EUROPEAN COMMISSION
DG Competition

Case M.9479 - PSA / SAFT / ACC

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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EUROPEAN COMMISSION

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9479 – PSA/SAFT/ACC**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 14 January 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Peugeot SA ("PSA"), ultimately controlled by Groupe PSA, and Saft Groupe S.A. ("Saft"), ultimately controlled by Total S.A., will acquire, within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation,[3] joint control of a newly created joint venture called Automotive Cells Company ("ACC" or the "JV") by way of a purchase of shares (PSA and Saft together are the "Notifying Parties" or 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 Publication in the Official Journal of the European Union No C 18, 20.1.2020, p. 21.

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1. THE PARTIES

(2) **PSA** is active globally in the manufacture and supply of passenger cars ("PCs"), light commercial vehicles ("LCVs") and automotive components for motor vehicles, under the brands Peugeot, Citroën, Opel, Vauxhall and DS.

(3) **Saft** is active globally in the manufacture and supply of batteries for industrial applications, including industrial infrastructure and transportation systems, smart cities and medical devices, energy storage and telecom networks, industrial vehicles and defence systems, and satellites and space applications. Saft is solely controlled by Total S.A., a multinational integrated oil and gas company.[4]

2. THE OPERATION

2.1. Structure of the Transaction

(4) The Parties therefore intend to create a full-function JV, operating in France and Germany, for the development, manufacture and supply of cells and modules at a large scale. The Parties will each hold [share capital of the JV]% of the JV's equity[5] (the "Transaction").

(5) **The JV** will develop, manufacture and sell cells and modules using Li-ion technologies, at a large scale. Cells and modules manufactured by the JV will be used for various applications in the automotive sector (PCs/LCVs, etc.) but also, to a minor extent, for other industrial non-automotive applications. The JV will not manufacture battery systems.

2.2. Joint control

(6) Pursuant to a Term-Sheet signed on [date of the signing of the Term Sheet], PSA and Saft will each hold [share capital of the JV]% of the share capital and voting rights of the JV. In addition:

(a) The management of the JV will be supervised by a board composed of [management of the JV], of which PSA and Saft will each appoint [management of the JV]. The chairman of the board of directors will be appointed unanimously by the board of directors.

(b) A number of decisions of the board of directors will require unanimity, including [business strategy of the JV].[6]

(7) Therefore, the Commission considers that PSA and Saft will jointly control the JV.

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4 For completeness, Total is engaged in every sector of the oil and gas industry, including upstream (hydrocarbon exploration, development and production) and downstream (refining, petrochemicals, specialty chemicals, trading and shipping of crude oil and petroleum products and marketing). Total is also involved in the renewable energy and power generation sectors.

5 [Share capital of the JV].

6 For completeness, according to the Term Sheet signed on [date of the signing of the Term Sheet], in case the Parties disagree on certain matters, the deadlock mechanism will be designed so that "*no decision of one Party will automatically prevail over that of the other Party*".

2.3. Full-function joint venture

(8) The JV will have sufficient own staff, financial resources and dedicated management for its operation and for the management of its portfolio and business interests.[7]

(9) The JV's activities will go beyond its parents' activities. The JV will be a company developing, manufacturing and commercializing cells and modules at a large scale, i.e. designed for mass production mainly for the automotive manufacturers.

(10) With regard to the JV's relationship with its parents, the JV will have a market presence that goes beyond its parents' activities.

(a) The first orders of the JV will be placed by PSA to help launch the JV's activities. These orders will not cover the JV's total production capacity so that PSA's activities will not freeze the JV's activities.

(b) The aim of the JV is to sell most of its production to automotive Original Equipment Manufacturers ("OEMs") including, but not limited to, PSA. On the contrary, the rest of the significant capacity not sold to the parents will be used to address the needs of other OEMs. Other automotive OEMs will therefore be able to purchase cells and modules from the JV.

(c) The JV will conduct its commercial relationships with its clients on its own. It will participate in Requests for Information ("RFI")/Requests for Quotation ("RFQ") launched by OEMs at worldwide level.

(d) Saft will also be able to purchase cells/modules manufactured by the JV for non-automotive applications. However, this will in any case not represent more than [quantities produced and sold]% of the total capacity of the JV.[8]

(e) The various contracts with the parents and third parties will take place at market price and at arm's length conditions with all clients.[9]

(11) The Parties intend the JV to operate on a lasting basis (99 years).

3. EU DIMENSION

(12) PSA and Saft have a combined aggregate world-wide turnover of more than EUR 5 000 million.[10] Each of has an EU-wide turnover in excess of EUR 250

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7 Form CO, paragraphs 51, 55 and 81:
Staff - the total number of staff (including the Management Committee and employees) is expected to be [number of staff in 2020 and 2023] when the JV starts commercializing its cells and modules, and up to around [number of staff in 2030].
Assets - the JV will have, among others, one testing line and have two industrial plants with all equipment for the development, manufacture and supply of cells and modules for a total capacity of [production capacity of the JV].
Finance - PSA and Saft have committed to finance in equity an amount [financial information] in total in line with their respective shares in the JV.

8 In addition, there is no exclusivity to the benefit of Saft.

9 As explained in the Parties internal documents, the "[cost structure and supply sources]", see Annex 5-1 of the Form CO, page 18.

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

million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has an EU dimension.

4. COMPETITIVE ANALYSIS

4.1. Market definition

4.1.1. Product market definition

4.1.1.1. The manufacture and supply of batteries, cells and modules

(13) In previous decisions,[11] the Commission has distinguished between "primary" (also known as disposable) and "secondary" (also known as rechargeable) batteries. Within rechargeable batteries, the Commission has previously differentiated the market into three separate product markets:[12] (i) portable batteries; (ii) heavy-duty industrial batteries; and (iii) automotive batteries.

(14) The Commission has previously stated that batteries could be supplied either as (i) modules (consisting of a number of cells) or (ii) integrated into a battery pack (or system). The Commission ultimately left open the question of the existence of a distinct product market for each of cells and modules separately.[13]

(15) The Commission has also previously indicated that for automotive batteries, a distinction could be drawn between Li-ion and NiMH batteries. This possible distinction was however also left open.[14]

(16) The Notifying Parties argue that since the Commission last examined this market over ten years ago, technology has evolved and almost all cells and modules manufacturers for the automotive industry now use Li-ion technology. The Notifying Parties argue that NiMH is now a marginal technology, and forecast that Li-ion cells will continue to constitute the technology of choice for the next decade.[15]

(17) It should be noted that the JV will only be active in the manufacture and supply of battery cells and modules (excluding battery systems) using Li-ion technology.

(18) The Commission therefore analysed the market for the manufacture and supply of battery cells and modules (excluding battery systems) using Li-ion technology as the narrowest plausible product market.

(19) In any case, as the activities of any of the Parties in the market for the manufacture and supply of batteries, cells and modules under any plausible product market definition or sub-segment (between modules versus integrated battery packs, Li-ion

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11 M.8988 - *Energizer/Spectrum Brands (battery and portable lighting business)*; M.8425 - *Safran/Zodiac Aerospace*; M.7655 - *Berkshire Hathaway/the Duracell Business*; M.5421 - *Panasonic/Sanyo*; M.5227 - *Robert Bosch/Samsung/JV*; M.2705 - *Enersys/Invensys*; M.836 - *Gillette/Duracell*.

12 M.5421 - *Panasonic/Sanyo*, paragraph 12.

13 M.5421 - *Panasonic/Sanyo*, paragraph 116.

14 M.5421 - *Panasonic/Sanyo*, paragraph 116.

15 The Parties refer to the Final Report of the European Battery Cell R&I Workshop, 12 February 2018, page 3.

versus MiMH batteries) will remain below 20%, the Commission considers that the question of the exact product market definition can be left open.

4.1.1.2. The manufacture and supply of PCs and LCVs

(20) In previous decisions,[16] the Commission has considered separate markets for the manufacture and supply of PCs on the one hand, and of LCVs on the other hand.

(21) For PCs, the Commission has defined separate product markets for (i) mini cars, (ii) small cars, (iii) medium cars (iv) large cars, (v) executive cars, (vi) luxury cars (vii) sport cars, (viii) sport utility vehicles ("SUVs") and (ix) multipurpose vehicles.[17]

(22) The Commission has previously considered the further sub-segmentation of the SUV segment into (i) small, (ii) medium and (iii) large SUVs but ultimately left the question open.[18]

(23) For LCVs, the Commission has considered but ultimately left open whether to further sub-segment LCVs into vehicles (i) up to 3.5 tons and (ii) between 3.5-6 tons.[19]

(24) The Commission also ultimately left open whether pick-up trucks can be considered PCs given that they can be purchased for private use and can transport both goods and people.[20]

(25) Furthermore, the Commission has left open whether each vehicle segment should be further segmented between vehicles with combustion engines and EVs. Within EVs, a possible further segmentation exists on the basis of technology, between electric battery vehicles and hybrid vehicles.[21]

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

(27) The Commission considers the exact market definition for the downstream market for the manufacture and supply of PCs and LCVs and its potential sub-segments (between different types of SUVs, between the weight categories of LCVs, as including or excluding pickup trucks, EVs and its further segmentation by technology) can be left open.

(28) The Transaction will be assessed on all narrowest plausible market definitions leading to a vertically affected market:

(a) Upstream: the market for the manufacture and supply of batteries, cells and modules and the plausible sub-segments (between modules versus integrated battery packs, Li-ion versus MiMH batteries). As explained in paragraph (18), the Parties have a share of less than 20% on any potential sub-segments,

16 M.8449 *Peugeot/Opel* paragraph 6; M.1519 *Renault/Nissan*; M.2832 - *General Motors/Daewoo*; M.5219 - *VWAG/OFH/VWGI*; M.5518 - *Fiat/Chrysler*.

17 M.8449 - *Peugeot/Opel*, paragraphs 7-16.

18 M.8099 - *Nissan/Mitsubishi*, paragraph 13; M.8449 - *Peugeot/Opel*, paragraph 12.

19 M.8449 - *Peugeot/Opel*, paragraphs 7-16.

20 M.8449 - *Peugeot/Opel*, paragraphs 7-16.

21 M.8449 - *Peugeot/Opel*, paragraphs 7-16.

the analysis will therefore be conducted on the narrowest plausible market for the manufacture and supply of battery cells and modules (excluding battery systems) using Li-ion technology.

(b) Downstream: the market for the manufacture and supply of PCs and LCVs, split between PCs and LCVs and by type of cars as well as its potential sub-segments (between different types of SUVs, between the weight categories of LCVs, as including or excluding pickup trucks, EVs and its further segmentation by technology).

4.1.2. Geographic market definition

4.1.2.1. The manufacture and supply of batteries, cells and modules

(29) In previous decisions,[22] the Commission has left open whether the market for automotive batteries is EEA-wide or global.

(30) The Notifying Parties argue that the markets should be assessed at a worldwide level.

(31) In any case, as the activities of any of the Parties in the market for the manufacture and supply of batteries, cells and modules under any plausible product (as listed in paragraph (19)) and geographic market definition or sub-segment (between EEA and worldwide) will remain below 20%, the Commission considers that the question of the exact market definition can be left open

4.1.2.2. The manufacture and supply of PCs and LCVs

(32) In previous decisions,[23] the Commission has considered that the market for the manufacture and supply of PCs and LCVs could be national or EEA-wide in scope.

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

(34) In any case, the Transaction will be assessed on all plausible geographic markets (in the different Member States) leading to a vertically affected market. The exact geographic market definition can, in any case, be left open between national and EEA-wide as the Transaction will not give rise to serious doubts as to its compatibility with the internal market.

4.2. Competitive assessment

4.2.1. Introduction

(35) Demand for electric vehicles ("EVs") has been growing over recent years and consequently demand for cells and modules will continue growing. Currently, almost all cells and modules for EVs are manufactured by Asia-based suppliers.

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22 M.5421 - *Panasonic/Sanyo*, paragraphs 117-118. In particular, the Commission considered that the following characteristics as pointing towards a global market: (i) batteries are manufactured outside the EEA, mainly in Asia (ii) there are no major differences in customers' requirements between the EEA, the USA and Asia (iii) manufacturers tended to have a global pricing strategy and (iv) many OEMs source globally. The exact geographic market definition was ultimately left open.

23 M.8449 - *Peugeot/Opel*, paragraph 32.

(36) PSA is an automotive OEM active in particular in the manufacture of PCs and LCVs. PSA does not manufacture cells and modules for automotive batteries but purchases these products from external suppliers to incorporate them into batteries, themselves incorporated into the EVs manufactured by PSA. PSA does not sell batteries to third parties; its production of batteries is entirely for in-house purposes.

(37) Saft is the only company within Total active in the battery business. Saft manufactures batteries for industrial applications, including industrial infrastructure and transportation systems, smart cities and medical devices, energy storage and telecom networks, industrial vehicles and defence systems, and satellites and space applications. Saft does not manufacture batteries for the automotive industry.[24]

(38) The JV will manufacture cells and modules (but not battery systems) for the automotive industry. The JV will also manufacture cells and modules for non-automotive applications (industrial applications). However, these activities will represent less than [quantities produced and sold]% of the total capacity/turnover of the JV.

(39) The Transaction will not give rise to any horizontally affected markets.[25]

(40) The Transaction gives rise to certain vertical links that are not affected[26] and to a number of vertically affected markets between:

(a) Upstream: the manufacture and supply of Li-ion battery cells and modules for the automotive sector in the EEA (JV's activities), and

(b) Downstream: the manufacture and supply of PCs and LCVs, segmented by type of car, in Belgium, Croatia, Denmark, Estonia, France, Greece, Latvia, Malta, the Netherland, Portugal, Slovakia, Slovenia, and Spain and the UK (PSA's activities).

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24 Form CO, paragraph 104: this is with the exception of a recent JV between Saft and Tianneng Energy Technology with a focus on the development, manufacture and supply of Li-ion cells, modules and battery systems in the PRC and abroad. [Sales policy and strategy]. However, even once attributed to Saft, this activity does not lead to affected markets (as confirmed by the Parties, Form CO, paragraphs 104-107). This will therefore not be further discussed.

25 See footnote 21. Also, any potential horizontal overlap between the JV's and Saft activities for non-automotive batteries does not give rise to affected markets. The Parties estimate their combined share to be below 5% under any plausible market definition (See Form CO, paragraphs 146-149).

26 First, the activities of Saft and ACC would give rise to a vertical relationship between (i) ACC as a supplier of battery cells and modules (excluding battery systems) for industrial uses at the upstream level and (ii) Saft as a manufacturer of battery systems for industrial use at the downstream level. This would not give rise to any affected market on any plausible market definition. Second, the activities of Total and ACC would also give rise to a vertical relationship between (i) ACC as a supplier of battery cells and modules (excluding battery systems) for industrial uses at the upstream level, and (ii) Total as a producer of integrated solar energy systems at the downstream level. This would not give to any affected market on any plausible market definition. Third, there is an overlap not leading to an affected market between (i) ACC as a supplier of battery cells and modules (excluding battery systems), and (ii) PSA's activities under any plausible segmentation of the EVs (excluding combustion vehicles) market.

4.2.2. *Vertical relationship with regard to the supply of battery cells and modules to vehicle manufacturers*

(41) The Transaction gives rise to a vertical relationship between (i) the JV's upstream activity in the manufacture and supply of Li-ion battery cells and modules (excluding battery systems) for the automotive sector in the EEA and (ii) PSA's downstream activities in the manufacture and supply of PCs and LCVs.

4.2.2.1. Market characteristics

(42) First, the JV's (foreseen) activities upstream are very limited compared to its competitors.

(43) The JV is only expected to start commercializing its automotive cells and modules in 2023. The market share of the JV is expected to amount to [0-5]% in 2023 at worldwide level and [5-10]% in 2025 at EEA-level. The JV's total production capacity of cells and modules for automotive applications will be approx. [production capacity] GWh in 2025 and [production capacity] GWh/year at its maximum. The total production capacity on the global market is expected to reach 797.2 GWh in 2023 and to reach 225 GWh at the EEA level in 2025.[27]

(44) Second, on the downstream market for the manufacture and supply of EVs, PSA does not have shares above 30% on any potential sub-segments. However, the upstream product sold by the JV will only serve as an input in EVs and not combustion vehicles. Therefore, even looking at PSA's market shares on a potential downstream market that combined electric and combustion vehicles, it should be noted that the input sold by the JV only constitutes an input for a very limited part of the market.

(45) The Notifying Parties highlight that electric vehicles make up a limited portion of PSA's vehicle sales: only [percentage of sales]% of total sales. In the EEA, the proportion was [percentage of sales]%. Moreover, PSA's share in the electric vehicle segments (the only segments of the overall market for which PSA will purchase battery cells and modules) was only [0-5]% in the EEA for battery electric vehicles as a whole, and less than [0-5]% for hybrid electric vehicles. Even considering electric vehicles segmented by type of car, no market would be affected.[28]

(46) On the markets for the manufacture and supply of PCs and LCVs at both EEA and national level (combining electric and combustion vehicles), PSA had a market share above 30% in the following possible markets for manufacture and supply of vehicles in 2018: mini cars in the Netherlands ([30-40]%); small cars in Denmark ([30-40]%) and France ([30-40]%); SUVs in France ([30-40]%);[29] multipurpose vehicles in Croatia ([30-40]%), Estonia ([30-40]%), France ([30-40]%), Greece ([30-40]%), Slovakia ([30-40]%), and Spain ([30-40]%); LCVs below 3.5 tons in Croatia ([30-

27 Form CO, paragraphs 164-167.

28 PSA also confirmed that it would not hold market shares of 30% or above on any possible sub-segmentation of the markets for electric cars, whatever the geographical dimension retained.

29 On a narrower possible market for small SUVs, PSA had market shares above 30% in Belgium ([30-40]%), Denmark ([30-40]%), France ([30-40]%), Latvia ([30-40]%), Netherlands ([30-40]%), Portugal ([30-40]%), Slovenia ([30-40]%), Spain ([30-40]%) and the UK ([30-40]%). On a possible market for medium SUVs, PSA had a market share of [30-40]% in France.

40]%), Estonia ([30-40]%), France ([30-40]%), Malta ([30-40]%), Portugal ([30-40]%), and Slovakia ([30-40]%); and the overall PCs in France ([30-40]%).[30]

(47) Therefore, although the Transaction would technically give rise to vertically affected markets because of PSA's strong position in the manufacture and supply of PCs and LCVs, this is largely due to its sales of combustion engine vehicles to which the JV's battery cells and modules are not an input.

4.2.2.2. No input foreclosure

(48) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products that it would have otherwise supplied absent the merger, thereby raising its downstream rival's costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.

(49) First, as the JV is newly created, its production will add new input to the upstream market and this will be newly accessible as a consequence of the Transaction. Therefore, the Transaction provides a new source of supply on the market rather than foreclosing access to inputs.

(50) Second, the Commission's guidelines on the assessment of non-horizontal mergers state that "[w]*here a merged entity would have a market share just above the 30% threshold on one market but substantially below on other, related, markets competition concerns will be less likely*".[31]

(51) This appears to be the case, as PSA has market shares slightly above 30% on certain markets for the sale of PCs and LCVs, but is not active on the related input market for modules and cells of batteries while the JV is initially expected to have very low market shares on the input market ([0-5]% in 2023 at worldwide level and [5-10]% in 2025 at EEA-level).

(52) Third, since the JV's cells and modules will only be an input for electric vehicles, vertical effects could only arise on the possible markets for electric vehicles (on which PSA's shares are very low) or on the electric segment of a combined market for combustion and electric vehicles (which forms a small proportion of PSA's sales of PCs and LCVs). Moreover, the JV would also have market shares significantly below 30% on its related upstream market.

(53) Fourth, any attempt to restrict access to the JV's input would not be recouped on the downstream market. This is mostly due to the fact that even when the JV will have reached its full capacity production, it will still only amount to a small part of the market and important competitors (e.g. LG Chem, Panasonic, Samsung SDI, BYD, Bolloré SA, Nissan, etc.) would constitute alternative sources of supply for other automotive OEMs.

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30 As PSA does not commercialise LCVs between 3.5 and 6 tons, its shares on a possible broader market would be no higher than those one a market for LCVs between 3.5 and 6 tons.

31 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Guidelines"), OJ C 265, 18.10.2008, p. 6- 25, paragraph 25, footnote 3.

(54) Finally, respondents to the market investigation largely consider the impact of the Transaction to be neutral.

(55) Therefore, the Commission considers that the JV will not have the ability or incentive to exclude competitors of PSA from access to cells and modules for automotive applications.

4.2.2.3. No customer foreclosure

(56) 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.

(57) First, PSA does not represent an important customer on the downstream market. PSA's demand for Li-ion cells and modules for automotive applications forms only a very small part of the market. PSA has very low market shares in the EEA ([0-5]% for battery electric vehicles, and [0-5]% for hybrid electric vehicles) and these market shares are expected to remain largely below 30% in 2025). PSA will thus have no ability to foreclose the competitors of the JV by limiting their output.

(58) Second, there are strong competitors on the downstream market, where multiple other OEMs are potential customers for the JV and its competitors. This includes Fiat, Volkswagen, Hyundai, Toyota, Renault-Nissan, Daimler, Ford and others, whose growing demand will meet the offer of the upstream undertakings competing with the JV.

(59) Third, given the JV's very low market shares on the upstream market, PSA has no incentive to exclude the JV's competitors.

(60) Fourth, the Parties will also not have the incentives to foreclose access to PSA as a customer. Indeed, it is foreseen so far that PSA will continue acquiring modules and sells from other suppliers in order not to be locked with a single supplier.[32]

(61) Finally, respondents to the market investigation largely consider the impact of the Transaction to be neutral.

(62) Therefore, the Commission considers that the Parties will not have the ability or incentive to exclude competitors of the JV from access to PSA as a customer.

[32] Form CO, paragraph 175.

5. CONCLUSION

(63) 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