



EUROPEAN COMMISSION
DG Competition

***Case M.10387 - MERIDIAM /
ALLIANZ / NEUCONNECT***

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/12/2021

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: Case M. 10387 — MERIDIAM / ALLIANZ / NEUCONNECT
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 17 November 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Meridiam Investment 3 SAS (France), controlled by Meridiam SAS (“Meridiam”,

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’).

France) and Allianz Leben Infrastrukturfonds GmbH, APKV Infrastrukturfonds GmbH and AZ-SGD Infrastrukturfonds GmbH (Germany), belonging to the Allianz Group (“Allianz”, Germany) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of NeuConnect Holdings BV (Netherlands) and its operative subsidiaries NeuConnect Britain Limited (United Kingdom) and NeuConnect Deutschland GmbH (Germany) (all three undertakings jointly referred to as “NeuConnect”). Meridiam and Allianz are designated hereinafter as the “Notifying Parties” and together with NeuConnect as the “Parties”.

1. THE PARTIES

- (2) Meridiam is a global investor and asset manager specializing in long-term investments in public and community infrastructure. As a financial investor Meridiam is active in the generation of electricity in Germany via [...].³
- (3) Allianz is a global financial services provider with services predominantly in the insurance and asset management business. Allianz’ portfolio companies i.a. hold financial investments in various electricity generation assets in Germany, which in 2020 had a total capacity of [...].
- (4) NeuConnect is active in the development and subsequent construction and operation of a subsea and underground high voltage direct current electricity link between the Isle of Grain in the south east of England, and Wilhelmshaven in northern Germany (“the Interconnector” or “the Project”).

2. THE CONCENTRATION

- (5) The proposed transaction concerns a planned change in the activity of NeuConnect rendering it a full-function joint venture within the meaning of Article 3(4) of the EUMR.⁴ So far, although NeuConnect is already jointly controlled by the Notifying Parties, it does not fulfil the criteria for full-functionality as it is not performing on a lasting basis all functions of an autonomous economic entity. NeuConnect is currently in the development phase with respect to the Project. Its current activities are limited to assisting the Notifying Parties for the purpose of carrying out certain preparatory steps for the potential future realisation of the Interconnector.
- (6) By January 2022, the Notifying Parties expect NeuConnect to enter into the construction phase of the Project. This would constitute a change in the activities of NeuConnect, which would render it a full-function joint venture within the meaning of Article 3(4) of the EUMR.⁵
- (7) In particular, by [...] the Notifying Parties expect to have obtained committed debt financing from lenders, as they expect to have fulfilled the key conditions in respect of third-party finance for the realisation of the Project (“Financial Close”), triggering the transition from the Project’s development phase into its construction phase:

³ [...].

⁴ See also paragraph 109 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ 2008, C 95/1 (the “CJN”).

⁵ On NeuConnect’s full-functionality post transaction, see Section 2.2. below.

- a. The Notifying Parties expect to have obtained all consents, permits and approvals, which are [...], and thus are of an essential core importance for the realisation of the Project.⁶
 - b. The Notifying Parties will also enter into an agreement pursuant to which they commit providing [...]. With immediate effect of Financial Close, the Notifying Parties will be bound to their commitment and be required to provide the relevant financial resources to NeuConnect to initiate the construction phase [...].
 - c. Shortly after Financial Close, NeuConnect will start drawing down the financing to initiate the construction of the Interconnector and start the hiring process for [...]. To manage the construction phase, the number of NeuConnect's employees will subsequently be increased to [...].
- (8) The completion of these steps, individually or in combination, will result in a change in the activity of NeuConnect, as it will trigger the immediate commencement of the Project's construction phase, rendering NeuConnect a full-function joint venture.

2.1. NeuConnect will be jointly controlled by Meridiam and Allianz

- (9) Following the concentration, Meridiam will continue to hold [...] and Allianz will continue to hold [...] of the share capital in NeuConnect.⁷
- (10) Meridiam and Allianz will have joint control over NeuConnect on the basis of veto rights over the business plan, investments, as well as the appointment and revocation of NeuConnect's management.⁸ These give each Notifying Party the power to reject proposed strategic decisions over NeuConnect and hence produce a deadlock.
- (11) In particular, the approval of the business plan, the approval of investments by NeuConnect in third undertakings, as well as the appointment and revocation of NeuConnect's Chief Executive Officer, Chief Technical Officer and Chief Financial Officer constitute "reserved matters" under the Shareholders' Agreement ("SHA"), which require a resolution of shareholders representing at least 75.1% of NeuConnect's shares.⁹
- (12) If the General Meeting fails to approve a proposed "reserved matter" by the requisite majority of 75.1%, then such matter will not be adopted. There is no mechanism in place which would compel Meridiam and Allianz to resolve the deadlock situation together.
- (13) Meridiam and Allianz must therefore reach a common understanding in determining the commercial policy and the composition of NeuConnect's management. It follows that, although being a minority shareholder, Allianz possesses veto rights which are

⁶ The Notifying Parties submit that there are currently only [...] consents, permits and approvals outstanding which NeuConnect requires to fulfil all conditions for Financial Close and to commence the Construction Phase; see paragraph 36 Form CO. The Notifying Parties are confident about the timely issuance of those, given their extensive experience in large-scale energy projects. See also paragraph 20 below.

⁷ The remaining 20.3% of NeuConnect's share capital will be held by [...] and [...]. [...]and [...] do not hold joint control over NeuConnect.

⁸ See Commission Consolidated Jurisdictional Notice, rec. (67).

⁹ See Annex 5 to the Form CO – Shareholders' Agreement, section 8; section 10; Schedule 2.

sufficient to enable it to exercise influence in relation to the strategic business behaviour of NeuConnect.

- (14) In light of the above, NeuConnect will be jointly controlled by Meridiam and Allianz.

2.2. NeuConnect will be a full-function joint venture

- (15) NeuConnect will upon Financial Close be performing on a lasting basis all the functions of an autonomous undertaking operating in the market for the provision of transnational interconnector capacity for electricity transmission.
- (16) First, NeuConnect will have a management dedicated to its day-to-day business, which will be able to autonomously determine its commercial policy pursuant to NeuConnect's own interests. NeuConnect will also have [...] employees after Financial Close.¹⁰
- (17) *Second*, NeuConnect will construct and operate the first of its kind interconnector between Germany and Great Britain. This includes the operation of all relevant functions that are required for the construction of the Interconnector as well as its future operation. As such, NeuConnect will have its own presence on the market.¹¹
- (18) *Third*, NeuConnect will not have significant sale/purchase relations with the Notifying Parties. During the construction phase of the Interconnector, NeuConnect does not envisage having any relevant business dealings with the Notifying Parties. In addition, during the operation phase, NeuConnect does not intend to make significant sales to the Notifying Parties, as the latter are not active to a significant extent on markets, which are up- or downstream to those on which NeuConnect will be active.¹²
- (19) *Fourth*, NeuConnect will construct a long-term infrastructure project, and upon completion of construction in 2026, it will also operate the Interconnector. The Shareholder Agreement between the Notifying Parties with respect to NeuConnect's operation does not provide for an expiry date. On this basis, NeuConnect will operate on a lasting basis.
- (20) *Finally*, NeuConnect has obtained the majority of regulatory licenses required for the construction of the Interconnector, and the Parties are confident about the timely issuance of the outstanding licenses, given its parent companies' extensive experience in large-scale energy projects.¹³
- (21) Therefore, NeuConnect will be a full-function joint venture.

3. UNION DIMENSION

- (22) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Meridiam Group: [...]; Allianz Group: [...]; NeuConnect:

¹⁰ See paragraph 51, Form CO.

¹¹ See paragraph 55, Form CO.

¹² See paragraph 56 *et seq.*, Form CO.

¹³ See paragraph 37 *et seq.*, Form CO.

[...])¹⁴. Meridiam and Allianz have a Union-wide turnover in excess of EUR 250 million (Meridiam Group: [...]; Allianz Group: [...]), 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.

4. MARKET DEFINITION

- (23) NeuConnect will construct and as from 2026 operate a subsea and underground high voltage direct current electricity link between the Isle of Grain in the south east of England, and Wilhelmshaven in northern Germany.
- (24) Both Notifying Parties hold financial investments in various assets in Germany, which are active in the generation and wholesale of electricity.
- (25) The proposed transaction therefore gives rise to a prospective vertical link between the upstream market for the generation and wholesale supply of electricity, in which the Notifying Parties are active through various assets located in Germany, and the downstream market for the provision of transnational interconnector capacity for electricity transmission, in which NeuConnect will be active as from 2026.

4.1. Product market definition

4.1.1. Provision of transnational interconnector capacity for electricity transmission

- (26) In the past, the Commission has consistently considered each electricity transmission network as a separate relevant product market whose geographic scope coincides with the area covered by the transmission grid. Each transmission system operator has been accordingly considered as a monopolist on its own network.¹⁵ Within the market for electricity transmission, the Commission has previously also considered a separate product market for the provision of interconnector capacities involving a “cross-border flow” of electricity between different countries.¹⁶ A cross-border flow refers to electricity that is transmitted from one State to another by means of interconnection of the respective transmission grids.¹⁷
- (27) The Notifying Parties do not dispute the previous decision practice of the Commission.¹⁸
- (28) In this light, and for the purposes of this decision, the Commission considers that the relevant product market is the market for the provision of transnational interconnector capacity for electricity transmission.

4.1.2. Generation and wholesale supply of electricity

- (29) The Commission has a consolidated case practice of defining the market for the generation and wholesale supply of electricity as encompassing the trading on the wholesale market of the generated electricity within a certain geographic market as

¹⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

¹⁵ Case M.8871 – RWE / E.ON ASSETS, para. 21.

¹⁶ Case M.5154 – CASC JV, paras. 18-22.

¹⁷ Case M.5707 – Tennet / E.ON, para. 8.

¹⁸ See paragraphs 111 et seq., Form CO.

well as the electricity that is physically imported into this geographic market via interconnectors, irrespective of the source of generated electricity (such as nuclear, lignite, wind, solar, etc.).¹⁹ This market definition is not disputed by the Notifying Parties.

- (30) The Commission notes that the Bundeskartellamt (German Federal Cartel Office, “FCO”) has typically considered a separate market for renewable-based generation that benefits from public subsidies under the German Renewable Energies Act (Erneuerbare Energien Gesetz, “EEG”).²⁰ The FCO bases its view on the fact that whilst renewable generation under the EEG exerts competitive pressure on conventional generation (such as nuclear, lignite, gas), conventional assets exert very limited competitive pressure on renewables falling under the EEG. This is because the subsidies under the EEG make renewables significantly less costly than any other technologies and as such, will always be offered to the market place first. As the way in which renewables generation is remunerated develops, this may change in the future.
- (31) The Commission considers that in this particular case the market definition can ultimately be left open as no competition concerns would arise whether the market is defined as encompassing both conventional and renewable generation falling under the EEG or whether a separate market were to exist for conventional generation (including renewables not covered by the EEG-scheme) on the one hand and renewable generation falling under the EEG on the other.

4.2. Geographic market definition

4.2.1. Provision of transnational interconnector capacity for electricity transmission

- (32) The Commission has previously considered that the geographic scope of the market for the provision of transnational interconnector capacity for electricity transmission would in principle be limited to the respective interconnector line,²¹ rendering the operator of such an interconnector a natural monopolist. While the Commission found that it is in principle possible for market participants to substitute certain interconnectors when booking interconnector capacity by using others, this will normally lead to an increase in the number of interconnectors used to complete the specific transmission booking path (e.g. transmitting electricity through NeuConnect vs. Germany-the Netherlands-the UK).²² As the Notifying Parties confirm,²³ when the Project will enter into operation in 2026, it will be the sole interconnector between Germany and the United Kingdom, and as such no direct substitute exists.
- (33) The Notifying Parties submit that the relevant geographic market for the provision of transnational interconnector capacity should not be limited to the respective interconnector line. According to the Notifying Parties, the harmonized legal framework at EU level combined with a high degree of market transparency results in significant demand-side substitution between interconnectors at EU level. In this respect, the Notifying Parties submit that planned interconnectors between Belgium

¹⁹ Case M. 8871 – RWE / E.ON Assets, para. 13 et seq.; See also Case M.8870 – E.ON / INNOGY, para. 35.

²⁰ See e.g. B4-80/17 – EnBW / MVV, para. 93.

²¹ Case M.5154 – CASC JV, para. 21.

²² *Idem*.

²³ Paragraph 102, Form CO.

or the Netherlands on the one side and the UK on the other side will be substitutable with the Project in the future, since Belgium and the Netherlands also have interconnector lines to Germany.²⁴

- (34) The Commission considers that for the purposes of this decision it can be left open whether the market for the provision of transnational interconnector capacity for electricity transmission only encompasses the respective interconnector line, or whether other interconnection lines connecting two electricity grids through an intermediate grid should be considered as part of the same geographic market, as no competition concerns would arise even under the narrowest geographic market definition.

4.2.2. *Generation and wholesale supply of electricity*

- (35) The Commission has generally defined the market for the generation and wholesale supply of electricity as national in scope.²⁵ However, the Commission has also recognised that in some instances the presence of a sufficiently large interconnection capacity between Member States may justify broadening the geographic scope of the market.²⁶ This could also be the case if two Member States belong to the same bidding area,²⁷ meaning areas in which market participants are able to exchange electricity without the need for attribution of cross-zonal capacity²⁸.
- (36) In the case of Germany, the Commission has previously left open the question whether the geographic market for the generation and wholesale supply of electricity should be defined as wider than the German territory due to the interconnection and existence of a common bidding zone with Luxembourg.²⁹
- (37) The Notifying Parties are of the view that the market for the generation of electricity should have the same geographic scope as the market for the provision of transnational interconnector capacity for electricity transmission.³⁰
- (38) For the purpose of this decision, the question whether, with respect to Germany, the geographic market for the generation and wholesale supply of electricity should be defined as wider than the German territory due to possible present or future interconnections and the existence of common bidding zones with other territories, can ultimately be left open as no competition concerns would arise even if the geographic market were limited to Germany alone.

4.3. **Conclusion on Market Definition**

- (39) In light of the above, and for the purposes of this Decision, the competitive assessment will be based on the following market definitions:

²⁴ Paragraph 111 et seq. Form CO.

²⁵ Case M.5979 – KGHM/TAURON Wytwarzanie/JV, para. 24; Case M.5711 – RWE/Ensys, para. 21; Case M.4180 – GDF/Suez, para. 726.

²⁶ Case M.3268 – Sydkraft/Grainige, para. 27; Case M.3868 – DONG/Elsam/Energi E2, paras. 258-260.

²⁷ Case M.8870 – E.ON / INNOGY, para. 36.

²⁸ See Art. 2 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

²⁹ *Idem*.

³⁰ *Supra*, 35.

- (a) the market for the provision of transnational interconnector capacity for electricity transmission, which is limited to the respective interconnector line; and
- (b) the generation and wholesale supply of electricity irrespective of the source of generated electricity (such as nuclear, lignite, wind, solar, etc.) in Germany.

5. COMPETITIVE ASSESSMENT

- (40) NeuConnect may hold a monopoly in the market for the provision of transnational interconnector capacity for electricity transmission between Germany and the UK, once the Interconnector's capacity is available, expected as of 2026. Since the Interconnector will constitute an infrastructure between Germany and the UK, it can be used by the Parties to sell to the UK the electricity generated in the biogas plants and windfarms located in Germany in which they hold investments. Therefore, the Transaction will bring about a vertical relationship between the upstream market for generation and wholesale of electricity in Germany, and the downstream market for the provision of transnational interconnector capacity for electricity transmission between Germany and the UK.

5.1.1. Analytical framework

- (41) Vertical non-coordinated effects may principally arise when non-horizontal concentrations give rise to foreclosure.³¹
- (42) The Commission has in general distinguished between two forms of foreclosure. 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 foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).³²
- (43) With regards to customer foreclosure, the object of the assessment is to ascertain whether the Transaction could lead to foreclosure of the Parties' downstream rivals in the provision of transnational interconnector capacity for electricity transmission between Germany and the UK. On a market the geographic scope of which is limited to the NeuConnect interconnector, foreclosure is not conceivable.
- (44) Even in case a broader geographic scope were to be considered, comprising alternative interconnectors connecting Germany and the UK through intermediate states,³³ the Parties would lack the ability to engage into customer foreclosure strategies. In view of the Notifying Parties' *de minimis* activities on the market for the generation and wholesale of electricity, representing significantly less than 1% of

³¹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008 ("Non-Horizontal Merger Guidelines"), paragraph 18.

³² Non-Horizontal Merger Guidelines, paragraph 30.

³³ *Supra*, paragraph 32.

the market in Germany³⁴, the Parties are not in a position to restrict operators of alternative interconnectors from access to a significant customer base.

- (45) With regards to input foreclosure, it will in the following be examined whether the Transaction might give rise to foreclosure of the Parties' rivals in the market for generation and wholesale of electricity, by restricting their access to NeuConnect's Interconnector.

5.1.2. *The Commission's assessment of input foreclosure*

- (46) Despite the Parties' potential monopoly in the market for the provision of transnational interconnector capacity for electricity transmission between Germany and the UK, the Commission considers that the Transaction will not raise serious doubts as to its compatibility with the internal market with respect to non-horizontal effects, since the Parties possess neither the ability, nor the incentives to engage in foreclosure strategies.

Ability to foreclose

- (47) Due to the sectoral regulation in place, the Parties will have no influence on the access and the allocation of capacity of the Interconnector.
- (48) As required under the Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (the "FCA Regulation"), NeuConnect will offer interconnector capacity for electricity through the allocation platform operated by the Joint Allocation Office ("JAO").³⁵ NeuConnect's Interconnector capacity will therefore be allocated exclusively via auctions on the JAO platform.
- (49) The platform is subject to specific rules on transparency and non-discriminatory access. It needs to publish all relevant information about the auction before its opening and participants, both on the buy-side as well as on the supply-side, need to be admitted by the platform provider based on non-discriminatory and transparent participation terms.³⁶ The auction process itself is held in a non-discriminatory and transparent procedure.
- (50) Regulation of capacity availability and allocation, as well as the auction process falls under the supervision of the German Federal Network Agency (Bundesnetzagentur – "FNA"), as well as the Agency for the Cooperation of Energy Regulators ("ACER").

³⁴ See paragraph 148 et seq., Form CO.

³⁵ JAO is a service company organizing auctions for cross border transmission capacity. JAO is jointly operated by 25 transmission system operators from 22 countries, namely 50Hertz (DE), Amprion (DE), APG (AT), ČEPS (CZ), CREOS (LU), Eirgrid (IRL), ELES (SI), ELIA (BE), EMS (RS), EnerginetDK (DK), ESO (BG), HOPS (HR), IPTO (GR), MAVIR (HU), Moyle (N-IRL), PSE (PL), RTE (FR), SEPS (SK), Statnett (NO), Swissgrid (CH), TenneT (DE), TenneT (NL), Terna (IT), Transelectrica (RO), TransnetBW (DE) On 1 October 2018, JAO became the Single Allocation Platform ("SAP") for all European Transmission System Operators ("TSOs") that operate in accordance to EU legislation, since it is able to implement and fulfil all regulatory obligations and requirements. For further information on JAO, please refer to <https://www.jao.eu/>.

³⁶ See Art. 37(1) FCA Regulation.

- (51) This setup will give market participants, such as electricity producers, wholesale traders and retail suppliers, a transparent, non-discriminatory, and fair access to transnational interconnector capacity on NeuConnect's Interconnector.
- (52) The market investigation confirmed that the extensive regulation to which the Interconnector will be subject excludes any ability of the Notifying Parties to foreclose competitors from the use of the Interconnector (e.g. one competitor explained that the *“considered asset is subject to the respective Rules and Regulations as regards to Unbundling. Therefore, we expect that the operators must provide a level-playing field for all energy traders and especially are not allowed to grant privileged access to any energy trader affiliated with the operator”* and another one stated that *“the operator of the interconnector is obliged to ensure non-discriminatory access to the capacity based on energy law. Under this assumption, the transaction does not give raise to concerns regarding the upstream market for generation and wholesale supply of electricity (will not have an impact on the competitive situation on this market. The interconnector will be another helpful small piece to facilitate the energy transition as more interconnectors are needed to connect the different supply and demand centres)”*).
- (53) The Commission therefore considers that the Parties do not possess the ability to implement input foreclosure strategies.

Incentives to foreclose

- (54) Even if the Parties would have the ability to engage in any type of foreclosure strategy, the Commission considers that they would lack the incentive to do so.
- (55) In particular, taking into consideration the Notifying Parties' *de minimis* activities on the market for generation and wholesale of electricity, which translate to a combined market share of significantly below 1%,³⁷ the Commission does not consider that the Parties would benefit from higher prices on the wholesale markets, once their upstream competitors have been foreclosed from access to the Interconnector.
- (56) Moreover, for the electricity generated in [...], Meridiam has concluded [...].³⁸As regards Allianz, the electricity generated [...]. Hence, Allianz has no influence over the subsequent sale of electricity by [...], including whether the electricity may potentially be exported (including, in the future, through the NeuConnect Interconnector).³⁹
- (57) The market investigation confirmed that the proposed transaction will not have a negative impact on the competitive situation of the market for the generation and supply of electricity in Germany, as the Notifying Parties will not have the ability to foreclose competitors or customers through NeuConnect.
- (58) For instance, various competitors in the market for generation and wholesale supply of electricity in Germany stated that the proposed transaction would not have a significant impact on the competitive situation on the market either *“considering the planned capacity of the interconnector”*, that *“the cable reflects a minority percentage of the total overall (and controllable) capacity both in Germany and*

³⁷ *Supra*, paragraph 44.

³⁸ See paragraph 153 et seq., Form CO.

³⁹ See paragraph 156 et seq., Form CO.

UK”, and also considering the Notifying Parties’ negligible position in the market for electricity generation in Germany (e.g. “we do not consider that the parties currently have a strong position in the electricity generation market in Germany. If they are active at all at the time being, their position is likely to be rather small”). Some large and established competitors in the electricity generation market in Germany were not even aware that the Notifying Parties are active therein: “We are not aware that the Parties are actively involved in operating or optimizing electricity generation units in Germany”.

6. CONCLUSION

- (59) 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