



EUROPEAN COMMISSION
DG Competition

Case M.9501 - I SQUARED CAPITAL ADVISORS / PEMA

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 18/10/2019

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EUROPEAN COMMISSION

Brussels, 18.10.2019
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PUBLIC VERSION

<p>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 Where possible the information omitted has been replaced by ranges of figures or a general description.</p>
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To the notifying party

**Subject: Case M.9501 – I Squared Capital Advisors/PEMA
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**

Dear Sir or Madam,

- (1) On 13 September 2019, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which I Squared Capital Advisors, LLC (“I Squared”) (USA), through its controlled TIP Group entities (“TIP”)³ (Germany), intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the whole of PEMA GmbH and its subsidiaries (“PEMA”) (Germany), currently owned by Société Générale S.A (France), by way of purchase of shares (the “Transaction”). I Squared is referred to hereinafter as the “Notifying Party”. I Squared and PEMA collectively are referred to as the “Parties”.

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

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

³ Namely TIP Trailer Services Germany GmbH and Global TIP Holdings Two B.V.

1. THE PARTIES

- (2) **I Squared**, headquartered in the USA, is an independent global infrastructure investment manager focusing on energy, utilities, telecom and transport in the Americas, Europe and Asia. I Squared, through funds it manages, controls a number of investments, in the energy, oil and transport sectors. Of these investments, only TIP is active in the same relevant market as PEMA.
- (3) **TIP** is mainly active in operating leasing of heavy trailers (16 to 44 tons fully loaded) in Europe and Canada. TIP owns a fleet of approx. 68 000 heavy trailers. TIP also offers affiliated services such as maintenance and repair (“M&R”) and damage protection.
- (4) **PEMA GmbH**, the parent entity of PEMA, is registered in Germany and is an indirect wholly-owned subsidiary of GEFA Bank GmbH (“GEFA”) which, in turn, is an indirectly wholly-owned subsidiary of Société Générale S.A. PEMA's main activity is operating leasing of heavy trucks and trailers, including integrated services. PEMA owns a fleet of approx. 18 000 vehicles. PEMA focuses its activities on Germany, where PEMA generates almost [...] % of its EEA-wide revenue.

2. THE OPERATION

- (5) On 25 July 2019, the Parties concluded a Share Purchase Agreement (“SPA”) pursuant to which I Squared, through TIP, will acquire 100% of the shares in PEMA.
- (6) At closing, PEMA will become a wholly-owned subsidiary of TIP and therefore an indirectly wholly-owned and solely controlled portfolio company of funds managed by I Squared. Following the Transaction, neither GEFA nor Société Générale will hold any interest or rights in PEMA.
- (7) In light of the above, and in line with paragraph 91 of the Commission's Consolidated Jurisdictional Notice (the “Jurisdictional Notice”),⁴ the Transaction will result in I Squared's acquisition of sole control over PEMA within the meaning of Article 3(1)(b) of the EU Merger Regulation.

3. EU DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR [...] million⁵ in 2018 (I Squared: EUR [...] million, PEMA: EUR [...] million). The EU-wide turnover of each of the undertakings concerned is more than EUR [...] million (I Squared: EUR [...] million, PEMA: EUR [...] million). Not each of the Parties achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.⁶ The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

⁴ OJ C 95, 16.4.2008, p. 1

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

⁶ Only PEMA achieved more than two thirds of its EU-wide turnover in Germany.

4. MARKET DEFINITION

4.1 Introduction

- (9) In the EEA, the Parties' activities overlap with respect to (i) the operating leasing of heavy trailers, (ii) the operating leasing of heavy trucks,⁷ (iii) the operating leasing of rigids.⁸ There is also an insignificant overlap in the sale of used trailers and trucks.⁹ The only product overlap which results in affected markets (at EEA level and national level) concerns operating leasing of heavy trailers.
- (10) Since TIP and PEMA are both active in the operating leasing of trucks, which are complementary products to trailers (in the sense that a truck is required to tow a trailer which itself is not motorized), the Transaction potentially also gives rise to conglomerate effects. The Transaction will not result in any potential vertical or conglomerate relationships between I Squared's portfolio companies, other than TIP, and PEMA.

4.2 Operating leasing of heavy trailers or trucks

4.2.1 Product market definition

4.2.1.1 Distinction between operating leasing and financial leasing

- (11) Operating leasing refers to a type of lease where the risks of ownership are retained by the lessor while the lease duration does not cover any major part of the asset's life. Ownership is not transferred to the lessee at the end of the lease term and the lease contract does not contain a bargain purchase option. Similarly, the costs of other related services (such as maintenance and repair services), which form an integrated part of the operating leasing services, are included in the (monthly) lease payments.¹⁰
- (12) By contrast, financial leasing primarily functions as a loan by the lessor to enable the lessee to purchase a given asset. The risks associated with the investment are usually borne by the lessee and the legal as well as the commercial ownership is left with the financing lessor. After the lease, the lessee usually has the option to acquire ownership of the asset for the consideration of the residual value.
- (13) In addition, the Commission has previously considered a market for "short-term rental" separate from operating leasing and financial leasing. It has defined the market for short-term rental as the provision of cars for an individually agreed duration. Such cars could be taken over by the user at certain locations (*e.g.* airports,

⁷ The Parties' activities do not overlap at national level.

⁸ The Parties' activities do not overlap at national level.

⁹ The Parties' combined market share on this market is less than 5% in the EEA and well below 20% in any EEA member state (as well as on a separate market for sales of used trailers and a separate market for sales of used trucks). Therefore, the Transaction does not give rise to affected markets in this respect and is consequently not further assessed in this Decision.

¹⁰ Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraph 8.

railway stations).¹¹ The Parties are active in the provision of short-term and long-term operating leasing, to the exclusion of rental services.

Notifying Party's views

- (14) While the Notifying Party agrees that there are certain structural differences between operating and financial leasing, it argues that the distinction has become increasingly blurred due to recent industry trends. According to the Notifying Party, this is due to, *inter alia*, a change in the international accounting standards IFRS 16. IFRS 16 entered into force on 1 January 2019 and effectively abolished the accounting differences between financial and operating leases adopting the current financial leasing methodologies for all leases. In addition, the Notifying Party submits that, in particular in times of low interest rates, outright purchasing solutions through instalments or regular loans exert a material competitive constraint on the (operating) leasing industry.¹²
- (15) However, the Parties consider that the exact market definition can be left open as the Transaction does not result in a significant impediment of effective competition even if a separate market for operating leasing (of trailers) is defined.¹³

Commission's assessment

- (16) The Commission has considered in previous decisions that operating leasing and financial leasing constitute separate product markets.¹⁴ Operating leasing and financial leasing can be distinguished on the basis of their respective business models and offerings to costumers, particularly in relation to the ownership status of the good and the risks associated with the leasing.
- (17) The majority of competitors responding to the Commission's market investigation confirmed that a product distinction by type of leasing, *i.e.* between operating leasing and financial leasing, is appropriate.¹⁵ From a supply side perspective, the majority of competitors indicated that they do not provide both types of leasing services. In addition, one competitor explained that "*it may get costly*" for a provider of operating leasing services to start providing financial leasing services, since "*the focus is shifting from ensuring the rental asset to compliance with procedural and regulatory requirements*" and, in this context, "*system adjustments for processes, implementation of adjustments in accounting regulations, terms and conditions, adjusted sales preposition need to be made.*" Furthermore, another competitor indicated that "*the difference between the 2 products being the offering of operational services, as well as taking up the operational and residual value risk of*

¹¹ See Commission decision of 23 September 2011 in case M.6333 – BMW/ING Car Lease, paragraph 17; Commission decision of 26 July 2017 in case M.8309 –Volvo/Car Corporation/First Rent A Car, paragraph 41; Commission decision of 19 August 2009 in case M.5568 – Volkswagen/Fleet Investments/Leaseplan Corporation JV, paragraph 20; Commission decision of 12 June 2006 in case M.4199 – Volkswagen/Offset/Crescent/Lease/Plan/JV, paragraph 14.

¹² Form CO, paragraphs 104-106.

¹³ Form CO, paragraph 108.

¹⁴ See, *e.g.* Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraphs 7 et seq.; Commission decision of 15 July 1992 in case M.234 – GECC/Avis Lease, paragraphs 6 et seq.

¹⁵ Replies to eQ2 – Questionnaire to Competitors, questions 3 and 4.

the assets, it is very difficult for financial leasing providers to add this dimension to their portfolio.”¹⁶

- (18) The responses from the customers in this regard were mixed.¹⁷ While some customers responding to the market investigation considered the services to be interchangeable and “*make decisions based upon business benefit*”, others however explained that “*customers have a clear preference for either one of the leasing options*” and multiple customers referred to operating and financial leasing as “*different*” or even “*very different*” products and services. In this respect, they made reference to the differences in the property rights transferred after the lease (*i.e.* ownership or not), and in aspects of accounting law and risk.¹⁸
- (19) In any event, I Squared and PEMA provide operating leasing services only. The Transaction would not give rise to an affected market if operating and financial leasing services were considered as belonging to the same product market.¹⁹ For the purposes of this Decision, the Commission will further assess the competitive effects of the Transaction on operating leasing services only.

Conclusion

- (20) For the purposes of this Decision, it is not necessary to decide whether the provision of operating and financial leasing services constitute separate markets or not, since no serious doubts would arise as to the Transaction's compatibility with the internal market under either product market definition.

4.2.1.2 Distinction between short-term and long-term (operating) leasing

Notifying Party's views

- (21) The Notifying Party submits that it can be left open whether short-term and long-term leasing constitute separate product markets, because the Transaction would not raise competition concerns under any relevant market definition. It considers that, while the exact delineation between short-term and long-term leasing contracts may be difficult in certain circumstances, *e.g.* because contracts are consecutively renewed with the same customer, the short-term versus long-term ratio should be very similar for all operating leasing providers.²⁰

Commission's assessment

- (22) In its prior decisions, the Commission left open the question whether the operating leasing segment should be further sub-segmented into short-term (1 to 365 days) and long-term (12 to 48 months) rentals.²¹

¹⁶ Replies to eQ2 – Questionnaire to Competitors, question 4.1.

¹⁷ Replies to eQ1 – Questionnaire to Customers, question 3.

¹⁸ Replies to eQ1 – Questionnaire to Customers, question 3.1.

¹⁹ Form CO, paragraph 108 and Reply of I Squared to RFI 2 of 9 October 2019.

²⁰ Form CO, paragraph 118.

²¹ Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraph 9; Commission decision of 15 July 1992 in case M.234 – GECC/Avis Lease, paragraphs 6 et seq.; Commission decision of 3 December 1999 in case M.1739 – Iveco/Fraikin paragraph 8; Commission decision of 18 February 2000 in case M.1810 – VW/Europcar, paragraph 8; Commission decision of 4 September 2001 in case

- (23) The results of the Commission's market investigation indicate that a product market for operating leasing comprising both short-term and long-term operating leasing is appropriate. The majority of respondents to the market investigation (both customers and competitors) indicated that they acquire or provide both short-term and long-term leasing services. In addition, the majority of competitors responding to the market investigation indicated that it would be easy for a provider of short-term operating leasing services to start providing long-term operating leasing services and vice versa. One competitor explained that "*the main differences in the processes of these products is the amount of in and out-checks as well as the pricing. Due to this, a change should not be difficult.*"²²
- (24) On that basis, there seems to be a single market for operating leasing, independent of the duration. In any case, the results of the Commission market investigation did not provide any indication that the outcome of the competitive assessment would differ materially if short-term and long-term operating leasing services were considered as distinct markets.

Conclusion

- (25) In light of the above, considering that customers demand and providers provide both short-term and long-term operating leasing services, the Commission concludes that, for the purposes of this Decision, the market for the provision of operating leasing services includes both short-term and long-term leasing.

4.2.1.3 Distinction between operating leasing of trailers and operating leasing of trucks

- (26) Both Parties provide operating leasing services for both trailers and trucks. A trailer (or "semi-trailer", because of the missing front axle) is a non-motorized vehicle for the road transportation of goods. A truck (or "tractor") is a motorized vehicle that is required to haul the trailer.

Notifying Party's views

- (27) The Notifying Party considers that, even if there are differences from a demand-side perspective between trailers and trucks, there is a supply-side substitutability between the operating leasing of trucks and trailers. It submits, however, that the definition of the relevant market can be left open in this respect, as the Transaction will not result in any competitive concerns regardless of whether the relevant product market is defined as operating leasing for all heavy road transportation equipment comprising both trucks and trailers, or operating leasing of trucks and trailers separately.²³

M.2540 – Fidis/SEI/JV, paragraph 10; Commission decision of 24 November 2005 in case M.3987 – Fidis Renting/Leasys, paragraphs 8 and seq.; Commission decision of 5 December 2006 in case M.4420 – Credit Agricole/Fiat Auto/FAFS, paragraph 22.

²² Replies to eQ1 – Questionnaire to Customers, question 6; Replies to eQ2 – Questionnaire to Competitors, questions 9 and 10.

²³ Form CO, paragraph 112.

Commission's assessment

- (28) In *GEFA/PEMA*, in the context of both financial leasing and operating leasing, the Commission considered a relevant product market for "heavy road transportation equipment (trucks and trailers)" or "heavy commercial vehicle[s]"²⁴, i.e., the Commission defined a relevant leasing market comprising both trailers and trucks. On that basis, the Transaction would not give rise to affected markets.
- (29) However, the results of the Commission's market investigation indicate that a distinction between the operating leasing of trucks and trailers could be appropriate.²⁵ In this regard, the majority of customers indicated that they lease trucks and trailers separately. In addition, all competitors responding to the market investigation indicated that they provide operating leasing services for trailers only, or trucks and trailers separately. One competitor explained that "*the operational needs (maintenance, service, tyres, regulator MoT, etc) are much higher on engine vehicles (trucks) than on trailers, their associated risks, as well as the residual value risk are much higher. Hence, this will require a higher frequency of transactions, a higher complexity and cost per transaction for trucks than for trailers with the associated suppliers.*" Another competitor submitted that "*the technology of a truck is much more demanding than a trailer, e.g. emission standards, registration regulations, wear & tear etc.*"²⁶
- (30) There are therefore indications that the markets for operating leasing of trucks and operating leasing of trailers could be considered as separate. While the Transaction would not lead to any affected markets (i) for operating leasing of heavy commercial vehicles (comprising both trucks and trailers) and (ii) for operating leasing of trucks only,²⁷ it only leads to affected markets for the operating leasing of trailers only.

Conclusion

- (31) In any event, for the purposes of this Decision, it is not necessary to conclude whether operating leasing services for trucks and for trailers constitute separate product markets, since no serious doubts would arise as to the Transaction's compatibility with the internal market under either product market definition.

4.2.1.4 Distinction between operating leasing of heavy vs. light trucks or trailers

Notifying Party's views

- (32) The Notifying Party submits that a segmentation of the market for operating leasing of trailers on the basis of the weight of the trailers is appropriate. In *GEFA/PEMA*, the Commission defined heavy equipment as vehicles above 12 tons.²⁸ However, while the 12 tons limit may be appropriate for trucks, the accepted range in the industry to define heavy trailers, according to the Notifying Party, is a load capacity between 16 and 44 tons fully loaded.

²⁴ Commission decision of 6 August 2008 in case M.5217 – *GEFA/PEMA*, paragraphs 16 and 18.

²⁵ Replies to eQ2 – Questionnaire to Competitors, questions 5 and 6; eQ1 – Questionnaire to Customers, question 4.

²⁶ Replies to eQ2 – Questionnaire to Competitors, question 6.1.

²⁷ Form CO, paragraph 112 and reply of I Squared to RFI 2 of 9 October 2019.

²⁸ Commission decision of 6 August 2008 in case M.5217 – *GEFA/PEMA*, paragraph 18.

Commission's assessment

- (33) In its prior decisions, the Commission considered a separate market for "heavy", *i.e.* above 12 tons, "road transportation equipment"/ "commercial vehicles".²⁹
- (34) The Commission's market investigation did not provide any objections or remarks with respect to the use of the abovementioned industry standard (of 16 tons fully loaded) for the definition of heavy vs. light trailers.
- (35) With regard to trailers, almost all customers responding to the market investigation indicated that heavy trailers cannot be substituted by light trailers.³⁰ In addition, while some competitors responded that they provide operating leasing services for both heavy and light trailers, , the majority of competitors responding to the market investigation indicated that they lease only heavy trailers. In this regard, one competitor indicated that "with increasing size of the trailer, the administrative burden and the maintenance and repair costs also increase. In addition, appropriate experts are required for the respective segment," while another referred to "two different segments of customers."³¹

4.2.1.4.1 Operating leasing of heavy trailers

- (36) In light of the above, considering the lack of demand-side substitutability and the fact that the Parties (as well as the majority of their competitors having responded to the Commission's market investigation) provide operating leasing services for heavy trailers only, and in line with its approach in previous cases, the Commission concludes that, for the purposes of this Decision, the market for the provision of operating leasing services of heavy trailers (above 16 tons) is distinct from the market for the provision of operating leasing services of light trailers (less than 16 tons fully loaded).
- (37) Considering that the Parties only provide operating leasing services of heavy trailers, the competitive assessment below takes account of the Parties' activities on the narrowest plausible relevant product market on which the Parties' activities would overlap, *i.e.* on the market for operating leasing services of heavy trailers.

4.2.1.4.2 Operating leasing of heavy trucks

- (38) The Commission considers that, for the purposes of this Decision, it can be left open whether the market for the provision of operating leasing services of heavy trucks (above 12 tons) is distinct from the market for the provision of operating leasing services of light trucks (less than 12 tons) or not, since the Transaction would not raise serious doubts as to its compatibility with the internal market under either product market definition.
- (39) Considering that the Parties only provide operating leasing services of heavy trucks, the Commission will further assess the competitive effects of the Transaction on the market for operating leasing services of heavy trucks. The Parties' activities would

²⁹ Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraph 16 et seq.

³⁰ Replies to eQ1 – Questionnaire to Customers, question 5.

³¹ Replies to eQ2 – Questionnaire to Competitors, questions 7, 8 and 8.1.

not give rise to a horizontally affected market for operating leasing services of heavy trucks; however the Transaction would give rise to conglomerate effects on this market. With regard to the Commission's conglomerate assessment below, the Parties' market shares would be diluted on the market for operating leasing services comprising both heavy and light trucks.

4.2.1.5 Distinction of operating leasing services of trailers by trailer type

- (40) Trailers come in many varieties. The most common types of trailers are curtainsiders (flexible sides or curtains, suitable for almost all transportation) and vans (solid sides, suitable for almost all transportation); followed by tankers (carry liquids, powder or aggregate products), reefers or temperature controlled trailers, bulkers (used in construction and agriculture), flats (open trailers without sidewalls, suitable for special transport of wide and long goods), swapbodies (an interchangeable freight container that can easily be separated from the carrier) and chassis trailers (trailer frames that can carry containers). All trailers available for leasing in the industry throughout Europe are homogenous, standardized vehicles available from OEM trailer manufacturers.³²

Notifying Party's views

- (41) The Notifying Party submits that no distinction should be made between the different types of trailers within the market for operating leasing of trailers, since from a demand-side perspective, most trailer types are suitable for most transportations, while there are only some goods that require a specific type of trailer, e.g. fuel, which can only be transported in a tanker. In its view, the differences between trailer-types are irrelevant for the operating leasing of trailers.³³

Commission's assessment

- (42) In its prior decisional practice, the Commission did not distinguish between the different types of trailers, such as curtainsider, bulker, temperature controlled or tanker, but, as explained above, considered a relevant market comprising all (heavy) trailers (or even all "*heavy road transportation equipment*").³⁴
- (43) The majority of the customers and competitors responding to the Commission's market investigation indicated that they lease multiple types of heavy trailers. In addition, a relative majority of the customers responding to the market investigation indicated that they lease different types of trailers from the same provider.³⁵ One customer explained that "*as the case may be, different types of trailers are leased from different providers or from the same provider*". Another customer noted that they "*lease from every of [their] suppliers, different types like Box and Curtainsiders*." Customers indicated that they "*compare different providers*" and it depends on factors such as price, availability and delivery time.³⁶

³² Form CO, paragraphs 113-114

³³ Form CO, paragraph 113.

³⁴ Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraphs 16 and 18.

³⁵ Replies to eQ1 – Questionnaire to Customers, questions 7 and 8; eQ2 – Questionnaire to Competitors, question 11.

³⁶ Replies to eQ1 – Questionnaire to Customers, questions 7.1 and 8.1.

Conclusion

- (44) In light of the above, considering that most customers and suppliers lease multiple types of heavy trailers, and in line with its approach in previous cases, the Commission concludes that, for the purposes of this Decision, the market for operating leasing of heavy trailers includes all the different types of heavy trailers.

4.2.1.6 Operating leasing services of rigids

- (45) A rigid is a vehicle that is motorized but, unlike a truck or a tractor, does not pull a separate trailer unit, but the trailer and the motor unit are combined. The Commission has not yet addressed the market delineation with respect to rigids.

Notifying Party's views

- (46) The Notifying Party considers that the precise market definition for operating leasing of rigids can be left open, as the Parties' market position in the operating leasing of rigids is negligible.³⁷

Commission's assessment

- (47) Considering that the Transaction would not give rise to an affected market under any plausible geographic market definition (EEA-wide or national) if operating leasing of rigids was considered as a separate market,³⁸ and that the Parties' market shares would be diluted in a market for operating leasing of trailers including rigids,³⁹ for the purposes of this Decision, the Commission can leave open the exact market definition and will further assess the competitive effects of the Transaction on the market for operating leasing of heavy trailers (excluding rigids).

Conclusion

- (48) For the purposes of this Decision, it is not necessary to conclude on the exact product market definition for operating leasing of rigids, since no serious doubts would arise as to the Transaction's compatibility with the internal market under any plausible product market definition.

4.2.2 *Geographic market definition*

Notifying Party's views

- (49) The Notifying Party considers that the relevant markets for operating leasing of heavy trailers and for operating leasing of heavy trucks could be defined as national, although it disagrees that there are meaningful national preferences as to brands or difficulties relating to cross-border transactions. The brands of the trailers are

³⁷ Form CO, paragraph 176.

³⁸ There is no overlap between the Parties' rigid leasing activities at national level. On an EEA-wide basis, the Parties' combined share in the operating leasing of rigids is below 5%. See Form CO, paragraph 179.

³⁹ Form CO, paragraphs 179 and 180.

typically the same for all trailers and across Europe and, while it is correct that cross-border transactions are rare, geographic expansion in this industry is easy.⁴⁰

Commission's assessment

- (50) According to previous Commission practice, the market for operating leasing is national in scope, due to "*differentiated consumer practices and national preferences as to e.g. brands, existing language barriers and difficulties concerning cross-border transactions.*"⁴¹ Indeed, in a number of Commission's precedents concerning contract truck hire and rental of motor vehicles markets, the Commission considered the relevant market to be national in scope.⁴²
- (51) The results of the Commission's market investigation in this respect were mixed.⁴³ Most customers and competitors responding to the market investigation indicated that they lease heavy trailers and/or trucks either on a national or on an EEA-wide basis. A relative majority of these customers and competitors indicated that they lease heavy trailers and/or trucks at national level and that there are national barriers that prevent or make it more difficult to lease heavy trailers and/or trucks in another country. The national barriers mentioned by the respondents include, among others national tax and registration rules, insurance requirements, registration requirements, licence plates, laws regarding the ownership of the asset, regulations regarding the characteristics of vehicles, who may drive the vehicle. One competitor mentioned that "*the risk varies widely across countries, red tape in general and varying technical regulations are the most important problems.*"⁴⁴
- (52) In sum, it appears that, while a substantial number of in particular large fleet operators source on an EEA-wide basis, the majority still does so at a national level.

Conclusion

- (53) In any case, for the purposes of this Decision, it can be left open whether the relevant geographic markets for operating leasing of heavy trailers and for operating leasing of heavy trucks are national or EEA-wide, since no serious doubts would arise as to the Transaction's compatibility with the internal market under either definition.

4.2.3 Conclusion on the market definition

- (54) In light of the above, it is not necessary to conclude on the exact geographic market definition of the markets for operating leasing of heavy trailers and for operating leasing of heavy trucks. For the reasons explained above, the Commission will, for the purposes of this Decision, assess the effects of the Transaction on national

⁴⁰ Form CO, paragraph 132.

⁴¹ Commission decision of 6 August 2008 in case M.5217 – GEFA/PEMA, paragraph 12.

⁴² Commission decision of 3 December 1999 in case M.1739 Iveco Fraikin, paragraph 9; Commission decision of 18 February 2000 in case M.1810 –VW/Europcar, paragraphs 13 and 14; Commission decision of 4 September 2001 in case M.2540 – Fidis/SEI/JV, paragraph 13; Commission decision of 24 November 2005 in case M.3987 – Fidis Renting/Leasys, paragraph 12; Commission decision of 5 December 2006 in case M.4420 – Credit Agricole/Fiat, paragraph 23.

⁴³ Replies to eQ1 – Questionnaire to Customers, questions 15-17; eQ2 – Questionnaire to Competitors, questions 18-20.

⁴⁴ Replies to eQ1 – Questionnaire to Customers, question 16; eQ2 – Questionnaire to Competitors, question 19.

markets as well as on an EEA-wide market for the provision of operating leasing services of heavy trailers and for the provision of operating leasing services of heavy trucks.

5. COMPETITIVE ASSESSMENT

5.1 Horizontal effects

5.1.1 Market shares

- (55) The Transaction gives rise to several horizontal overlaps in the markets for operating leasing of heavy trailers and the sale of used trucks and trailers. However, on the basis of the Notifying Party's submission, the Transaction will result in only five affected markets for operating leasing of heavy trailers: in Czechia, Denmark, Germany and Sweden, and at EEA-level.
- (56) As indicated in Table 1 below, the Parties' combined market share for operating leasing of heavy trailers post-Transaction would be as follows.

Table 1. The Parties' market shares in operating leasing of heavy trailers, 2018⁴⁵

Country	TIP's market share	PEMA's market share	Combined market shares
Czechia	[5-10]%	[20-30]%	[30-40]%
Denmark	[20-30]%	[10-20]%	[30-40]%
Germany	[10-20]%	[10-20]%	[20-30]%
Sweden	[30-40]%	[5-10]%	[30-40]%
EEA	[10-20]%	[0-5]%	[20-30]%

5.1.2 Notifying Party's views

- (57) The Notifying Party submits that the Parties' combined market shares at EEA-level and on the national markets for operating leasing of heavy trailers in Czechia, Denmark, Germany and Sweden are not indicative of any market power and that they will continue to face significant competitive constraints post-Transaction due to the following reasons.

⁴⁵ All market share estimates provided in this Decision are based on the size of the fleet (*i.e.* the number of heavy trailer units) and are based on the Parties' estimates provided in the Form CO and Annex 6.1 to the Form CO. These market shares are largely confirmed by the information collected by the Commission in its market investigation.

- (58) First, the combined entity will continue to face competition from a number of operating leasing players, including pan-European vertically integrated players such as EURO-Leasing⁴⁶ and Krone.⁴⁷
- (59) Second, at national level, in each of Czechia, Denmark, Germany and Sweden, there is a number of independent operating leasing providers. In addition, according to the Notifying Party, there are no material barriers to entry or expansion from both the product and geographic perspectives as there is perfect supply-side substitutability between different types of trailers. An operating leasing company active in one Member State can easily enter or expand in another Member State.
- (60) Moreover, the Notifying Party submits that the vehicles leased to customers by TIP, PEMA and competing providers are homogenous and standardized products. All leasing companies offer more or less the same trailer brands from leading OEM manufacturers, such as Schmitz Cargobull, Krone,⁴⁸ Kögel or Schwarzmüller.
- (61) Third, customers such as large retail chains and transport and logistics operators, including DHL, DB Schenker, Kuehne & Nagel, trans-o-flex, DSV, have significant buyer power.
- (62) Last, post-Transaction, the Parties will continue to face significant competitive constraints from financial institutions that offer financial leasing (*e.g.* instalment purchases, regular loans) as well as operating leasing solutions by teaming up with OEM manufacturers and independent services providers. In addition, the Parties' will remain constrained by general leasing companies, various importers, distributors and traders.

5.1.3 *The Commission's assessment*

5.1.3.1 Czechia

- (63) The Commission has assessed the horizontal overlap between the Parties' activities in operating leasing of heavy trailers in Czechia and considers that the Transaction will not lead to a significant impediment to effective competition for the following reasons.
- (64) First, while the combined entity will have a market share of [30-40]% in operating leasing of heavy trailers post-Transaction, there will remain a number of competitors, including pan-European operating leasing providers such as Fraikin ([20-30]% market share)⁴⁹ and EURO-Leasing ([5-10]% market share)⁵⁰ that will continue to constrain the merged entity's ability to profitably raise prices or lower the quality of its services in Czechia. Local or smaller players such as EWT ([5-10]% market share),⁵¹ Schwarzmüller ([0-5]% market share), and ABTIR/TIR Centrum ([0-

⁴⁶ Active, among others, in all five affected markets.

⁴⁷ Active, among others, in Denmark, Sweden and Germany.

⁴⁸ Fahrzeugwerk Bernard Krone GmbH & Co. KG ("Krone").

⁴⁹ Following the Commission's market investigation, it appears that this market share is slightly overstated. Nevertheless, in the Commission's view, Fraikin is an important competitor to the Parties.

⁵⁰ Annex 6.1 to the Form CO.

⁵¹ EWT is the general agent of Schmitz Cargobull in Czechia.

5] % market share) will also remain active on the Czech market.⁵² This is also supported by the Commission's market investigation, given that none of the responding competitors believed that the Transaction could have a negative impact in terms of higher prices or lower quality of services in Czechia.⁵³

- (65) Second, as demonstrated by the Commission's market investigation, several customers in Czechia do not view TIP and PEMA as closest competitors due to the "differences in quality of services and price"⁵⁴ and note that "there are no huge obstacles to switch to another provider".⁵⁵
- (66) Third, the majority of customers responding to the Commission's market investigation noted that they do not expect significant changes following the Transaction.⁵⁶ Given this, on balance, the Commission is of the view that the majority of customers do not see any issues with the Transaction.
- (67) Last, based on the Notifying Party's submission, it appears that the total size of the operating leasing market in Czechia is just under 2 500 units of heavy trailers as opposed to markets such as Denmark and Belgium with total market sizes of approximately 16 000 units and 14 000 units of heavy trailers respectively.⁵⁷ This shows that operating leasing does not seem to present an important means of contracting for heavy trailers, as opposed to buying directly, including by means of a financial lease. Indeed, the Parties' competitors in Czechia indicate that the markets in the "CEE countries are less developed, and have less concentration".⁵⁸ The same competitor considers that there is "lower penetration" of the operating leasing model,⁵⁹ whereas another competitor notes that customers are "smaller fleet operators [that] have a preference for owning the trailers".⁶⁰ This, in the Commission's view, suggests that overall operating leasing is not a preferred means for customers seeking to contract for heavy trailers in Czechia.
- (68) In view of the above, the Commission therefore considers that it is unlikely that the Transaction would give rise to serious doubts as to its compatibility with the internal market in operating leasing of heavy trailers in Czechia.

5.1.3.2 Denmark

- (69) The Commission considers that the Transaction will not lead to a significant impediment to effective competition in Denmark for the following reasons.
- (70) First, the Danish market for operating leasing of heavy trailers is considered competitive with a number of large fleet providers active on this market. Indeed, TIP and PEMA are currently number two and three operating leasing of heavy trailers

⁵² Annex 6.1 to the Form CO.

⁵³ Replies to eQ2 – Questionnaire to Competitors, question 27.

⁵⁴ Customer's reply to eQ1 – Questionnaire to Customers, question 18.1.

⁵⁵ Customer's reply to eQ1 – Questionnaire to Customers, question 19.1.

⁵⁶ Replies to eQ1 – Questionnaire to Customers, questions 20 and 21.

⁵⁷ Annex 6.1 to the Form CO.

⁵⁸ Competitor's reply to eQ2 – Questionnaire to Competitors, question 22.1.

⁵⁹ Competitor's reply to eQ2 – Questionnaire to Competitors, question 22.1.

⁶⁰ Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019, paragraph 14.

providers in Denmark with a market share of [20-30]% and [10-20]% respectively.⁶¹ Krone is currently the market leader with a market share of [20-30]%, whereas other players on the Danish market include multinational providers such as Schmitz Cargobull ([5-10]% market share) and EURO-Leasing ([5-10]% market share), as well as Nordic players such as PNO ([5-10]% market share)⁶² and HFR ([5-10]% market share).⁶³

- (71) In the Commission’s view, while the merged entity will become the largest player on the market for operating leasing of heavy trailers in Denmark with a combined market share of [30-40]% post-Transaction, it will continue to face competition from the remaining players, in particular from the second largest provider Krone for which Denmark is the largest market.⁶⁴
- (72) Second, the Commission’s market investigation showed that Danish customers will continue to have sufficient choice following the Transaction. As noted by several customers, “*there will [...] be alternatives to TIP and PEMA*”.⁶⁵ Indeed, a large number of customers responding to the Commission’s market investigation expressed their view that the Transaction will have no impact in Denmark.⁶⁶ Similar view was also shared by the majority of the Parties’ competitors in Denmark who provided responses to the Commission’s market investigation.⁶⁷ Some customers also noted that they expect the Transaction to have a positive impact in terms of “*better services*”⁶⁸ and “*better quality*”.⁶⁹
- (73) Only one competitor expressed its view that the Transaction might negatively impact competition in Denmark.⁷⁰ However, the Commission notes that this competitor is not active in Denmark and that during the call with the case team in the context of the Commission’s market investigation, this competitor did not further explain why the Transaction could have a negative impact in Denmark.⁷¹ The Commission also notes that none of the current players in Denmark expressed similar concerns. On balance, the Commission is of the view that the strong presence of competing operating leasing providers in Denmark will be sufficient to constrain the merged entity’s ability to negatively affect market prices and conditions.
- (74) Moreover, a large number of customers responding to the Commission’s market investigation indicated that it is possible to contract for operating leasing services

⁶¹ Annex 6.1 to the Form CO.

⁶² PNO is headquartered in Denmark and operates through the EEA. It describes itself as “*the Nordic region’s leader in trailer rental*”. See PNO’s website at <https://sharing.pnorental.com/about>.

⁶³ Annex 6.1 to the Form CO.

⁶⁴ Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019, paragraph 3.

⁶⁵ Replies to eQ1 – Questionnaire to Customers, question 19.1.

⁶⁶ Replies to eQ1 – Questionnaire to Customers, question 21.

⁶⁷ Replies to eQ2 – Questionnaire to Competitors, question 27, and Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019, paragraph 3.

⁶⁸ Replies to eQ1 – Questionnaire to Customers, question 21.1.

⁶⁹ Replies to eQ1 – Questionnaire to Customers, question 21.1.

⁷⁰ Replies to eQ2 – Questionnaire to Competitors, questions 22.1, 27 and 27.1; Non-confidential version of the minutes of the call with a Competitor, dated 3 October 2019.

⁷¹ Non-confidential version of the minutes of the call with a Competitor, dated 3 October 2019. See also Competitor’s reply to eQ2 – Questionnaire to Competitors, question 22.1 where this competitor stated that “*Denmark & Sweden are countries where we are not present, hence it is difficult to elaborate*”.

across borders.⁷² For example, as noted by one of the customers, typically if an operating leasing provider “*is able to obtain local registration and insurance (and has regional presence), it should not raise major issues [for an operating leasing provider in one country to contract with customers in another country].*”⁷³ A competitor explained that there is “*strong overall competition in the market between many regional players (ICTS, Krone Fleet, ATL)*”.⁷⁴ This shows that operating leasing providers of heavy trailers active in neighbouring Member States are also capable to exert some competitive pressure.

- (75) Last, the responses to the Commission’s market investigation indicate that while various countries exhibit different regulatory requirements in terms of registration and insurance,⁷⁵ the national markets for operating leasing of heavy trailers, on balance, do not exhibit particularly high barriers to entry and expansion across various Member States.
- (76) In view of the above, the Commission therefore considers that it is unlikely that the Transaction would give rise to serious doubts as to its compatibility with the internal market in operating leasing of heavy trailers in Denmark.

5.1.3.3 Germany

- (77) The Commission considers that the Transaction will not lead to a significant impediment to effective competition in Germany for the following reasons.
- (78) First, the German market for operating leasing of heavy trailers has one of the largest number of operating leasing providers in Europe. Indeed, a number of vertically integrated pan-European players such as Krone, Schmitz Cargobull and EURO-Leasing are active on this market in Germany and offer their large heavy trailer fleets to the German customers. Other experienced competitors include Seaco ([10-20]% market share), Axis Intermodal ([5-10]% market share), Aves ([5-10]% market share), and Confern ([5-10]% market share). Moreover, as noted by a competitor of the Parties, the German market also features strong local operating leasing providers, including Mezger (Stuttgart area), which have a very close relationship with their customers.⁷⁶
- (79) Second, following the Transaction, the Parties’ combined market share in Germany will result to [20-30]%, *i.e.* just slightly above the threshold for an affected market. Krone (with a market share of [10-20]%) and Seaco (with a market share of [10-20]%) will be the second and third largest competitors respectively.⁷⁷ Given the moderate combined market share of the Parties, the Commission is of the view that the large number of the remaining players, including the strong vertically integrated

⁷² Replies to eQ2 – Questionnaire to Competitors, question 20; Replies to eQ1 – Questionnaire to Customers, question 17.

⁷³ Customer’s reply to eQ1 – Questionnaire to Customers, question 16.1.

⁷⁴ Competitor’s reply to eQ2 – Questionnaire to Competitors, question 23.1.

⁷⁵ Replies to eQ2 – Questionnaire to Competitors, question 23. In addition, such requirements are not specific to heavy trailers and apply to vehicles in general throughout Member States.

⁷⁶ Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019, paragraph 12.

⁷⁷ Annex 6.1 to the Form CO.

competitor Krone, will be able to exert significant competitive pressure on the merged entity post-Transaction.

- (80) Third, the Parties' competitors responding to the Commission's market investigation generally support the Commission's findings.⁷⁸ Only one competitor expressed its view that the Transaction might have a negative impact on the German market in terms of higher prices and lower quality, whereas the majority of responding German competitors believe that the Transaction will have no impact.⁷⁹ For example, as noted by one competitor, the Transaction "*is not problematic, since [post-Transaction] the merged entity will still have to compete with manufacturers (OEMs)*".⁸⁰ Another competitor explained that "*most of the truck and trailer producers have their own leasing offers, and the independent providers are well served by large international and smaller regional providers.*"⁸¹
- (81) On the demand side, the Commission's market investigation showed that a majority of customers viewed the Transaction as having a positive or no impact.⁸² One customer noted that in its view, the Transaction could be "*a benefit for maintenance network in Germany*"⁸³; whereas another customer noted that "*we are not concerned here [...]. In terms of pricing, our purchasing department will make sure that prices will not change to our disadvantage*".⁸⁴
- (82) Last, as mentioned in section 5.1.3.2 above, operating leasing providers in other Member States also exert some competitive pressure,⁸⁵ and the national markets for operating leasing of heavy trailers, on balance, do not exhibit particularly high barriers to entry and expansion across various Member States.
- (83) In view of the above, the Commission therefore considers that it is unlikely that the Transaction would give rise to serious doubts as to its compatibility with the internal market in operating leasing of heavy trailers in Germany.

5.1.3.4 Sweden

- (84) The Commission considers that the Transaction will not lead to a significant impediment to effective competition in Sweden for the following reasons.

⁷⁸ Replies to eQ2 – Questionnaire to Competitors, question 27.

⁷⁹ Replies to eQ2 – Questionnaire to Competitors, question 27. The same competitor expressed its view that the combined market share of the Parties post-Transaction will be above 50% in Germany leading to a "*dominant position, especially on the trailer segment*", however, based on the information collected during the Commission's investigation, it appears that such estimation is not substantiated. See Competitor's reply to eQ2 – Questionnaire to Competitors, questions 22.1, 26, 26.1, 27, and 27.1; Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019 and Non-confidential version of the minutes of the call with a Competitor, dated 3 October 2019.

⁸⁰ Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019, paragraph 17.

⁸¹ Competitor's reply to eQ2 – Questionnaire to Competitors, question 23.1.

⁸² Replies to eQ1 – Questionnaire to Customers, question 21.

⁸³ A Customer's reply to eQ2 – Questionnaire to Customers, question 21.1.

⁸⁴ Convenience translation from German. See Customer's reply to eQ1 – Questionnaire to Customers, question 21.1.

⁸⁵ Customer's reply to eQ1 – Questionnaire to Customers, question 16.1.

- (85) First, even though the merged entity will have a combined market share of [30-40]% following the Transaction, a number of competitors will continue to exert significant competitive pressure on the merged entity, including PNO, who, with a market share of [30-40]% is roughly the same size as the merged entity.⁸⁶ Other competitors in Sweden include Schmitz Cargobull ([5-10]% market share), EURO-Leasing ([5-10]% market share), AG Trailer ([5-10]% market share), and Krone ([0-5]% market share).⁸⁷
- (86) Second, based on the Notifying Party's submission, it appears that the Parties are not each other's closest competitors in Sweden, as [TIP and PEMA target different customer groups].⁸⁸ The responses to the Commission's market investigation in this respect were mixed and therefore inconclusive.⁸⁹
- (87) Third, none of the Parties' competitors responding to the Commission's market investigation expressed their view that the Transaction could have a negative impact in term of higher prices or lower quality of services in Sweden.⁹⁰ Similarly, on the demand side, the majority of customers, which had knowledge on the Swedish market, indicated that the Transaction will have no impact on the market for operating leasing of heavy trailers in Sweden.⁹¹
- (88) Last, as mentioned in section 5.1.3.2 above, operating leasing providers in other Member States also exert some competitive pressure,⁹² and the national markets for operating leasing of heavy trailers, on balance, do not exhibit particularly high barriers to entry and expansion across various Member States.
- (89) In view of the above, the Commission therefore considers that it is unlikely that the Transaction would give rise to serious doubts as to its compatibility with the internal market in operating leasing of heavy trailers in Sweden.

5.1.3.5 EEA

- (90) If the market for operating leasing of heavy trailers was considered to be EEA-wide, the Transaction would give rise to an affected market. At EEA-level, the Parties' combined market share in operating leasing of heavy trailers is approximately [20-30]%, just slightly above the threshold of an affected market.⁹³
- (91) The merged entity will continue to face significant competitive constraints post-Transaction from a number of large competitors, including the leasing businesses of OEM trailer manufacturers, such as Krone ([5-10]% market share) and Schmitz Cargobull ([0-5]% market share), and from general leasing companies, including

⁸⁶ As mentioned above, PNO is headquartered in Denmark and operates through the EEA; it describes itself as "*the Nordic region's leader in trailer rental*". See PNO website at <https://sharing.pnorental.com/about>.

⁸⁷ Annex 6.1 to the Form CO.

⁸⁸ As explained by the Notifying Party, as an exception in Europe, the market is not fully standardized. Therefore, trailers leased to domestic customers are typically local domestic equipment whereas trailers leased by European customers are typically European standard equipment. See Form, CO, paragraph 147.

⁸⁹ Replies to eQ2 – Questionnaire to Competitors, questions 21-22.

⁹⁰ Replies to eQ2 – Questionnaire to Competitors, question 27.

⁹¹ Replies to eQ1 – Questionnaire to Customers, question 21.

⁹² Customer's reply to eQ1 – Questionnaire to Customers, question 16.1.

⁹³ Annex 6.1 to the Form CO.

PNO, Ryder, and Fraikin. The merged entity will also continue to face intense competition from regional and local players, as well as importers, distributors and traders of trailers.⁹⁴ In addition, the merged entity will also face competition from international (non-European) players, such as CIMC, a Chinese company which has acquired the UK market leader SDC and is planning to open a plant in Poland.⁹⁵

- (92) This was confirmed by the market investigation, where a majority of the customers and competitors responding to the market investigation indicated that the Transaction would have either no impact or even a positive impact on the overall market for operating leasing of heavy trailers in the EEA.⁹⁶ Indeed, as indicated by one of the competitors active in several Member States, there is “*strong overall competition in the market between many regional players (ICTS, Krone Fleet, ATL)*”.⁹⁷
- (93) In view of the above, the Commission therefore considers that it is unlikely that the Transaction would give rise to serious doubts as to its compatibility with the internal market in operating leasing of heavy trailers at EEA-level.

5.2 Conglomerate effects

- (94) The Transaction will give rise to conglomerate effects in four national markets, namely Czechia, Denmark, Sweden, and the Netherlands.
- (95) TIP and PEMA are active in the operating leasing of heavy trailers and trucks. Trailers and trucks are complementary products in the sense that a truck is required to tow a trailer, which itself is not motorized.

5.2.1 Market shares

- (96) With respect to the conglomerate relationship between the Parties' activities, the Transaction would give rise to affected national markets, if the operating leasing of heavy trailers and trucks are defined as separate relevant product markets. As shown in Table 2 below, the Parties' combined market share in operating leasing of heavy trailers exceeds [30-40]% in Czechia (combined market share of [30-40]%), Denmark (combined market share of [30-40]%), Sweden (combined market share of [30-40]%). In the Netherlands TIP's market share alone is [40-50]%,⁹⁸ however PEMA does not lease heavy trailers to customers that are located in the Netherlands.⁹⁹

⁹⁴ Form CO, paragraphs 7-10; Non-confidential version of the minutes of the call with a Competitor, dated 4 October 2019.

⁹⁵ Annex 6.2.1 to the Form CO, page 39.

⁹⁶ Replies to eQ1 – Questionnaire to Customers, question 21; and to eQ2 – Questionnaire to Competitors, question 27.

⁹⁷ Competitor's reply to eQ2 – Questionnaire to Competitors, question 23.1.

⁹⁸ Form CO, paragraph 172.

⁹⁹ As explained by the Notifying Party, PEMA does not lease trailers to customers that are located in the Netherlands. Nevertheless, in exception, a non-Dutch customer may ask PEMA to register a trailer, which is required to be registered in one country, in the Netherlands (from PEMA's offices in Belgium or Germany), however, such registrations are not considered as relevant market activity in the Netherlands. See Form CO, footnote 34.

- (97) TIP's presence in the operating leasing of heavy trucks is marginal with only [...] trucks units across the EEA.¹⁰⁰ Moreover, TIP is not active in the operating leasing of heavy trucks in Denmark, Sweden, Czechia and the Netherlands, and estimates that its and PEMA's combined market share is below [5-10]% at EEA level.¹⁰¹ PEMA estimates that its market share in the operating leasing of heavy trucks in Sweden is approximately [0-5]-[5-10]%, in each Denmark and Czechia below [5-10]%, and in the Netherlands below [0-5]%.¹⁰²

Table 2. The Parties' market shares in conglomerate affected markets¹⁰³

Country ¹⁰⁴	Operating leasing of heavy trailers	Operating leasing of heavy trucks	
	Merged entity	PEMA	TIP
Czechia	[30-40]%	<[5-10]%	[0-5]%
Denmark	[30-40]%	<[5-10]%	[0-5]%
Sweden	[30-40]%	[0-5]-[5-10]%	[0-5]%
The Netherlands	[40-50]% (only TIP's market share)	<[0-5]%	[0-5]%

5.2.2 Notifying Party's views

- (98) The Parties submit that the Transaction will not result in any competitive (conglomerate) concerns in relation to the potential commercial building of a combined trailer and truck offering, as the merged entity will not have the ability and incentive to foreclose competitors post-Transaction.

5.2.3 Commission's assessment

- (99) The Commission considers that the Parties will not have the ability to foreclose rivals by engaging in bundling strategies.
- (100) First, PEMA is already active in the operating leasing of both heavy trucks and heavy trailers and could have already engaged in such practices.

¹⁰⁰ Form CO, paragraph 172.

¹⁰¹ Form CO, paragraph 172, Reply of I Squared to RFI of 10 October 2019, paragraphs 3-5.

¹⁰² Form CO, paragraph 172, Reply of I Squared to RFI of 10 October 2019, paragraphs 3-5.

¹⁰³ Form CO, paragraph 172, Reply of I Squared to RFI of 10 October 2019, paragraphs 3-5.

¹⁰⁴ At EEA-wide level, the conglomerate relationship between the Parties' activities will not give rise to an affected market, since the Parties have a combined market share of [20-30]% on the market for operating leasing of heavy trailers and a combined market share below [5-10]% for the operating leasing of heavy trucks.

- (101) Second, as explained in the section on horizontal assessment, the merged entity will not have a significant degree of market power in the operating leasing of heavy trailers. As such, it will not be able to foreclose competitors in the operating leasing of heavy trucks. Moreover, as indicated in Table 2, PEMA's market shares in operating leasing of heavy trucks are very low. The merged entity will thus lack the sufficient degree of market power to leverage its market position in operating leasing of heavy trucks to be able to foreclose competitors in the operating leasing of heavy trailers.
- (102) Third, customers can and do mix and match heavy trucks and trailers from different leasing providers ("multi-sourcing"). Indeed, the majority of customers responding to the Commission's market investigation confirmed that they lease their heavy trailers from different operating leasing providers.¹⁰⁵ One customer indicated that they "*utilise a limited pool of industry recognised suppliers to fulfil [their] trailer requirements and always after undertaking a review of the respective quotations*"; another indicated that this constitutes a "*decision based upon operational and financial considerations*" and a third one noted that "*it is a strategic purchasing decision [...] to have different suppliers*".¹⁰⁶
- (103) Fourth, post-Transaction, there will remain a large number of operating leasing providers in the relevant national markets that are able to offer both truck and trailer operating leasing contracts.
- (104) In view of the above, and considering all the evidence available to the Commission, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market due to conglomerate effects.

5.3 Conclusion on the competitive assessment

- (105) In light of the outcome of the market investigation and the evidence submitted by the Notifying Party, the Commission concludes that the Transaction does not raise serious doubts about its compatibility with the internal market or the functioning of the EEA Agreement as regards its impact on competition for operating leasing of heavy trailers in Czechia, Denmark, Germany, Sweden, the Netherlands or at EEA-level, including with respect to conglomerate effects.

¹⁰⁵ Replies to eQ1 – Questionnaire to Customers, question 9.

¹⁰⁶ Replies to eQ1 – Questionnaire to Customers, questions 9.1 and 8.1.

6. CONCLUSION

- (106) 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

Member of the Commission