶ According to the Parties, [...].¹⁴⁷ At this stage, it appears to be too early to predict any concrete development of the eMSP market for battery electric trucks and coaches, let alone the presence of certain market players or their relative competitive strength therein. The market investigation indicated that some competitors are of the

¹⁴¹ See paragraph (7).

¹⁴² Replies to Q1 to Competitors, question 34. Letter by a competitor of 15 February 2022, paragraph 1.1.2.

¹⁴³ Replies to Q1 to Competitors, question 34.

¹⁴⁴ Replies to Q1 to Competitors, question 35.

¹⁴⁵ Replies to Q1 to Competitors, question 34.

¹⁴⁶ Form CO, paragraph 23.

¹⁴⁷ Form CO, paragraph 24.

view that end-customers will purchase public charging services for battery electric trucks or coaches via the use of eMSPs. However, the same number of respondents indicated that they expect that charging services will be included in a package-deal with the OEM upon purchase of the truck or coach.¹⁴⁸ Nevertheless, the Commission expects that the Parties are likely to be considerable players in this market. This said, while their position as the first point of contact for an electric vehicle customer will likely enable them to translate at least a part of their high market shares in the battery electric vehicle markets into a significant market position in the market for electric mobility services for battery electric trucks and coaches.

- (129) The Commission is nevertheless unable to conclude that the Parties will have a significant degree of market power in the market for electric mobility services for battery electric trucks and coaches, for the following reasons. First off, market entry barriers are likely to be low. The market is an asset-light activity, which primarily requires software and contracts with CPOs and end-customers.¹⁴⁹ In addition, the market structure in the eMSP market for electric passenger vehicles suggests that the market is likely going to be rather fragmented. For example, there are currently over 1.000 eMSPs active in Germany alone, which come from different backgrounds such as such as OEMs, IT companies, CPOs, electric energy and mineral oil companies and fleet management companies.¹⁵⁰ Moreover, customers are likely to multi-source, with the average passenger car user in Germany actively using three eMSPs.¹⁵¹ In addition, an OEM's position in the passenger vehicle market does not automatically translate into an equally strong market position in the eMSP market. For example, [...] of the VW brand electric vehicles are used together with the VW branded eMSP subscription. Of these, [...] % are active users, charging at least once per month by using the VW branded eMSP service. Therefore in sum, only slightly above [...] % of VW electric vehicle customers are active users of their eMSP services.¹⁵²

5.2.3. Installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (upstream) and manufacturing and sale of battery electric trucks (and coaches) and provision of electric mobility services (eMSPs). Total foreclosure.

- (130) The Transaction gives rise to a vertical link between the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (upstream) and the provision of eMSPs (downstream). The Transaction furthermore gives rise to conglomerate links between the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches and the manufacturing and sale of battery electric trucks and coaches.

5.2.3.1. The Parties' Views

- (131) With regard to the risk that the JV will foreclose other OEM brands than the Parties', or non-Party eMSPs, by refusing access to its charging points, the Parties submit that

¹⁴⁸ Replies to to Competitors, question 33.

¹⁴⁹ Form CO, paragraph 280.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid*, based on publicly available data, available under <https://uscale.digital/en/electromobility-study-on-charging-services/>

¹⁵² *Ibid.*

the JV will have neither the ability nor the incentive to engage in an input foreclosure strategy and that the JV will be open and impartial to all customers.¹⁵³

5.2.3.2. The Commission's assessment

5.2.3.2.1. Ability to foreclose

(132) The market investigation revealed a set of practices by which the JV could foreclose the Parties' OEM- or eMSP rivals or tie its charging services to the services or goods of the Parties. Specifically, market participants indicated that a total foreclosure strategy by the JV could primarily take two forms. First, the Parties and the JV could implement limitations to the technical interoperability of the JV-charging points with the Parties' OEM- or eMSP rivals. These could take the form of a proprietary charging plug, the use of a particular charging protocol, a limitation of software interoperability, as well as physical or digital barriers at the charging station site.¹⁵⁴ Second, the JV could commercially refuse to give access to the Parties' OEM- or eMSP rivals to its charging points, for example by limiting roaming agreements or refusing to contract with certain eMSPs.¹⁵⁵

(133) However, as a prerequisite to having the ability to engage in a vertical input foreclosure strategy or to engage in foreclosure through conglomerate bundling or tying strategies, the merged entity must have a significant degree of market power in the upstream market or one of the bundling/tying markets, respectively.¹⁵⁶ As set out in section 5.2.2.1, the Commission concludes that the JV is not likely to have a significant degree of market power in the market for the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches.

(134) In addition, it would likely be difficult to employ total foreclosure strategies, in particular with larger customers, as many of them have multi-brand fleets, which will include non-Party-vehicles. The market investigation suggests that customers would not be willing to accept a differentiation within their own fleet's access to the JV's charging points.¹⁵⁷

(135) For these reasons, the Commission concludes that the JV is unlikely to have the ability to entirely foreclose input or access to its charging points to other OEM brands than the Parties', or non-Party eMSPs by refusing access to its charging points.

5.2.3.2.2. Incentive to foreclose

(136) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream activities, but also those of its downstream activities. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of

¹⁵³ Form CO, paragraphs 67 and 68.

¹⁵⁴ Replies to Q1 to Competitors, question 24.

¹⁵⁵ Replies to Q1 to Competitors, question 24.

¹⁵⁶ Non-Horizontal Merger Guidelines, paragraphs 35 and 99.

¹⁵⁷ See the reply of a customer to Q2 to Customers, question 3.1: *"Preferred access to particular station networks are rated rather low [as a criterion to choose battery electric trucks], since the Group in general operates mixed fleets and requires solutions to apply brand independent. Fleet solutions that are OEM specific add complexity to the fleet management within the Group"*.

input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.¹⁵⁸ Similarly, in the case of conglomerate foreclosure, the incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable. The merged entity faces a trade-off between the possible costs associated with bundling or tying its products and the possible gains from expanding the market shares in the market(s) concerned or, as the case may be, being able to raise price in those market(s) due to its market power.¹⁵⁹

- (137) Even if the Parties were to be considered as having the ability to engage in total input foreclosure, they would likely not have the incentive to do so because such a foreclosure strategy would be unlikely to be profitable, when considering the reasons set out below and weighing these against each other.
- (138) When looking at the profitability of a foreclosure strategy, one must compare the sum of total profits made in all involved markets in case of an implementation of the foreclosure strategy and absent its implementation. In its most optimistic target utilization scenario ([...]), the Parties foresee that up to 2035, the JV would at most generate an annual net income of EUR [...],¹⁶⁰ which would then have to be divided up equally amongst the shareholders. An input foreclosure strategy/tying products to the JV's services would risk diminishing these JV-profits, as less users would (be able to) use the JV's charging services.
- (139) However, such strategies would be targeted at increasing the Parties' profits generated in the markets for the manufacturing and sale of battery electric trucks and coaches and the provision of electric mobility services. The net gain generated by the Parties with regard to the former market, has to take into account both the expected income generated by sales of vehicles, as well as potential fines that the Parties would incur, if they would miss the CO2 emissions targets set by EU Regulation 2019/1242 setting the CO2 emission performance standards for new heavy duty vehicles.¹⁶¹ According to the Parties, the potential fines which the Parties would face annually, due to a potentially insufficient sale of battery electric trucks and coaches, would already "*far exceed the planned JV investment per Party if the Parties significantly miss the targets set out by the EU*".¹⁶² The annual fines would therefore far exceed EUR 500 million annually, and therefore [...].¹⁶³ In addition, [...].¹⁶⁴ Therefore, an increase in these would further add to the expected gains associated with a foreclosure strategy. It would therefore appear that increasing sales in the market for the manufacturing and sale of battery electric trucks and coaches would therefore be considerably more profitable than the potential losses associated with decreased sales in the CPO market for battery electric trucks and coaches.
- (140) This would prima facie suggest that the Parties and the JV would have the incentive to engage in a total foreclosure strategy vis-à-vis rival OEMs and eMSPs. However, the

¹⁵⁸ Non-Horizontal Merger Guidelines, paragraph 40.

¹⁵⁹ Non-Horizontal Merger Guidelines, paragraph 105.

¹⁶⁰ Reply of the Parties to RFI 1, question 8 a) and Annex 3.2-a. to RFI 1.

¹⁶¹ Regulation (EU) 2019/1242 setting CO2 emission performance standards for heavy-duty vehicles of 20 June 2019, Article 8.

¹⁶² Reply of the Parties to RFI 1, question 8 b), paragraph 15.

¹⁶³ Form CO, paragraph 104.

¹⁶⁴ Reply of the Parties to RFI 1, question 8 c), paragraphs 19-21.

market investigation suggests that for the following reasons, the JV would likely not have the incentive to engage in the above-mentioned total foreclosure strategies.

- (141) First and foremost, the market investigation suggests that a total foreclosure strategy by which rival OEMs or eMSPs would be denied access to the JV's charging services would likely significantly affect customer confidence in the reliability of the public charging infrastructure as a whole, and thereby reduce the willingness of customers to switch to battery electric trucks and coaches at all. Such a development would likely negatively affect the overall development of the market for the manufacturing and sale of battery electric trucks and coaches as such, and thereby negatively affect all market participants, rather than any particular OEM or eMSP. In fact, customers have emphasised the need to have a fully accessible and interoperable network, as a prerequisite for them to plan the transition to battery electric vehicles. For example, one customer explained that limiting interoperability of the JV charging points with truck manufactured by competing OEMs *"can also scare customers away. I think we should work towards interoperability of charging, the same as current fuel stations. All cars can refuel at Shell, Texaco, Esso, BP... competition is on service, sustainability, prices... not on the possibility to use a particular vehicle and a fuel provider. This will overcomplicate the eco system"*.¹⁶⁵ And another customer noted in its reply that a foreclosure strategy *"is a no go if the transition [from fuel to electric vehicles] should go fast"*.¹⁶⁶ The loss of customer-confidence in the charging market, in turn would lead to a decrease in the sale of battery electric vehicles for the Parties, thereby significantly raising the potential fines incurred by the Parties due to missing EU emissions targets and decreasing the profitability of such a foreclosure strategy. In addition, this would run counter the declared purpose of the creation of the JV, which is to facilitate the mainstream transition to battery electric trucks and coaches.¹⁶⁷
- (142) In addition, the Parties state that the JV *"will seek public funding to maximize the resources that can be used to build (high power) charge points for heavy vehicles"*.¹⁶⁸ According to the Parties, *"funding conditions for charging infrastructure typically foresee the requirements of accessibility, interoperability and non-discrimination"*.¹⁶⁹ The Parties concretely name their interest in EU funds made available under the Connecting Europe Facility (CEF) – CEF 2 Transport - Alternative Fuels Infrastructure Facility (CEF-T-2021-AFIFGEN) on the basis of Regulation (EU) 2021/1153, which foresee, inter alia, public accessibility of charging points without preferential access to any user-category as well as reasonable, easily and clearly comparable, transparent and non-discriminatory prices for all funded charging points.¹⁷⁰ The Parties further suggest that a large number of applicable national schemes will at least require public access to the funded charging points.¹⁷¹ According to the Parties, in their jointly developed business case, the Parties factored in (as a placeholder) a lump sum per charge point of EUR [...] in order to account for potential subsidies.¹⁷² Given the expected overall costs of EUR [...] per CCS charging

¹⁶⁵ Reply of a customer to question 22.1 of Q2 to Customers.

¹⁶⁶ Reply of a customer to question 22.1 of Q2 to Customers.

¹⁶⁷ Form CO, paragraphs 95, 114.

¹⁶⁸ Form CO, paragraph 107.

¹⁶⁹ Form CO, paragraph 107.

¹⁷⁰ Conditions under CEF2 Transport, for Regulation (EU) 2021/1153, page 12

¹⁷¹ Form CO, paragraph 109.

¹⁷² Reply of the Parties to pre-Notification QP3, paragraph 87, reply to question 51.

point and of [...] per MCS charging point,¹⁷³ the Parties confirmed that they expect at least [...] % of the costs for charging points to be covered by public contributions.¹⁷⁴ Given the significant share that public funding would make up of the Parties' current planning, as far as a total foreclosure strategy would limit access to public funding, this would further limit the strategy's profitability, and thereby the Parties' incentive to engage in such a strategy.

- (143) Furthermore, in its assessment on the merged entity's incentive to engage in a particular foreclosure strategy, the Commission also considers that the possibility that a certain conduct is unlawful may provide disincentives to the merged entity.¹⁷⁵ In the case at hand, existing EU legislation¹⁷⁶ regulates the way in which CPOs can operate publicly accessible charging stations, imposing certain non-discrimination obligations on CPOs, notably in terms of pricing. There are also current plans to update these rules with a view to impose more stringent requirements on CPOs in terms of non-discriminatory treatment of both end customers and eMSPs.¹⁷⁷ In addition, should the JV at some point in fact obtain a significant degree of market power, competition rules (including EU antitrust rules) may also provide a disincentive to engage in the aforementioned foreclosure strategies.¹⁷⁸
- (144) This conclusion was confirmed by competitors in the market investigation. The majority of respondents stated that the JV would not have the incentive to limit technical interoperability of its charge points with battery electric (heavy duty) trucks or coaches not produced by one of the Parties.¹⁷⁹ Similarly, the majority of respondents stated that it does not believe that the JV would have the ability and incentive to refuse to offer charging services to end-customers using battery electric (heavy duty) trucks or coaches not produced by one of the Parties.¹⁸⁰
- (145) In addition, internal documents related to the Transaction did not reveal any concrete plans by the Parties to foreclose the JV's infrastructures to rival OEMs or e-MSPS.

5.2.3.2.3. Overall effect of total (input) foreclosure or tying strategies

- (146) In general, a merger will raise competition concerns because of input foreclosure strategies when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.¹⁸¹ A merger will raise competition concerns because of tying or bundling strategies, if these strategies result in a significant reduction of sales prospects faced by single-component rivals in the market, and in turn, this would lead to a reduction in rivals' ability or incentive to compete, allowing the merged entity to acquire/maintain market power and raise

¹⁷³ Form CO, paragraph 411.

¹⁷⁴ Reply of the Parties to pre-Notification QP5, paragraph 24, reply to question 12 b).

¹⁷⁵ Non-Horizontal Merger Guidelines, paragraph 46.

¹⁷⁶ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure.

¹⁷⁷ Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU of the European Parliament and of the Council.

¹⁷⁸ Non-Horizontal Merger Guidelines, paragraph 46.

¹⁷⁹ Replies to question 24 of Q1 to Competitors.

¹⁸⁰ Replies to question 25 of Q1 to Competitors.

¹⁸¹ Non-Horizontal Merger Guidelines, paragraph 47.

prices or decrease output for the tied or bundled good.¹⁸² If there remain sufficient credible downstream or respectively single-product competitors in the market, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels.¹⁸³

- (147) First, the market investigation suggests that in addition to the limited effect of a total foreclosure strategy on the electric trucks/coaches as well as eMSP markets due to the likely lack of market power of the JV in the CPO market.
- (148) Moreover, the most significant effect, if any, of such a foreclosure effect would be a delay in the overall transition to battery electric trucks and coaches,¹⁸⁴ which would likely affect also the Parties, in the same negative way as their competitors.
- (149) Furthermore, the majority of competitors having responded to the market investigation do not consider it likely that the control by the Parties over the JV as a charge point operator will negatively affect the ability and incentives of other OEMs to enter or expand in the market for manufacturing and sale of battery electric heavy-duty trucks and coaches.¹⁸⁵
- (150) Lastly, the effect of any input foreclosure or tying strategy by the JV on the Parties' OEM- or eMSP rivals is likely going to be limited by the degree to which operators of heavy-duty battery electric trucks will require access to public charging solutions at all. In this regard, the market investigation has revealed that especially in the ramp-up phase for battery electric trucks (where the JV's first mover advantage would likely be the strongest), customers may still avoid a reliance on public charging infrastructure, and rather rely on private/depot-charging.¹⁸⁶
- (151) In sum, a total input foreclosure or tying strategy by the JV would be unlikely to have an overall negative impact on effective competition in the markets for the manufacturing and sale of battery electric trucks or electric mobility services.

5.2.3.2.4. Conclusion

- (152) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to total (input) foreclosure concerns to the detriment of OEM and eMSP competitors.

¹⁸² Non-Horizontal Merger Guidelines, paragraph 111.

¹⁸³ Non-Horizontal Merger Guidelines, paragraphs 50 and 113.

¹⁸⁴ See paragraph (141).

¹⁸⁵ Replies to question 23 of Q1 to Competitors.

¹⁸⁶ Reply of a customer to Q2 to Customers, question 6.1: *"For our fleet we usually have frame agreements in place which determine at which stations drivers are permitted to charge"*. Reply of a customer to Q2 to Customers, question 14.2: *"Short-haul more likely to be charged on site during the night (lower power). Medium and long-haul will be charged mixed (depot and public charging -> with higher power > 1MW)"*.

5.2.4. Installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches (upstream) and manufacturing and sale of battery electric trucks (and coaches) and provision of electric mobility services (eMSPs). Partial foreclosure.

(153) As stated in Section 5.2.3, the Transaction gives rise to vertical and conglomerate links between the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches on the one side and the manufacturing and sale of battery electric trucks and coaches and/or the provision of electric mobility services on the other.

5.2.4.1. The Parties' Views

(154) With regard to the risk that the JV will foreclose other OEM brands than the Parties', or non-Party eMSPs by engaging in partial input foreclosure or bundling strategies, the Parties submit that the JV will have neither the ability nor the incentive to engage in a partial input foreclosure strategy and that the JV will be open and impartial to all customers.¹⁸⁷

5.2.4.2. The Commission's assessment

5.2.4.2.1. Ability to foreclose

(155) The market investigation revealed a set of practices by which the JV could partially foreclose the Parties' OEM- or eMSP-rivals or bundle its charging services with the electric mobility services or battery electric vehicle sales of the Parties. Specifically, market participants indicated that a partial foreclosure or bundling strategy by the JV could take (but not be limited to) the following forms. First, the JV could engage in discriminatory pricing strategies vis-à-vis end-customers with non-Party vehicles or using non-party electric mobility services to access the JV's charging points. This strategy could also be implemented at the level of the Parties, by offering the Parties' vehicles and/or their electric mobility services to customers in a bundle with charging services of the JV, at a more favourable price. Second, the JV or the Parties could offer a reservation system that would prioritize end-customers with trucks manufactured by the Parties or prioritize customers using the Parties' eMSPs with regard to access to the JV's charging stations. Third, the JV could offer different charging speeds, based on the vehicle-brand or eMSP used by the end-customer. Fourth, the JV could have the ability and incentive to discriminate OEM- and eMSP-competitors of the Parties by delaying software optimization for these companies.

(156) The Commission notes that charging is an important cost factor for the operation of battery electric trucks and coaches. According to the Parties, charging is expected to represent between [...] and [...] % of the total costs of operation of long-distance battery electric trucks.¹⁸⁸

(157) However, as a prerequisite to have the ability to engage in a vertical input foreclosure strategy or to engage in conglomerate bundling or tying strategies, the merged entity must have a significant degree of market power in the upstream market or one of the

¹⁸⁷ Form CO, paragraphs 67 and 68.

¹⁸⁸ Form CO, paragraph 101.

bundling/tying markets, respectively.¹⁸⁹ As set out in section 5.2.2.1, the Commission concludes that the JV is not likely to have a significant degree of market power in the market for the installation and operation of public charging solutions for battery electric heavy-duty trucks and coaches.

(158) In addition, as previously stated for total foreclosure strategies, it would also be difficult to employ partial foreclosure strategies with larger customers having multi-brand fleets, which may include non-Party-vehicles. While this factor may be less pronounced for partial foreclosure or bundling strategies, multi-fleet customers may nevertheless be hesitant to accept any differentiation within their own fleet's access to the JV's charging points.¹⁹⁰

(159) For these reasons, the Commission concludes that the JV is unlikely to have the ability to partially foreclose end-customers using battery electric trucks/coaches other than the Parties', or non-Party eMSPs-users from its charging stations.

5.2.4.2.2. Incentive to foreclose

(160) As stated above, the incentive to foreclose (vertically or through bundling/tying) depends on the degree to which this strategy is profitable.

(161) Contrary to the conclusion on total input foreclosure, the Commission finds that such a partial foreclosure strategy would likely be profitable for the Parties, and that the Parties would therefore likely have the incentive to engage in such a strategy.

(162) The Commission acknowledges that the Parties and the JV may be discouraged to a certain degree from engaging in partial foreclosure strategies for the same reasons which would disincentive them from engaging in total foreclosure strategies (see: paragraphs (141) to (144)). However, partial foreclosure strategies are less likely to discourage the market-adoption of battery electric trucks and coaches, as they may even initially appear advantageous to customers,¹⁹¹ and would thus be likely to be more profitable than total foreclosure strategies. In addition, the potential unlawfulness of partial foreclosure practice is also less likely to disincentivize the Parties. Concretely, existing EU legislation¹⁹² which regulates the way CPOs can operate publicly accessible charging stations does not explicitly cover all types of partial foreclosure strategies. Therefore, some of these forms of partial foreclosure may potentially be lawful. However, it must be noted that there are plans to update these rules to impose more stringent non-discrimination obligations on CPOs, as regards both end customers and eMSPs.¹⁹³

(163) Therefore, with these considerations weighing less heavily, a partial foreclosure strategy of rival OEMs and eMSPs by the JV is likely going to be profitable for the Parties, given the higher profitability of the market for the manufacturing and sale of

¹⁸⁹ Non-Horizontal Merger Guidelines, paragraphs 35 and 99.

¹⁹⁰ See: paragraph (134)

¹⁹¹ Letter by a competitor of 15 February 2022, para 2.1.6.

¹⁹² Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure.

¹⁹³ Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU of the European Parliament and of the Council.

battery electric trucks and coaches, compared to the CPO market for battery electric trucks and coaches.¹⁹⁴

(164) With regard to concrete foreclosure strategies, during the market investigation, the majority of competitors expressed the view that the Parties and the JV most likely have the incentive to offer discriminatory prices to customers of OEM and eMSP competitors.¹⁹⁵ According to several competitors, such a strategy is in fact being implemented by Ionity-shareholders (which are OEMs) and Tesla in the battery electric passenger vehicle market.¹⁹⁶ In addition, the majority of competitors also expressed the view that the Parties and the JV would have the incentive to offer differing conditions regarding the reservation of the JV's charging stations, depending on the vehicle brand of the customer (and thereby disadvantage customers using electric (heavy duty) trucks or coaches not produced by one of the Parties).¹⁹⁷ By contrast, competitors considered it less likely that the JV would have the incentive to offer different charging speeds depending on the vehicle brand of the end-customer (and thereby disadvantage customers using battery electric (heavy duty) trucks or coaches not produced by one of the Parties).¹⁹⁸

(165) Internal documents of the Parties also confirm that [...].¹⁹⁹ This suggests that the Parties do consider such strategies commercially profitable and that they would have the economic incentive to engage in such partial foreclosure strategies.

5.2.4.2.3. Overall effect of partial (input) foreclosure or bundling strategies

(166) The market investigation suggests that there could be some overall effects of partial (input) foreclosure or bundling strategies, but that such effects are likely to be limited, in particular due to the likely lack of market power of the JV in the CPO market and the existence of alternative CPOs with competing charging networks.

(167) The market investigation did indicate that if partial foreclosure strategies could be realised - which is unlikely due to the abovementioned probable lack of ability - may have some anticompetitive effects. First and foremost, end-customers of the Parties and the JV are price sensitive. Their decision to purchase a certain vehicle or use a certain eMSP, is likely to be strongly influenced by its price. In this regard, a cheaper price for the charging services of the JV (whether offered upon the purchase of a vehicle from the Parties, through the Parties' eMSP or directly by the JV to any customer of the Parties), is likely to be a significant factor in the decision of an end-customer of which vehicle to purchase, and which eMSP to use.²⁰⁰

(168) Furthermore, the price-sensitivity of end-customers is related to the TCO of their vehicles. Therefore, end-customers will also likely be highly responsive to any other factor that affects their TCO. One of the most relevant factors that affects the TCO is the downtime of the vehicle. Small delays may often carry a significant additional cost

¹⁹⁴ See paragraphs (138) and (139).

¹⁹⁵ Replies to Q1 to Competitors, question 26. Competitors expressed the view that the Parties would most likely engage in such a strategy by offering their vehicle-customers discounted package deals, which include charging services provided by the JV.

¹⁹⁶ Replies to Q1 to Competitors, question 26.

¹⁹⁷ Replies to Q1 to Competitors, question 28.3.

¹⁹⁸ Replies to Q1 to Competitors, question 27.

¹⁹⁹ Response to RFI 1, question 19, documents 11, 12 and 20a.

²⁰⁰ Replies to Q1 to Competitors, question 37..

(for example in the form of contractual fines).²⁰¹ The promise of preferential access to the JV's charging services through a reservation system, or in turn the opportunity to avoid the danger of not being able to immediately have access to a charging point during the driver's mandatory 45 minute break, would likely be a strong incentive for vehicle customers to purchase the Parties' vehicles and use the Parties' eMSPs, rather than those of competitors, which could not offer such preferential access.²⁰²

(169) Nevertheless, the market power of the JV as a CPO is likely to be limited as explained in section 5.2.2.1 above. That means, in particular, that alternative charging networks are likely to be available. This would allow the Parties' rival OEMs to enter into partnerships with such CPOs to offer similar combined offers as the Parties would be able to offer with the JV.

(170) Furthermore, as explained in paragraph (150), the effect of any input foreclosure strategy will be limited by the fact that a significant share of users of battery electric trucks and coaches will not rely on public charging solutions. Accordingly, a sizeable part of demand for battery electric trucks, including heavy-duty truck, is likely to remain unaffected by any foreclosure strategy.

(171) In addition, the market investigation results indicate that customers would consider it very important to have access to multiple alternative charging networks. If alternatives were available, they would also be willing to switch to alternative operators.²⁰³ As explained in section 5.2.2.1, the Commission considers it likely that several alternative charging networks will be available to end-customers.

(172) In sum, therefore, a partial input foreclosure or bundling strategy by the JV could have some overall effects, but such effects are likely to be limited.

5.2.4.2.4. Conclusion

(173) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to partial (input) foreclosure concerns.

5.2.5. *Using the Parties' position in the manufacturing and sale of battery electric heavy duty trucks and coaches and the provision of electric mobility services (eMSPs) to engage in total or partial customer foreclosure of competing CPOs or bundling strategies.*

(174) As stated in Section 5.2.3, the Transaction gives rise to vertical and conglomerate links.

5.2.5.1. The Parties' views

(175) The Parties submit that they will neither have the ability nor the incentive to engage into customer foreclosure strategies by restricting the JV's CPO competitors' access to

²⁰¹ Replies to Q1 to Competitors, question 37.

²⁰² Replies to Q1 to Competitors, question 28.3.

²⁰³ Replies to Q2 to Customers, question 21.1. For example, respondents indicated that "*It is very important that we as customers are not tied to a provider of charging infrastructure*"; "*As long as other competitors are available our market position will ensure that we can switch to another provider*"; "*If other providers will be available of course yes [we will switch]*"

their electric mobility services or to engage in bundling or tying strategies by leveraging their market position in the market for the manufacturing and sale of battery electric heavy duty trucks and coaches to foreclose the JV's CPO competitors.²⁰⁴

5.2.5.2. The Commission's assessment

5.2.5.2.1. Ability to foreclose

- (176) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company, which is an important customer with a significant degree of market power in the downstream market. If, on the contrary, there is a sufficiently large customer base, at present or in the future, that is likely to turn to independent suppliers, the Commission is unlikely to raise competition concerns on that ground.²⁰⁵
- (177) The Commission considers that the Parties may have the ability to foreclose access to a sufficient customer base or engage in bundling strategies, for the reasons set out below.
- (178) First, the Parties are likely to have joint market power in the markets for the manufacturing and sale of battery electric trucks and coaches²⁰⁶ (however, the Parties are not likely to have joint market power in the market for electric mobility services for battery electric trucks and coaches.)
- (179) Furthermore, the market for the installation and operation of public charging solutions for battery electric trucks and coaches in the EEA is yet to develop. In fact, there are currently no companies active in this market. The development of the market will therefore depend on the willingness of potential entrants to enter.²⁰⁷ According to the Non-Horizontal Merger Guidelines, the ability to engage in bundling and the effects of such strategies are more pronounced in such markets. Concretely "*where entry into the market for the complementary product is contemplated by potential entrants, the decision to bundle by the merged entity may have the effect of deterring such entry*".²⁰⁸
- (180) Concretely, in this case, a customer foreclosure or bundling foreclosure strategy by the Parties may deter entry by potential CPO-competitors or raise their barriers to entry. The market investigation indicated furthermore that such strategies may also make it harder for existing CPOs to compete and limit their competitiveness vis-à-vis the Parties.²⁰⁹
- (181) When looking at the above-mentioned foreclosure strategies, while some may require coordinated action by the three Parties, others may not. With regard to the latter, the investigation suggest as long as other foreclosure strategies were profitable in themselves, the Parties would not have to coordinate, but would rather employ them

²⁰⁴ Form CO, paragraph 114.

²⁰⁵ Non-Horizontal Merger Guidelines, paragraph 61.

²⁰⁶ See Section 5.2.2.2

²⁰⁷ See Section 5.2.2.1 on likely competitors of the Parties.

²⁰⁸ Non-Horizontal Merger Guidelines, paragraph 101.

²⁰⁹ Replies to Q1 to Competitors questions 37.2 and 38.2.

out of self-interest.²¹⁰ That said, the Commission notes that each of the Parties will remain independent in the sale of battery electric heavy-duty trucks and coaches. Therefore, each of them is likely to have incentives not to engage in, or to stop coordinated behaviour and to benefit from additional sales of its battery electric heavy-duty trucks and vehicles by making its own trucks more attractive, also if used with alternative charging services. For example, increasing the offer of CPOs included in its company's eMSP services or including more rival CPOs in its vehicle's navigation systems would allow one of the Parties to offer a more attractive product to its customers than the others could. This incentive may therefore undermine the ability of the Parties to engage in customer foreclosure or bundling strategies. Furthermore, the Transaction would also not put any contractual limits on the Parties' abilities to engage in commercial behaviour by which the Parties would coordinate with other CPOs. Concretely, [...].²¹¹ According to the Parties, this means that their own eMSPs could engage with any other CPO and conclude cooperation agreements with them.²¹² Those dynamics are likely to decrease the likelihood that each of the Parties would pursue a uniform foreclosure strategy.

- (182) Furthermore, as suggested above, the Parties may potentially also obtain market power in individual national markets for the manufacturing and sale of battery electric trucks and coaches individually. In that case, coordination between the Parties would also not be necessary and they could potentially engage in the above-mentioned foreclosure strategies unilaterally regardless.

5.2.5.2.2. Incentive to foreclose

- (183) The incentive to foreclose depends on the degree to which it is profitable.²¹³ The merged entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals or from not combining its products with the products of single-product rivals at the same conditions as absent the merger and the possible gains from doing so, for instance, because it allows the merged entity to raise prices in the upstream or downstream markets or on the markets concerned.²¹⁴

- (184) Competitors responding to the market investigation indicated that in their view, the Parties would have the ability and incentive to offer the JV's charging services as bundle/commercial package with their battery electric (heavy duty) trucks or coaches at an advantageous price after the Transaction.²¹⁵ According to one competitor, "[s]uch an offer would give a competitive edge when selling". More concretely, another competitor argued that this may reduce the vehicle's TCO for end-customers, and thereby be a strong sales argument for the Parties. In this regard, respondents explained that this was a common practice in the passenger car market (especially in the case of Ionity-shareholders and Tesla).²¹⁶

- (185) In addition, the majority of the competitors responding to the market investigation indicated that in their view, the Parties would have the ability and incentive to provide

²¹⁰ Replies to Q1 to Competitors question 38.3.

²¹¹ Form CO, paragraph 114, and Annex 5.1-b) to the Form CO, Section 22.

²¹² Form CO, paragraph 114.

²¹³ For conglomerate tying and bundling strategies, see paragraph (136)

²¹⁴ Non-Horizontal Merger Guidelines, paragraphs 68 and 105.

²¹⁵ Replies to Q1 to Competitors, question 38.3.

²¹⁶ Replies to Q1 to Competitors, question 37.

navigation systems in their battery electric (heavy duty) trucks or coaches, which would prioritize or preferentially direct customers to charging points of the JV, instead of potential competing CPOs/charging networks.²¹⁷

- (186) Furthermore, the majority of the competitors responding to the market investigation indicated that in their view, the Parties would have the ability and incentive to pre-install their own eMSP in their vehicles, using the vehicle to grid communication interface technology commonly referred to as “plug-and-charge technology”²¹⁸ in order to direct customers to the JV’s charging stations.²¹⁹
- (187) Despite these responses to the market investigation, the Commission considers that the Parties would likely not have strong incentives to foreclose access to a sufficient customer base or engage in bundling strategies, both jointly and individually, for the reasons set out below.
- (188) First, such a strategy would be at odds with the rationale for the Transaction. According to the Parties: “[t]he rationale of the Proposed Transaction is to encourage investment in the CPO market by other players and not to prevent it”, in order to be able to sell more battery electric vehicles.²²⁰ Preventing other CPOs from entering the market would indeed likely delay the acceptance of customers with regard to battery electric trucks and coaches, and thereby delay the Parties’ ability to sell these vehicles. Furthermore, according to the Parties, the scale of investment in the charging network in the EEA which is expected to be required, is significant, due to which the Parties would be eager to encourage entry and investment from other CPOs.²²¹ The Commission considers this to be a credible assertion, when looking at the costs associated with the installation of the initial 1 700 charging points by the JV, especially in comparison to the expected profits of the JV.²²²
- (189) Second, a customer foreclosure or a bundling strategy aimed at hurting the JV’s CPO competitors’ competitiveness is unlikely to be profitable for the Parties. As previously shown, the markets for the manufacturing and sale of battery electric trucks and coaches is likely to be considerably more profitable than the market for the installation and operation of a public charging network for battery electric trucks and coaches.²²³ Losses in truck- or coach sales or potentially even more relevant, risking fines due to the low share of battery electric truck and coach sales, could likely not be recovered by increased revenues generated by the JV’s charging services. This particularly holds true, as customers have indicated that they would be willing to switch to other OEMs, if their choice in charging station was in any way limited,²²⁴ given their particular sensitivity to charging point availability as a factor to the TCO of their vehicles.
- (190) As regards the incentive to pre-install eMSP certificates in their vehicles, respondents were unable to substantiate what the specific effect of the pre-installation of the Parties’ own eMSP certificates would be on the CPO-market and why this would be in

²¹⁷ Replies to Q1 to Competitors, question 38.

²¹⁸ Enabled by the technological concept ‘ISO 15118’, which is currently still being developed.

²¹⁹ Replies to Q1 to Competitors, question 39.

²²⁰ Form CO, paragraph 114.

²²¹ Form CO, paragraph 114.

²²² See Section 5.2.2.1.

²²³ See Section 5.2.3.2.2.

²²⁴ Replies to Q2 to Customers, question 21.1.

the Parties' interest.²²⁵ In addition, a competitor explained that the incentive of the Parties to do so may be limited, as it would not be accepted by their customers, stating “[e]ven if this was possible from a technological point of view, transporters are economic operators that cannot accept not to optimize their rest time, so it is likely that they will choose the best MSP/navigation system to answer their needs and optimize their resting time along their trip”²²⁶

5.2.5.2.3. Overall effect of customer foreclosure or tying and bundling strategies

- (191) The Commission considers that, post-Transaction, the implementation of a customer foreclosure strategy by the Parties or a corresponding tying or bundling strategy, whether conducted by the Parties jointly and individually, would likely have no overall negative impact on effective competition within the EEA for the following reasons.
- (192) Customer foreclosure as well as tying and bundling strategies are likely to have an adverse impact on effective competition, if they harm the ability or incentive of (upstream) rivals to compete, which may in turn allow the merged entity to raise prices or reduce overall output in the (downstream) market.²²⁷
- (193) The market investigation yielded mixed results with regard to the potential effects of foreclosure strategies by the Parties. On the one hand, according to respondents of the market investigation, bundling strategies by the Parties may make it harder for other CPOs to compete and limit their competitiveness, especially if the JV were to capture a significant market share.²²⁸ Specifically, with regard to navigation systems prioritizing charging points by the JV, respondents indicated that this may also lower the competitive strength of CPO competitors.²²⁹ Moreover, the market investigation indicated that end-customers may have limited ability to switch vehicle, eMSP- or CPO-suppliers in case the Parties would engage in the above-mentioned strategies (namely to provide their vehicles in bundles with the JV's charging services, to preference the JV in their navigation systems or to pre-install their own eMSP certificates in their vehicles),²³⁰ thereby suggesting that customers may not have significant countervailing buyer power.²³¹
- (194) On the other hand, respondents conceded that the impact of such a foreclosure strategy will not just depend on the Parties' strength in the battery electric truck and coach markets, but rather “*would depend on the quality of the geographic coverage of the network*” as well as the availability of other charging networks.²³² As indicated in the Non-Horizontal Merger Guidelines, “*if there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate merger*”.²³³ As developed in Section 5.2.2.1, the market investigation suggests that

²²⁵ Replies to Q1 to Competitors, question 39.

²²⁶ Replies to Q1 to Competitors, question 38.

²²⁷ Non-Horizontal Merger Guidelines, paragraphs 72 and 111.

²²⁸ Replies to Q1 to Competitors, question 37.2.

²²⁹ Replies to Q1 to Competitors, question 37.2.

²³⁰ Replies to Q1 to Competitors, question 42.

²³¹ For countervailing buyer power, see Non-Horizontal Merger Guidelines, paragraph 114.

²³² Replies to Q1 to Competitors, questions 38.2 and 42.

²³³ Non-Horizontal Merger Guidelines, paragraph 113.

there will be other, financially strong entrants to the CPO-market capable of defeating through the necessary partnerships a foreclosure strategy by the Parties.

- (195) Furthermore, customers will likely have the interest to use multiple eMSPs for their charging needs (multi-sourcing).²³⁴ As explained in section 5.2.2.3, the Commission considers it likely that there will be a very large number of alternative eMSPs available to end-customers. This would significantly reduce the effect of any above-mentioned foreclosure strategy targeting the JV's CPO-competitors, as such strategies would be undermined by customer's access to other offers and sources of information. Furthermore, if the offer provided by the Parties to customers were commercially less interesting, customers would likely switch to other eMSPs.
- (196) With regard to the possibility of the use of on-board navigation systems, as submitted by the Parties specifically, using these to route their OEM-customers to the JV's charging systems would likely have a very limited effect, as eMSP apps are more frequently used by end-customers to find suitable charging points.²³⁵ Furthermore, as indicated in Section 5.2.2.1, the limited scope of the JV's network is unlikely to be sufficient for end-customers to rely on, for all of their public charging needs. A foreclosure strategy by which the Parties would use navigation systems in their vehicles to foreclose CPO-competitors is therefore likely to have a limited effect on the competitiveness of these competitors.
- (197) In addition, experiences from the electric passenger vehicle charging market have shown the limited effect of above-mentioned foreclosure strategies. Whereas market respondents indicated that several companies employ such strategies,²³⁶ respondents did not indicate that this has led to significant market power of the benefitting the related CPOs (namely Ionity and Tesla) or prevented other market participants from being able to compete with these two companies effectively.²³⁷
- (198) Lastly, as indicated in Section 5.2.2.1, at least for the foreseeable future, the demand for public charging stations for battery electric trucks and coaches (as set out by the ACEA studies) may surpass the supply thereof (as indicated by the respondents to the market investigation). In such a situation, a customer foreclosure strategy by the JV's parents would likely have a limited effect on the JV's competitors, given the likely excess demand for their services.

²³⁴ Form CO, paragraph 114. Reply of a customer to Q2 to Customers, question 7.1: "*Open access of charging network between the various transport operators, the different bus makers and charger maker is a must*". Reply of a customer to Q2 to Customers, question 17.1: "*access to multiple charging networks will maximise the opportunity of electromobility without increasing duty times or kilometers*". Reply of a customer to Q2 to Customers, question 17.2: "*We don't want to use only this network in the future. We encourage the choice of multiple suppliers that could be OEM, eMSP, Energy Suppliers*".

²³⁵ Form CO, paragraph 114.

²³⁶ Replies to Q1 to Competitors, question 37; Replies to Q3 – Customers of public electric charging stations, question 8.

²³⁷ Reply of a competitor to Q1 to Competitors, question 22.1; Reply of a respondents to Q3 – Customers of public electric charging stations, question 5.

5.2.5.2.4. Conclusion

(199) Based on the above considerations and all evidence available to it, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to (customer) foreclosure concerns.

5.2.6. *Access to and foreclosure of customer data generated by the JV*

(200) One of the Parties' competitors has raised concerns in relation to the JV's access to data regarding charging and the performance and behaviour of battery electric trucks and coaches. In particular, it claims that such data would enable only the JV members to advance with development of products and services. Under such circumstances, access to this information would give the JV's parents a significant edge compared to competitors.²³⁸ In particular, it is argued that access to such big data exclusively by the JV's parents would give them a competitive advantage in vehicle and charger development that would in the longer term be unassailable, to the ultimate detriment of customers.²³⁹ The theory of harm alleged in the complaint is that (i) the customer data generated by the JV is an important input for product development, (ii) the JV's Parties would have preferential access to such data, and (iii) they would exclude competitors (in the vehicle and CPO services markets) from access to such data, to the ultimate detriment of customers of such products and services.

(201) The Commission considers that such concern is not justified for the reasons explained below.

(202) First, there is no evidence that the data that the JV (and, possibly, the Parties) would derive from the operation of the charging infrastructure are unique or particularly important. In fact, any CPO (e.g. oil and gas companies) will be in possession of the same data, as soon as it starts operating its charging infrastructure. OEMs who do not operate a charging infrastructure could either (i) contract with a CPO to obtain such data, or (ii) derive such data from their own vehicles (e.g. for example, by installing a specific recorder on the vehicle).

(203) Second, before the Transaction, such data were not available to any OEM working in the development of battery electric trucks and coaches, but this did not prevent OEMs to design products that are now ready to be offered on the market. The Transaction does not introduce any change in this respect, as OEMs will continue to develop their products under the same conditions existing pre-Transaction. Therefore, the Transaction will not have any effect on competition in this respect/

(204) In the light of the above, the Commission therefore considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the possible foreclosure of the data generated by the JV's charging infrastructure.

²³⁸ Reply of a competitor to Q1 to Competitors, question 22.1.1.

²³⁹ Reply of a competitor to Q1 to Competitors, question 37.3.1

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President