



EUROPEAN COMMISSION
DG Competition

Case M.10963 – BMWK / SEFE

Only the English text is available and authentic.

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

Article 7(3)
Date: 11/11/2022



EUROPEAN COMMISSION

Brussels, 11.11.2022
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Bundesministerium für Wirtschaft
und Klimaschutz
Scharnhorststraße. 34-37
10115 Berlin
Germany

**Subject: Case M.10963 – BMWK / SEFE
Commission decision pursuant to Article 7(3) of Council Regulation
No. 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²
Request for derogation**

Dear Sir or Madam,

- (1) On 10 November 2022 the German Federal Ministry for Economic Affairs and Climate Action (“BMWK”, Germany) requested pursuant to Article 7(3) of the Merger Regulation a derogation from the standstill obligation provided for in Article 7(1) of the Merger Regulation (the “Derogation Request”). The Derogation request is submitted with regard to the proposed acquisition by the Federal Republic of Germany, represented by the German Federal Ministry for Economic Affairs and Climate Action (“BMWK”, Germany) of SEFE Securing Energy for Europe GmbH (“SEFE”, Germany) by way of an administrative act pursuant to

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”).

Section 17a para. 3 German Energy Security Act (“EnSiG”). BMWK and SEFE are together referred as “the Parties”.

1. THE PARTIES AND THE OPERATION

- (2) The Federal Republic of Germany intends to acquire SEFE through the BMWK. Based on the Commission’s preliminary assessment, and without prejudice to its future assessment of the notification, the Commission considers the BMWK, together with SEFE SPV, to make up an economic unit with an independent power of decision.³ The *prima facie* assessment of potential competition concerns therefore takes into account the activities of SEFE, SEFE SPV and the BMWK, independently from the rest of the activities of the German State.⁴
- (3) The BMWK has currently no commercial activities on the energy markets. As part of its response to the current energy crisis, the BMWK is developing five LNG regasification facilities in Germany, the first of which will become operational as of December 2022.⁵
- (4) SEFE was founded in 1990 under the name Gazprom Germania GmbH and is a supplier of natural gas with a strong presence mainly in the German market. The company’s main business areas include the downstream wholesale supply and trading of natural gas and LNG, as well as the operation of underground gas storages and gas pipelines.
- (5) Through its sole shareholder Gazprom export business services LLC (“Russian shareholder”), SEFE is an indirect subsidiary of the Russian natural gas company PJSC Gazprom. As such, SEFE has faced a substantial deterioration of its financial situation since Russia’s invasion in Ukraine and the ensuing gas crisis.
- (6) By administrative acts dated 4 April 2022 and 17 June 2022, the German Federal Government put Gazprom Germania GmbH under fiduciary management (*Treuhandverwaltung*) by the German Federal Network Agency (*Bundesnetzagentur*). On 20 June 2022, Gazprom Germania GmbH was renamed into SEFE Securing Energy for Europe GmbH. The fiduciary management under the administrative act of 17 June 2022 will expire on 15 December 2022.
- (7) To continue its gas trading activities beyond 31 December 2022, SEFE has to evidence a permanent solution to its current ultimate beneficial ownership (“UBO”) by 15 December 2022, [information on financing, relations with business partners].⁶

³ See recital 22 EUMR.

⁴ Case M.5549 – *EDF/Segebel*, paras. 92 et seq. See also footnote 5 below.

⁵ The Federal Republic of Germany owns a joint controlling stake in a further company currently developing a further LNG regasification terminal, albeit through a state-owned entity controlled by the Federal Ministry for Finance (“BMF”), which is therefore not controlled by the BMWK. Apart from this LNG regasification terminal under development by the BMF and the LNG regasification terminals under development by the BMWK, the Federal Republic of Germany does not have other activities in the gas markets.

⁶ See Request for derogation from the obligations pursuant to Article 7 para. 1 EU Regulation No. 139/2004 (“Derogation Request”), Section 1, page 3.

- (8) Therefore, the BMWK intends to carry out capital measures on the level of SEFE, by means of an administrative act pursuant to Section 17a para. 3 EnSiG, and thereby replace the current Russian shareholder of SEFE with a special purpose vehicle, SEFE Holding GmbH (“SEFE SPV”). SEFE SPV’s sole shareholder will be the Federal Republic of Germany, represented by the BMWK (the “Proposed Transaction”).
- (9) In order for the Russian shareholder to be replaced by SEFE SPV by 15 December 2022, the Federal Republic of Germany would need to adopt the administrative act pursuant to Section 17a paragraph 3 EnSiG at the latest on 14 November 2022. This is because the administrative act will be subject to an appeal period of one month following its adoption.⁷

2. EU DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (BMWK: [...] EUR; SEFE [...] EUR). Each of them has an EU-wide turnover in excess of EUR 250 million (BMWK: [...] EUR; [...] million EUR), and SEFE does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The Proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

3. THE APPLICATION FOR DEROGATION

- (11) The parties submit that Russia’s invasion in Ukraine and the ensuing gas crisis have led to a substantial deterioration of SEFE’s financial situation and severely affected SEFE’s viability, which can only be remedied by replacing SEFE’s current Russian shareholder by an alternative UBO by 15 December 2022. In order for this to happen, the Federal Republic of Germany would need to adopt the administrative act at the latest on 14 November 2022. This is because the administrative act will be subject to an appeal period of one month following its adoption.
- (12) As a possible appeal would not have suspensory effect, following the administrative act SEFE SPV will become the sole shareholder of SEFE already as of 14 November 2022. The BMWK therefore applies for the derogation from the standstill obligation, enabling it to adopt the relevant administrative act on 14 November 2022.

Current financial situation of SEFE

- (13) On 11 May 2022, the Russian Federation imposed sanctions⁸ on SEFE and almost all of its subsidiaries, which caused severe financial difficulties for the company. The gas deliveries that did not take place due to the Russian sanctions made it necessary for SEFE to procure replacements at very high market prices. For the year 2022, SEFE estimates that this will translate into EUR [financial information]

⁷ See Derogation Request, Section 2, page 3.

⁸ The sanctions imposed by the Russian Federation against SEFE and its subsidiaries effected mainly in the significant reduction of Russian gas supplies to SEFE.

of expected additional costs for SEFE, caused by procuring gas from alternative sources.⁹ [Financial information]. [Information on relations with business partners].

- (14) In order to secure continuous energy supply in Germany and in Europe, the German Federal Government had to provide liquidity amounting to around EUR 13.8 billion into SEFE over the last months.¹⁰ In addition, the German Federal Government put SEFE under fiduciary management by the Federal Network Agency as mentioned at paragraph (6) above. The fiduciary management will expire on 15 December 2022, unless further extended.
- (15) As a result, the estimated EBITDA of SEFE for the year 2022 amounts to a loss of approximately EUR [...].¹¹ Currently, SEFE is only able [...]. Without [...], SEFE would be forced to exit the market within a short time.

Implications for SEFE due to its Russian shareholder

- (16) The fact that SEFE is, despite the fiduciary management, still a subsidiary of the Russian shareholder, has a significant impact on SEFE's ability to operate on the market. [Information on financing].
- (17) This affects primarily SEFE's energy trading subsidiary, SEFE Marketing & Trading ("SM&T").
- (18) SM&T is a key subsidiary of SEFE. [Information on internal organization and business strategy].
- (19) [Information on business relations with third parties]. A default of SM&T would mean that SEFE would not be able to serve its customers in the wholesale market and lead to a discontinuation of SEFE's activities in their current form.

The intended capital measures

- (20) As explained at paragraph (8) above, the BMWK intends to carry out capital measures on the level of SEFE. The capital measures would include further financial aid to SEFE, as well as the replacement of the Russian shareholder with SEFE SPV, whose sole shareholder will be the Federal Republic of Germany, represented by the BMWK. The administrative act would have in particular the following content:
- The capital and revenue reserves of SEFE would be dissolved in order to reduce SEFE's balance sheet loss.
 - The current share capital of SEFE would be decreased to zero.
 - The share capital of SEFE would then be increased, and the new share capital would be composed of one single share.
 - SEFE SPV would be admitted to acquire the new single share in SEFE, excluding any pre-emptive rights of the current Russian shareholder.

⁹ See Derogation Request, Section 1, page 2.

¹⁰ *Ibid.*

¹¹ See response to question 3, RFI 2 of 27 October 2022.

- (21) As explained at paragraph (9) above, in order for the Russian shareholder to be replaced by SEFE SPV with effect of 15 December 2022, the Federal Republic of Germany would need to adopt the administrative act at the latest on 14 November 2022. This is because the administrative act will be subject to an appeal period of one month following its adoption.
- (22) As a possible appeal would not have suspensory effects, following the administrative act SEFE SPV will acquire the new single share in SEFE and thus become the sole shareholder of SEFE already as of 14 November 2022.
- (23) The BMWK, on behalf of the Federal Republic of Germany, is therefore applying for derogation from the standstill obligation pursuant to Article 7(3) of the Merger Regulation.

4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION

- (24) Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1).
- (25) Article 7(3) of the Merger Regulation provides that, in deciding on the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.
- (26) A derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.

4.1. THE PROPOSED TRANSACTION FALLS UNDER THE STANDSTILL OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE MERGER REGULATION

- (27) Given that the Proposed Transaction consists in the acquisition of sole control by the BMWK of SEFE it constitutes a concentration within the meaning of Article 3 of the Merger Regulation. As indicated in paragraph (10) above, the Proposed Transaction has an EU dimension according to Article 1(2) of the Merger Regulation. Hence the Proposed Transaction is subject to the standstill obligation laid down in Article 7(1) of the Merger Regulation.
- (28) Carrying out the Proposed Transaction before its notification or before it has been declared compatible with the internal market by the Commission pursuant to the Merger Regulation would amount to an implementation of the Proposed Transaction. Implementing these measures before the notification of the Transaction or before it has been declared compatible with the internal market by the Commission requires a derogation pursuant to Article 7(3) of the Merger Regulation.

4.2. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

BMWK's arguments

- (29) The BMWK submits that a refusal of the derogation could have significant adverse effects on SEFE, its customers and even the whole European gas market. SEFE is one of the large natural gas and LNG procurement, optimisation, distribution and trading company groups in Europe with an essential role for the German and European gas supply security. The unfettered continuation of SEFE's business activities is necessary for the functioning of the energy sector and for maintaining security of supply.
- (30) In particular, the BMWK submits that SEFE is under significant financial distress [financial information]. In order to continue its loss-making business operations, SEFE requires significant additional financial aid from the German State, which can be provided through the capital measures explained at paragraphs (20) *et seq.* above.
- (31) The BMWK further submits that, apart from the financial aid provided by the German State, SEFE would require having its Russian shareholder replaced by 15 December 2022, [information on business relations with third parties and financial information].
- (32) An exit of SEFE from the markets would in turn have unforeseeable negative consequences for the security of gas supply in Germany and Europe, according to the BMWK. SEFE has an important role in the gas supply in Europe, representing gas deliveries covering about [5-10]% of the entire EU demand. A default of SEFE would mean that its customers would have to make substitute gas procurements, which would entail significant replacement costs. The increased financing costs for SEFE's current customers would possibly lead to insolvencies. In addition, the reduction of available gas volumes, as a result of SEFE's default, would lead to further price increases on the gas markets, which could further destabilise market participants.
- (33) On the other hand, a derogation from the standstill obligation would have no adverse effects to third parties, since it would enable SEFE to continue its operations beyond 31 December 2022, to the benefit of its customers and suppliers.

The Commission's assessment

- (34) The Commission considers it likely that, if no derogation from the standstill obligation is granted regarding the Proposed Transaction, SEFE would not be able to continue its business relationships with [...]. The loss of [...] would effectively mean that SEFE would have to stop its [...] activities by 31 December 2022. A default of its [...] activities would mean that SEFE would no longer be able to serve its customers in the market for the downstream wholesale supply of natural gas as well as other adjacent markets such as the markets for retail supply of natural gas, the storage of natural gas and the transmission of gas, primarily in Germany, and lead to a discontinuation of SEFE's activities in their current form. This means that in the absence of the derogation SEFE will likely cease to be a going concern and to effectively compete on the markets in question.

- (35) SEFE is in serious financial distress. Due to the discontinuation of planned gas supplies from Russia, SEFE has to procure equivalent quantities in the short term from other sources, at much higher prices, in order to avoid default vis-à-vis its customers. Given that SEFE's gas supplies to its customers are governed by long-term contracts, SEFE cannot adjust its prices in order to pass on its increased costs. This leads to SEFE's activities in the wholesale supply of gas being heavily loss-making. Despite the liquidity support of approximately EUR 14 billion provided by the Federal Government of Germany, SEFE is still forecasted to incur EUR [...] of extraordinary costs for 2022, and EBITDA losses of approximately EUR [...].¹² SEFE therefore relies on further support from the German State, [financial information]. This is without prejudice to an assessment by the Commission under State aid rules.
- (36) In addition, apart from its reliance on financial support from the German State, SEFE needs to have its current Russian shareholder replaced, in order to avoid losing [...] business partners, [financial information].
- (37) SEFE's access to gas supplies through bilateral agreements (i.e. through the over-the-counter ("OTC") market) is made almost completely impossible, as almost all OTC gas suppliers refuse to trade with SEFE, due to it being owned by a Russian shareholder. SEFE is therefore bound to trade almost exclusively on exchanges, primarily through SM&T.
- (38) As explained by the parties in paragraph (19) above, [information on business relations with third parties].¹³
- (39) [Information on business relations with third parties]. In this case, SEFE would not be able to fulfil its gas supply obligations towards its customers, and, ultimately, exit the market.
- (40) The capital measures contemplated by the Federal Republic of Germany pursuant to Section 17a paragraph 3 EnSiG would entail a replacement of the current Russian shareholder of SEFE with a special purpose vehicle, whose sole shareholder would be the Federal Republic of Germany, represented by the BMWK. SEFE's current business partners, [...], have confirmed to SEFE that the contemplated replacement of the UBO would address their concerns [...].¹⁴
- (41) Moreover, an absence of the derogation and SEFE's resulting default would have significant adverse effects also on SEFE's customers and could risk the stability of the European gas market.
- (42) SEFE's exit from the market would have significant negative consequences for the security of gas supply in Europe. SEFE is an integrated gas supplier and plays a key role for the gas supply in Europe. In 2021, SEFE delivered a total of about [...] billion cubic meter of gas to its customers, representing about [5-10]% of the total EU demand.

¹² See footnote 7 above.

¹³ See Derogation Request, Section 1, page 3 and Annex 5 to response to RFI2.

¹⁴ *Ibid.*

- (43) With particular regard to Germany, SEFE¹⁵ is one of the largest suppliers of natural gas, especially to municipal utilities, regional gas suppliers, and industrial customers. A default of SEFE would mean that it would no longer be in a position to meet its existing supply obligations to its customers. These would have to make substitute procurements of gas on the market, which could entail significant replacement costs. The increased need for financing could lead to insolvencies of municipal utilities as well as production reductions of industrial customers. In addition, there could be further price increases and a reduction of available gas volumes on the German and European gas markets, which would possibly destabilise further gas suppliers and other market participants.
- (44) Against this background, given the impossibility in the present case to complete merger control proceedings by 14 November 2022, the Commission concludes that the standstill obligation imposed by Article 7(1) could lead to serious harm to SEFE, on the one hand, and to its employees, suppliers and customers, on the other hand. Furthermore, on the basis of the information submitted by the BMWK, the Commission does not consider that a derogation from the standstill obligation would have any adverse effects on third parties. To the contrary, the sole effect of the derogation would be the replacement of the Russian shareholder as [...], which would in turn allow the continuation of SEFE's operations beyond 15 December 2022, to the benefit of its employees, suppliers and customers.

Conclusion on the effects of the suspension

- (45) Against this background, the Commission concludes that the standstill obligation imposed by Article 7(1) could lead to serious harm to SEFE. Furthermore, on the basis of the information submitted by the BMWK, a derogation from the stand-still obligation would not have adverse effects on any third party.

4.3. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

- (46) The BMWK has currently no commercial activities on the energy markets. The transaction would therefore not give rise to any horizontal overlaps.
- (47) The BMWK submits that, as part of its response to the current energy crisis, it is developing five LNG regasification facilities in Germany, the first of which will become operational as of December 2022. There are no other LNG regasification facilities currently in operation in Germany.¹⁶
- (48) In previous decisions, the Commission considered the question whether the market for infrastructure for gas imports could be sub-segmented into the following markets: (i) regasification services for the import of liquid natural gas; (ii) interconnection points with international gas pipelines; and (iii) underground gas storage.¹⁷ The Commission typically left open whether pipelines and regasification terminals belong to the same or to separate relevant product markets.

¹⁵ Through its subsidiary WINGAS GmbH.

¹⁶ A further FSRU is currently being developed, in which the Federal Republic of Germany will hold a joint-controlling stake, albeit through a state-owned entity which is not controlled by the BMWK.

¹⁷ E.g. cases M.10139 – *DESFA/COPELOUZOU/DEPA/GASLOG/BTG/GASTRADE*, paras. 33 et seq., M.9641 – *SNAM/FSI/OLT*, paras. 20 et seq., and M.8771 – *TOTAL/ENGIE* (Part of liquefied natural gas business), paras. 23 et seq.

In terms of geographic market definition, the Commission has in past decisions considered that the market for infrastructure for gas imports, including LNG regasification terminals, was national in scope but ultimately left open whether the geographic scope was national or wider.¹⁸

- (49) The Commission considers that the market definition can be left open in this case as, *prima facie*, no competition concerns arise under any plausible (product or geographic) market segmentation. The Commission will base its assessment on the narrowest plausible segmentation of regasification services for the import of liquid natural gas in Germany.
- (50) SEFE is not active in the operation of gas import infrastructure in Germany. SEFE is however active in the import and downstream wholesale supply of natural gas. Once the planned LNG regasification terminals in Germany are operational, SEFE plans to use these terminals to import gas in Germany in the form of LNG.
- (51) In previous decisions, the Commission has defined a distinct product market for the downstream wholesale supply of natural gas, as comprising the activity whereby wholesalers procure gas from producers for resale to other wholesalers or downstream distributors.¹⁹ Regarding Germany, the Commission in a more recent decision considered that the market for downstream wholesale supply of gas should not be further segmented.²⁰ The geographic scope of the market has been generally considered as national in scope.²¹
- (52) The Transaction will therefore give rise to a potential vertical link between the activities of the BMWK on the market for gas import infrastructure in Germany (upstream), and SEFE's activities on the market for downstream wholesale supply in Germany (downstream). However, this potential vertical relationship does not raise, *prima facie*, any concerns with respect to foreclosure effects, for the reasons set out below.

Potential foreclosure

BMWK's arguments

- (53) The BMWK submits that the future vertical link between the operation of LNG terminals by the BMWK in the upstream and the activities of SEFE in the downstream gas wholesale market does not pose a threat to competition.
- (54) First, the BMWK submits that the operation of LNG terminals in Germany will be subject to regulation, which will exclude any risk of foreclosure. There are currently two regulatory initiatives being enacted in Germany, which will regulate *inter alia* third party access and the methodology for setting tariffs.

¹⁸ E.g. cases M.10139 – *DESFA / COPELOUZOU / DEPA / GASLOG / BTG / GASTRADE*, para. 49, M.9641 – *SNAM / FSI / OLT*, para. 36, and M.8771 – *TOTAL / ENGIE* (Part of liquefied natural gas business), paras. 35-37.

¹⁹ See, e.g., case M.6984 – *EPH / STREDOSLOVENSKA ENERGETIKA*, paras. 21 et seq.; case M.6910 – *GAZPROM / WINTERSHALL / Target Companies*, paras. 92 et seq.

²⁰ Case M.9990 – *Vattenfall/Engie/Gasag*, paras. 29-31.

²¹ Case M.9990 – *Vattenfall/Engie/Gasag*, para. 34; case M.8870 – *E.ON/Innogy*, para. 490.

- (55) Second, the BMWK submits that only two out of six currently developed LNG terminals, namely Brunsbüttel and Wilhelmshaven I, will start operations within the duration of the requested derogation from the standstill obligation. However, the regasification capacity in both those LNG terminals has already been completely allocated to third parties until 31 March 2024, which excludes any risk of foreclosure effects.

The Commission's assessment

- (56) Out of the five LNG regasification terminals currently being developed by the BMWK, only the LNG terminals in Brunsbüttel and Wilhelmshaven I will start operations in the short term, i.e. at the end of 2022 or in early 2023. However, as submitted by the BMWK at paragraph (55) above, the capacity of these LNG terminals has already been completely allocated to third parties, namely RWE, Uniper and EnBW/VNG.²²
- (57) [Information on strategic planning].
- (58) It follows that, at least for the duration of the derogation from the standstill period, during which no further LNG terminal will commence operation according to the BMWK, the parties to the Transaction have no ability to engage in strategies of input or customer foreclosure.

Conclusion on threat to competition posed by the concentration

- (59) Therefore, on the basis of the information provided by the BMWK, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA.

5. BALANCE OF INTERESTS

- (60) Based on the above, it appears that whilst the standstill obligation could seriously affect the financial situation and the viability of SEFE, as well as SEFE's employees, suppliers and customers no threat to competition posed by the derogation can currently be identified. A derogation from the standstill obligation does further not appear to have adverse effects on one or more of the parties or on any third party. Therefore, the Commission finds that the derogation can be granted in accordance with the application and to the extent specified below.

6. TERMS AND CONDITIONS

- (61) According to Article 7(3) of the Merger Regulation, a derogation from the standstill obligation laid down by Article 7(1) thereof may be made subject to conditions and obligations in order to ensure effective competition.

²² The capacity allocation and the management concept for the two LNG terminals has been approved by the German Federal Cartel Office (https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/15_09_2022_LNG_Terminals.html) and the Federal Network Agency (https://www.bundesnetzagentur.de/SharedDocs/Downloads/EN/BNetzA/PressSection/PressReleases/2022/20220929_FSRU.pdf?__blob=publicationFile&v=2).

- (62) As the adoption of the intended administrative act on 14 November 2022 would effectively implement the Proposed Transaction as of that date and prior to an examination by the Commission of the notification, the Commission considers that a derogation from the standstill obligation would need to be made subject to conditions to ensure that the Proposed Transaction will not lead to the operational integration of SEFE within BMWK before the Commission has taken a final decision on the transaction.
- (63) Based on the preceding considerations, the Commission has decided to grant a derogation from the standstill obligation with regard to the proposed concentration subject to the following conditions:
- (a) The BMWK shall no later than one month from the date of adoption of this decision submit a complete notification of the Proposed Transaction, in order to allow the assessment of the compatibility of the Proposed Transaction with the common market.
 - (b) The BMWK shall continue the management of SEFE under the current fiduciary management pursuant to the administrative act of 17 June 2022, under the independent supervision of the Federal Network Agency until the earlier of (i) 15 December 2022 or (ii) the date of the adoption by the Commission of an approval of the Proposed Transaction.
 - (c) Should the date of the adoption by the Commission of an approval of the Proposed Transaction be later than 15 December 2022, the BMWK shall extend the current fiduciary management of SEFE by the Federal Network Agency, or otherwise abstain from exercising its shareholder rights in SEFE, for the period after 15 December 2022 and until the adoption of a final decision by the Commission with regard to the Proposed Transaction.

7. CONCLUSION

- (64) The Commission considers that the reasons given by the notifying parties for derogation from the standstill obligations meet the requirements set out in Article 7(3) of the Merger Regulation.
- (65) Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, the BMWK is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible or incompatible with the common market and the EEA Agreement by means of a decision pursuant to Article 6(1)b or 8(2) or a presumption pursuant to Article 10(6).

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President