

168/2018 : 8 novembre 2018 – Arrêt du Tribunal dans l'affaire T-544/13 RENV

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Mergers: Commission clears the creation of six joint ventures by Daimler and BMW, subject to conditions

Daimler and BMW, both active in car manufacturing, will establish six joint ventures, bringing together the two companies' mobility services in five business fields: (i) free-floating car sharing services, via DriveNow (BMW) and car2go (Daimler), (ii) ride hailing services, (iii) parking services, (iv) charging services, and (v) other on-demand mobility services. The sixth joint venture will (vi) manage the brands and license them out to the other five joint ventures.

The activities of Daimler and BMW overlap significantly with respect to free-floating car sharing services. Free-floating car sharing allows customers to pick up and drop off the car anywhere within a certain delimited area in a given city, using authorised parking spaces such as public parking spots. The car can then be picked up by the next user in the location where the previous user parked it.

The Commission's investigation

The Commission found that the proposed transaction would raise competition concerns for **car sharing in six cities**, namely Berlin, Cologne, Düsseldorf, Hamburg, Munich and Vienna. In these cities the alternatives to car sharing would be limited.

The Commission examined the effects of the proposed transaction, taking into account the competitive restraints exerted by other means of transportation, such as station-based car sharing (where cars can only be dropped off at specific "stations") or public transport.

Moreover, free-floating car sharing is a newer, expanding form of urban mobility. The market investigation found that many players, such as original equipment manufacturers (OEMs), rental firms and pure car sharing players have plans or intentions to start operating in the six cities concerned.

In addition, the Commission examined a number of vertical relationships arising from the merging companies' activities. In particular, providers of integrator apps could be shut-out after the merger. Integrator apps are mobile applications that aggregate several different transport options including free-floating car sharing and therefore want to display the services of DriveNow and car2go.

The Commission found that, after the transaction, Daimler and BMW would have the **ability and incentive to shut out**: (a) rival providers of integrator apps, to the benefit of Daimler's own integrator app "moovel"; and (b) rival car sharing providers, to the benefit of their own car sharing services.

The proposed remedies

To address the Commission's competition concerns, Daimler and BMW offered, in the six relevant cities, a two-fold remedy package, granting:

- application programming interface ("API") access to third party aggregator platforms for mobility solutions, so that they can also re-direct users to Daimler and BMW's car sharing services; and
- access to Daimler "moovel" integrator app to interested car sharing providers.

The commitments thus fully address the Commission's concerns as they will reduce the barriers to entry for competing free-floating car sharing providers by (a) ensuring that smaller competitors can enter the market in any of the cities concerned and be immediately visible on "moovel"; and (b) allowing integrator apps to also display DriveNow and car2go to customers seeking a mobility solution.

Therefore, the Commission concluded that the proposed transaction, as modified by the commitments, would no longer raise competition concerns. The Commission's decision is conditional upon full compliance with the commitments.

Companies and products

BMW, based in Germany, is a manufacturer of passenger cars and motorcycles worldwide under the BMW, Rolls Royce and MINI trademarks. It also provides premium services in the field of individual mobility. BMW provides free-floating car sharing services via its subsidiary "DriveNow".

Daimler, based also in Germany, is globally active in the development, manufacturing and distribution of automotive products, mainly passenger cars, trucks, vans and buses, through its divisions Mercedes-Benz Cars, Daimler Trucks, Mercedes-Benz Vans, Daimler Buses and Daimler Financial Services. Daimler provides free-floating car sharing services via its subsidiary "car2go".

Merger control rules and procedures

The transaction was notified to the Commission on 17 September 2018.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the [Merger Regulation](#)) and to prevent concentrations that would significantly impede competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information on this case is available on the Commission's [competition](#) website, in the public [case register](#) under the case number [M.8744](#)

[Environmental reporting alignment: Council agrees its position](#)

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ESMA updates its Q&As regarding the Benchmark Regulation

The updated BMR Q&As provide new clarifications regarding the following topic:

- Use of benchmarks in bilateral agreement on exchanged collateral.

The purpose of these Q&As is to promote common supervisory approaches and practices in the application of BMR. It aims at providing investors and other market participants with clarifications on the applicable requirements. ESMA will periodically review these Q&As and update them where required.