

OFFICE FOR COMPETITION

4th July 2016

COMP-MCCAA/15/2016

Decision on the creation of a full-function joint venture in terms of regulations 6 (1) (ii) and 12(4) of the Control of Concentrations Regulations (LN 294 of 2002 as subsequently amended)

The Office for Competition,

Having considered the notification of Pater Holding Company Limited, United Group Limited, and Tum Invest Limited dated 8 June 2016 pursuant to regulation 5 of the Control of Concentrations Regulations,

Having considered the provisions of the Control of Concentrations Regulations

Having considered EU jurisprudence

Facts

1. On 8 June 2016, Pater Holding Company Limited, United Group Limited, and Tum Invest Limited (hereinafter collectively referred to as “the Notifying Parties”) notified the Office for Competition (hereinafter referred to as “the Office”) with a Joint Venture and Shareholders’ Agreement (hereinafter referred to as “the Agreement”) dated 20 May 2016, whereby U.C.I.M. Co. Limited (hereinafter referred to as “UCIM”) as subsidiary of Pater Holding Company Limited, and Cars International Limited (hereinafter referred to as “CIL”) which is equally owned by United Group Limited and Tum Invest Limited, are to transfer, sell, assign and deliver unto a newly joint venture company, to be formed and named ‘Motors Inc. Limited’, all rights, title and interest in and all the assets and interests forming part of the parties’ automotive businesses.
2. The notification was filed and accepted as a complete notification on 8 June 2016. It was notified to the public through a notice that appeared in a daily newspaper on 17 June 2016 and a notice that appeared in the Government Gazette No. 19,594 of 17 June 2016.

Parties

3. i. Pater Holding Company Limited is a holding company registered in Malta, with registration number C 3334, and registered address at U.C.I.M Co Buildings, Birkirkara Road, Birkirkara. Pater Holding Company Limited is primarily concerned with the representation and distribution of automobiles. It has a number of subsidiaries operating, *inter alia*, in both the automotive sector (via UCIM Co Ltd, Meridian Enterprises Company Ltd and Waldorf Auto Services Co. Ltd) as well as in the finance sector (via Pater Finance Company Limited). In the automotive sector, UCIM is the sole distributor in Malta of Fiat, Alfa Romeo, Jeep, Chrysler and Iveco motor vehicles. The commercial vehicles division is divided into two sections: the light commercial vehicle range through the Fiat professional arm and the Iveco medium to heavy truck department. Meridian Enterprises Company Ltd (hereinafter referred to as "Meridian") is the sole distributor in Malta of Hyundai motor vehicles. Waldorf Auto Services Co. Ltd offers car and repair services, including panel beating, spraying and car valet services. In the finance sector, Pater Finance Company Limited is an in house finance company that provides medium term financing to clients of both UCIM Co Ltd and Meridian Enterprises Company Ltd.

ii. United Group Limited is a holding company registered in Malta with registration number C 10233 and registered address at 'United Group Limited', GB Buildings, 2nd Floor, 28 Water Street, Ta' Xbiex, XBX1310. United Group Limited has interests in a number of subsidiaries operating in the automotive, retail and real estate sectors. With regard to the automotive sector, on the 1st of July 2011, United Automobile Limited (today United Group Limited) merged its car dealership operations with that of Easysell Kia (Malta) Limited through the setting up of a new company – Cars International Limited ("CIL"). CIL is equally owned by United Group Limited and the remaining Notifying Party Tum Invest Limited. CIL represents Kia, Opel, Chery, Saab and DFM automotive brands in Malta. Another subsidiary of United Group Limited is United Garage Limited which is the franchise in Malta for Hertz, providing vehicle rental services.

iii. Tum Invest Limited is a holding company registered in Malta with registration number C 69572 and registered address at Tum Invest Limited, Mdina Road, Qormi, QRM 9010. It has interests in the automotive sector primarily through the holding of a fifty percent stake in CIL together with United Group Limited. Other subsidiaries of Tum Invest Limited are Easysell KIA (Malta) which receives rental income, Commercial Vehicles Imports Limited which used to import buses, coaches and similar commercial vehicles, and Kromus Estates Limited, a holding company involved in real estate.

Transaction

4. Pursuant to the Agreement, the concentration consists of an acquisition of joint control by the Notifying Parties of a fully functioning joint venture to be formed and named Motors Inc. Limited, whereby UCIM and CIL are to transfer and/or procure to transfer, sell, assign and deliver to Motors Inc. Limited all rights, title and interest in and to all the assets and interests forming part of the parties' automotive businesses. Specifically, UCIM and CIL, shall, for the purpose of carrying out the joint venture, transfer their respective automotive businesses which shall include, the distribution, sale and dealing as merchants of motor vehicles, the servicing, maintenance and repairs of such goods and the supply and sale of all components, spare parts, accessories and tools relative to such goods.
5. Motors Inc. Limited shall be jointly controlled by the Notifying Parties, with each of the Notifying Parties holding 33.3% of its issued ordinary shares. The Board of Directors is to be composed of a minimum of three and a maximum of six directors, with each of the Notifying Parties having the right to nominate and appoint two directors. The Board shall be responsible for deciding on the strategic business behaviour of the joint venture, including matters such as the budget, business plan, capital expenditure, the appointment; removal or change in management composition and the appointment of the chief executive officer. In each of these cases the approval of at least one director appointed by each of the Notifying Parties is required.
6. [...]

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7. Completion of the concentration is conditional upon a number of conditions, including *inter alia*, clearance from the Office for Competition within the Malta Competition and Consumer Affairs Authority.

Notifiable Concentration

8. The proposed transaction brings about the acquisition of joint control by the Notifying Parties of a fully functioning joint venture within the meaning of regulation 2(ii) of the Regulations.
9. The Office considers that the proposed transaction constitutes a concentration within the meaning of Regulation 2 of the Regulations.

Threshold for Notification

10. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2,329,373.40 and each of the parties concerned had a turnover in Malta equivalent to at least 10% of the combined aggregate turnover of the undertakings concerned.
11. The notified concentration, therefore, meets the notification threshold as set out in Regulation 2 of the Regulations.

Simplified Procedure

12. Following the examination of the notification, it is considered that the notified concentration falls within the scope of regulation 12(1) of the Regulations, whereby it is provided that:

“The simplified procedure will apply to the following categories of concentrations that are deemed not to raise serious doubts as to their legality in terms of the provisions of these regulations...”

(iii) two or more undertakings merge, or one or more undertakings acquire sole or joint control of another undertaking and two or more of the parties to the concentration are engaged in business activities either in the same product and geographical market and their combined market share is less than 15%...”

Conclusion

For the above mentioned reasons and in terms of regulations 6 (1) (ii) and 12 (4) of the Regulations, it is therefore decided:

- (1) that the Concentration falls within the scope of the Regulations on Control of Concentrations;
- (2) that the Concentration does not raise serious doubts as to its lawfulness;
- (3) not to oppose the notified Concentration and to declare it a lawful Concentration.



Godwin Mangion
Director General