

OFFICE FOR FAIR COMPETITION

DECISION

Comp-MCCAA/17/2012

12 September 2012

Decision on the creation of a full function joint venture in terms of regulation 6(1)(ii) of the Regulations on Control of Concentrations, 2002 (LN 294 of 2002),

The Office for Competition,

Having considered the notification of Gasan Enterprises Limited, Mira Holdings Limited, Mira Motor Sales Limited and Associated Motors Company Limited pursuant to regulation 5 of Regulations on Control of Concentrations 2002,

Having considered the provisions of the Regulations on Control of Concentrations, 2002,

Having considered EU and other foreign jurisprudence,

Whereas,

I. Facts

1. On 2 August, 2012, Gasan Enterprises Limited (hereinafter referred to as "Gasan"), Mira Holdings Limited, Mira Motor Sales Limited and Associated Motors Company Limited (hereinafter referred to as "Mira" and hereinafter collectively referred to as "the Notifying Parties") notified the Office for Competition (hereinafter referred to as "Office") with a Joint Venture & Shareholders' Agreement dated 24 July, 2012, whereby Gasan and Mira, are to transfer the entirety of their respective automotive operations, including, the sale and distribution of motorcycles and marine and other power products to GasanZammit Motors Limited, a new joint venture company set up for the purposes of this transaction.
2. The filing and the acceptance of such notification was notified to the public through a public notice in the Government Gazette number 18,953 on 10 August, 2012 and a notice that appeared in a local newspaper on 10 August, 2012.

II. Parties

3. Gasan is a limited liability company incorporated in Malta having registration number C 467 and registered address at Gasan Centre, Mriehel By-Pass, Birkirkara. Its principal activity is the operation of a motor vehicle dealership and related services in Malta. Gasan sells new cars, approved used cars, motorcycles and marine products. It represents the following brands in Malta: Jaguar, Volvo, Ford, Mazda, Yamaha, Geely, LML, Pirelli, and Capelli. The company also operates a vehicle servicing centre, a body and spray shop and a parts department. It is a subsidiary of Gasan Group Limited having registration number C 2958 and the same registered address as Gasan Enterprises. Gasan Group's activity is the holding of investments in subsidiaries and associates forming the Gasan Group and the provision of finance and management services to these group companies. Gasan Group is engaged in the operation of motor vehicle dealerships and related services, the provision of insurance services, the holding of property for development and renting, as well as the provision of electrical and mechanical engineering contracting services, including the installation of lifts and air conditioners.

4. Mira Motor Sales Limited and Associated Motors Company Limited are both limited liability companies incorporated in Malta having registration number C 3303 and C 720 respectively and registered address at 4, Territorials Street Mriehel By-Pass Birkirkara. They are mainly involved in the business of importation, local distribution and retail of automobiles in Malta. Mira Motor Sales sells new cars and operates a parts and services department. Associated Motors sells new cars, motorcycles, marine products, power products, agriculture and gardening products, and operates a parts and services department. Mira represents the following brands in Malta: Chevrolet, Isuzu, and Honda. These companies are subsidiaries of Mira Holdings Limited having registration number C 5361. Besides its corporate governance duties, the company is responsible for providing the financial resources to finance and support the operations of its subsidiaries, in particular the financial requirements of Mira Motor Sales and Associated Motors.

III. Full Function Joint Venture

5. The Notifying Parties shall establish a new joint venture to be named GasanZammit Motors Limited (hereinafter referred to as "GasanZammit"), which shall be a limited liability company incorporated under the laws of Malta and having its registered address at Gasan Centre, Mriehel By-Pass, Birkirkara. The business of GasanZammit shall relate to the distribution, sale and otherwise dealing as merchants of motor vehicles of all types and motor scooters, engines for land, sea and air, inflatable boats, motor tractors for agricultural and industrial use, the servicing, maintenance and repairs of such goods and the supply and sale of all components, spare parts and accessories relative to such goods and services.

6. It shall be owned as to 65.48% by Gasan and as to 34.52% by Mira. It is established that Gasan and Mira shall respectively be entitled to appoint six directors and three directors to GasanZammit's Board of Directors. The Board shall be responsible for deciding on the strategic business behaviour of the joint venture, including matters such as the budget, capital expenditure and the appointment of the chief executive officer. In each of these cases the approval of at least one director appointed by Gasan and one director appointed by Mira is required. In addition, the approval of the business plan shall require an extraordinary resolution which mandates a number of shareholders holding a total of not less than 75% shareholding. The approval of, inter alia, the business plan, require approval, therefore, of both of the Notifying Parties. Thus, GasanZammit is jointly controlled by Gasan and Mira.

7. Furthermore, Gasan and Mira will withdraw from the market of GasanZammit. The Notifying Parties have agreed to transfer, sell/contribute, assign and deliver to GasanZammit all rights, title and interest in and to all the assets and interests pertaining to the Parties and which assets and interests constitute and represent the automotive businesses currently carried on by the Parties in Malta. Indeed, the Notifying Parties have submitted that each of the parties' respective principals have agreed to transfer the sales distribution or agency agreements to the joint venture once it is incorporated.

8. GasanZammit shall carry out its operations and activities and conduct its business from the premises at Gasan Centre, in Birkirkara. The *[confidential]* services. Furthermore, the Notifying Parties will endeavour to procure for the joint venture, banking facilities, including over drafts, as is required to finance its operations. The joint venture has therefore been placed in a position to perform all the functions related to its business activity independently from its parent companies.

IV. Turnover Threshold

9. The aggregate turnover of the undertakings concerned in the preceding financial year exceeds €2.33 million and each of the parties concerned had a turnover in Malta equivalent to at least 10 percent of the combined aggregate turnover of the undertakings concerned as set out in regulation 2(d)(ii) of the Regulations.

V. Notifiable Concentration

10. The Office considers that the joint venture will perform on a lasting basis all the functions of an autonomous economic entity within the meaning of the first proviso to regulation 2(d)(ii) of the Regulations and that the proposed operation thus constitutes a concentration.

VI. Third Party Objections

11. There were no Third Party Objections.

VII. The Relevant Markets

12. The joint venture will be active in:
- Importation and retail distribution of new and used passenger cars;
 - Importation and retail distribution of new and used light commercial vehicles;
 - Importation and retail distribution of new and used motor cycles;
 - Servicing and repair of motor vehicles and motor cycles;
 - Importation and retail distribution of motor vehicle and motor cycle spare parts; and
 - Importation and retail distribution of marine and other power products.

A. Product Markets

A.1 Importation and Retail Distribution of new Passenger Cars

13. The Notifying Parties overlap in the retail distribution of (i) new passenger cars and (ii) new light commercial vehicles. Gasan is also involved in the retail distribution of approved used passenger cars. According to the Registration and Licensing of Motor Vehicles Regulations¹ a new motor vehicle means a vehicle which has never been registered in any country. Vehicles registered in another country and imported to Malta are defined as used vehicles.

14. In *Tumas Group Company/United Automobile Limited*², the Office concluded that used passenger cars formed part of the same market as that for new passenger cars. The Office, in fact, in that case, saw a marked increase in the registration of used motor vehicles indicating, inter alia, that at least from a consumers' point of view new and used motor vehicles were substitutes. The Office, considers that, for the purposes of this concentration, the precise definition of the relevant market as to used passenger cars and new passenger cars could be left open as there are no competition concerns even on the narrowest possible product market delineation being that for new passenger cars only.

A.2 Importation and Retail Distribution of new light commercial vehicles

15. Furthermore, in the above-mentioned case, the Office acknowledged that light commercial vehicles may be considered as a separate market to passenger cars. However, for the purposes of this concentration it has not been necessary to conclude on this as the concentration does not raise any competition concerns even on the narrowest possible product market delineation being that for new light commercial vehicles only.

A.3 Importation and Retail Distribution of new Motor Cycles

16. The Notifying Parties overlap in the retail distribution of new motor cycles. Gasan is also involved in the retail distribution of used motor cycles. Gasan imports and distributes Yamaha, Greely and LML motor cycles and Mira imports and distributes Honda motorcycles. Motorcycles are two-, three- or four-wheeled road motor vehicles not exceeding 400 kg

¹ S.L. 368.02

² Comp-CCD/19/11. 25 April 2011

(900 lb) of unladen weight³. A scooter is a motorcycle with step-through frame and a platform for the operator's feet.

17. In previous decisional practice, the Commission made a distinction between scooters with an engine size smaller than 50cc and scooters with engines greater than 50cc. This was mainly due to the fact that in a number of European countries, scooters with a small engine size can also be used by drivers below the age of 16. The Office, however considers that this distinction is not relevant for the purposes of the relevant product market. The regulatory framework in Malta requires that all drivers irrespective of the engine size have to be of eighteen years of age. Furthermore, given the negligible number of imports of scooters in the preceding years (in the year 2011 less than 40) and given that neither of the Notifying Parties operate on this market, this Office has not considered this product market further as no competition concerns may arise.

18. With respect to the distinction between the import and retail distribution of new and used motor cycles, the Office, considers that the precise definition of the relevant market as to used motor cycles and new motor cycles can be left open as there are no competition concerns even on the narrowest possible product market delineation being that for new motor cycles only.

A.4 Servicing and repair of motor vehicles and motor cycles

19. The Notifying Parties overlap in the service and repair market primarily as an after-sales service to the retail distribution of motor vehicles and motor cycles market. In its analysis in *Tumas Group Company/United Automobile Limited*, the Office concluded that the relevant product market was the supply of servicing and repair of motor vehicles provided by both authorised dealerships and individually-owned independent garages as they were considered substitutable from a demand-side perspective. During the course of its investigation in the present case, the Office has found no evidence to suggest that it is necessary to deviate from that conclusion.

³ http://www.nso.gov.mt/statdoc/document_file.aspx?id=3379

20. Furthermore, the Office has not received any evidence that the supply of servicing and repair of motor vehicles should be considered as a separate market to that of the supply of servicing and repair of motor cycles, nor does the Office consider it necessary to conclude on this since the concentration does not raise any competition concerns on the narrowest possible product market delineation.

21. Accordingly, this Office has not considered this product market further as no competition concerns were raised by third parties in respect thereof and the parties' combined shares in each of these sectors are below 15 per cent.

A.5 Importation and retail distribution of motor vehicle and motor cycle spare parts and accessories

22. The Notifying Parties overlap in the importation and retail distribution of motor vehicle and motor cycle spare parts and accessories. In its analysis in *Tumas Group Company/United Automobile Limited*, the Office concluded the relevant product market to be that for branded specific original spare parts only as the narrowest possible market definition. During the course of its investigation in the present case, the Office has found no evidence to suggest that it is necessary to deviate from that conclusion, nor does the Office consider it necessary to conclude on this since the concentration does not raise any competition concerns on the narrowest possible product market delineation.

23. Accordingly, this Office has not considered this product market further as no competition concerns were raised by third parties in respect thereof and the parties' combined shares in each of these sectors, are below 15 per cent.

A.6 Importation and retail distribution of marine and other power products

24. The Notifying Parties overlap in the importation and retail distribution of marine outboard engines. Gasan sells new and used Yamaha outboard engines and new and used inflatable boats. Mira sells new Honda outboard engines and new inflatable boats. However these are

not considered further as no competition concerns were raised by third parties in these areas and the parties' combined shares in each of these sectors are below 15 per cent.

B. Relevant Geographic Market

25. The precise scope of the respective relevant geographic markets can be left open given that the notified transaction does not threaten to impede effective competition on the narrowest possible product market delineation, which would be national in scope.

VIII. Competitive Assessment

26. For the purposes of Section 6 III of the CN Notification Form (annexed to the Regulations on the Control of Concentrations), affected markets are relevant product markets where, in the Maltese territory or a relevant part thereof, two or more of the parties to a concentration are engaged in business activities in the same product market and where the concentration leads to a combined market share of 15 percent or more.

Importation and Retail Distribution of new Passenger Cars

27. The Notifying Parties overlap in the retail distribution of new passenger cars. As a result of the proposed transaction, the combined market shares for the importation and retail distribution of new passenger cars, is approximately [10-20%] percent. This level of market share is arrived at by assuming, in line with the Commission's Guidelines on Horizontal Mergers, that, post-merger, combined market shares are the sum of the pre-merger company's individual market shares. The Office has found that there is a number of strong competing distributorships all offering leading competing marques. Furthermore, on the basis of the information made available to the Office, the merging parties are not the closest competitors pre-merger. Indeed, one of the Notifying Parties has a market share which is significantly less than the other.

28. Additionally, the Office notes that from the data provided by the Notifying Parties and when verified with data retrieved from the National Statistics Office, post 2009, there has been a

marked increase in the registration of used passenger cars. This is also consonant with the reply to the Office's Request for Information from the Association of Car Importers, wherein it was submitted that importers of new cars face increasingly strong competition from imported used cars and the ratio of used to new imported cars has been shifting in favour of used imported cars in recent years. This is also further consonant with the commercial decision of a number of national distributorships, including Gasan, to venture into the used passenger car market. The Office considers, therefore, that the proposed transaction will not lead to a substantial lessening of competition in the market for new passenger cars.

Importation and Retail Distribution of new light commercial vehicles

29. The Notifying Parties overlap in the retail distribution of new light commercial vehicles. As a result of the proposed transaction, the combined market shares for the importation and retail distribution of light commercial vehicles, is approximately [20-30%] percent. The Office considers that the combined post-merger market share is relatively low and that there are credible competitors having at least an equivalent or higher market share to one of the Notifying Parties. Accordingly, the proposed transaction will not lead to a substantial lessening of competition in the market for new light commercial vehicles.

Importation and Retail Distribution of new Motor cycles

30. The Notifying Parties overlap in the retail distribution of new motor cycles. According to the data made available by the Notifying Parties, as a result of the proposed transaction, the combined market shares for the importation and retail distribution of new motorcycles, is approximately [30-40%] per cent. The market for new motor cycles is made up of six close competitors, two of which are the Notifying Parties, together with, a number of smaller competitors which together make up a market share that is equal to the individual market share of the largest competitor pre merger. When analysing the available data over the last three years, it is evident that the market is dynamic with considerable movement and fluctuations in market shares amongst the market players. Considering that the presence of other main competitors will exert a competitive pressure on the joint venture and that barriers to entry in this sector are

relatively low, the Office considers that the proposed transaction will not lead to a substantial lessening of competition in the market for new motor cycles.

X. Conclusion

31. For the above mentioned reasons and in terms of regulation 12(4) of the Regulations on Control of Concentrations, 2002 the Director General of the Office for Competition has therefore decided:

- (1) that although the Concentration falls within the scope of these Regulations, the Concentration does not raise serious doubts about its lawfulness;
- (2) not to oppose the Concentration; and
- (3) declares it to be a lawful Concentration

Dr Sylvann Aquilina Zahra

Director General