

***Case No COMP/M.5219 -
VWAG / OFH / VWGI***

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25-IX-2008

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5219 - VWAG/ OFH/ VWGI
Notification of 21 August 2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

INTRODUCTION

1. On 21 August 2008 the Commission received a notification of a proposed concentration pursuant to Art. 4 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings ("the EC Merger Regulation") by which the undertaking Volkswagen AG ("VWAG", Germany) acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of the undertaking Volkswagen Group Ireland Limited ("VWGI", Ireland) by way of purchase of shares.

I. THE PARTIES

2. VWAG develops, manufactures, markets and sells new passenger cars and light commercial vehicles, including related spare parts and accessories. In addition, VWAG manufactures and sells trucks in the EEA via its subsidiary Scania AB ("Scania", Sweden).² VWAG also holds a non-controlling shareholding in MAN AG ("MAN", Germany)³, a producer of commercial vehicles.

¹ OJ L 24, 29.1.2004 p. 1.

² See Commission decision of 13.6.2008, Case COMP/M.5157 – Volkswagen/Scania.

³ See Commission decision of 13.6.2008, Case COMP/M.5157 – Volkswagen/Scania, recital 5.

3. The target, VWGI, is a special purpose vehicle which was established for the purposes of the present transaction. VWGI is a wholly owned subsidiary of O'Flaherty Holdings Limited ("OFH", Ireland). OFH is the exclusive importer and wholesale distributor of Volkswagen, Audi and Skoda new passenger cars and Volkswagen light commercial vehicles ("LCV") and related spare parts and accessories for such vehicles in Ireland. OFH is also involved, via its [...]-%-shareholding in Hispano Cars Limited ("Hispano Cars", Ireland), in the wholesale distribution of SEAT new passenger cars in Ireland. Hispano Cars is VWAG's exclusive importer and wholesale distributor of SEAT new passenger cars in Ireland. At the retail level, OFH is involved in the sale of new motor vehicles (Volkswagen, Audi, Mazda and Mercedes-Benz) and used motor vehicles, and the sale of spare parts. The transaction concerns only the business of OFH in respect of the exclusive importation and wholesale distribution of Volkswagen, Audi and Skoda new passenger cars and Volkswagen LCV and related spare parts and accessories for all such vehicles. This business has been transferred to VWGI pursuant to the Share Purchase Agreement dated [...]. OFH will continue to be involved in the exclusive importation and wholesale distribution of SEAT vehicles⁴ and at the retail level in the sale of new motor vehicles, in particular Volkswagen and Audi passenger cars.

II. THE OPERATION

4. Pursuant to the Share Purchase Agreement, the shares in VWGI will be transferred to VWAG.

III. CONCENTRATION

5. VWAG will acquire sole control of VWGI. The transaction therefore constitutes a concentration within the meaning of Article 3 (1) (b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 Mio. (VWAG: EUR 108,897 Mio., VWGI EUR [...]) and the aggregate Community-wide turnover of each of at least two of the undertakings is more than EUR 250 million (VWAG: EUR [...], VWGI: EUR [...]). Of the undertakings concerned, only VWGI achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member state. The notified operation has a Community dimension within the meaning of Article 1(2) of EC Merger Regulation.

V. COMPETITIVE ASSESSMENT

7. With the transaction, the exclusive importer and wholesale distributor of the Volkswagen, Audi and Skoda brands is vertically integrated by VWAG.

1. RELEVANT PRODUCT MARKETS

8. The acquirer is active in the production of passenger cars. In previous decisions, the Commission left the question open if an overall market for the *manufacture and supply of passenger cars* can be defined or if a further segmentation based on widely accepted

⁴ OFH will also continue to trade vehicles of Mercedes-Benz.

industry standards is necessary.⁵ Segments which were considered to be a possible basis for the product market definition were the following:

- (A) Mini cars;
- (B) Small cars;
- (C) Medium cars ('compact or lower middle class');
- (D) Larger cars ('middle class');
- (E) Executive cars ('upper middle class');
- (F) Luxury cars;
- (S) Sports cars / coupés / cabriolets;
- (M) Multi purpose cars;
- (J) Sports utility cars (SUVs, including off-road vehicles)

9. For the purpose of the assessment of the present case, it is not necessary to conclude on the product market definition in that respect as even under the assumption of narrow product markets the transaction is unlikely to raise serious doubts as to its compatibility with the common market.
10. In previous cases, the Commission has also distinguished between the wholesale and the retail distribution of vehicles.⁶ At the wholesale level, wholesale distributors distribute vehicles to dealers (retailers), who later resell the vehicles to final customers. The wholesale function is often carried out by subsidiaries of the vehicle manufacturers themselves. However, some vehicle brands are distributed by independent distributors. Although independent, these companies have to ensure consistency with the central marketing strategies developed by the manufacturers. In most cases, a car manufacturer has exclusively a single importer / wholesale distributor for a specific country.⁷ For the purpose of the assessment of the present case, the question if a distinct market for the *wholesale of passenger cars* parts should be defined may be left open as even under that assumption the transaction is unlikely to raise serious doubts as to its compatibility with the common market.
11. The Commission has also defined markets for the *manufacture and supply of spare parts for passenger cars* and for the *wholesale* of these parts.⁸ The narrowest possible product market definition would be a market definition which only comprises brand specific original spare parts. However, even under that assumption the transaction is unlikely to raise serious doubts as to its compatibility with the common market.
12. The Commission has also defined markets for the *manufacture and supply of light commercial vehicles, for related spare parts* and for the *wholesale of light commercial vehicles and for related spare parts*.⁹ For the purpose of the assessment of the present

⁵ See most recently Commission Decision of 23.7.2008, COMP/M.5250 Porsche/Volkswagen, recital 18.

⁶ See Commission Decision of 22.7.2002, COMP/M.2832 General Motors/Daewoo Motors, recital 17.

⁷ See most recently Commission Decision of 23.7.2008, COMP/M.5250 Porsche/Volkswagen, recital 26 – 28.

⁸ See most recently Commission Decision of 23.7.2008, COMP/M.5250 Porsche/Volkswagen, recital 29 – 34.

⁹ See Commission Decision of 22.7.2002, COMP/M.2832 General Motors/Daewoo Motors, recital 14.

case, it is not necessary to conclude on the product market definition in that respect as even under the assumption of narrow product markets the transaction is unlikely to raise serious doubts as to its compatibility with the common market.

2. RELEVANT GEOGRAPHIC MARKETS

13. In previous decisions the geographic scope of the markets for the manufacture and supply of passenger cars, for related spare parts and for the wholesale of passenger cars and of related spare parts was left open.¹⁰ The geographic scope of the markets for the manufacture and supply of light commercial vehicles, for related spare parts and for the wholesale of light commercial vehicles and related spare parts was also left open.¹¹
14. For the purpose of the assessment of the present case, all geographic market definitions may be left open as even under the assumption of national markets the transaction is unlikely to raise serious doubts as to its compatibility with the common market.

3. COMPETITIVE ASSESSMENT

15. The parties' activities do not overlap horizontally. However, the transaction leads to vertically affected markets if a narrow product definition for the manufacture and supply of passenger cars is retained as the acquirer is active on the (upstream) market for the manufacture and supply of passenger cars and LCV and the target is active on the (downstream) market for the wholesale distribution of passenger cars and LCV. As the target is the exclusive importer and wholesaler distributor in Ireland of LCVs manufactured by VWAG Group, VWAG's market share is entirely attributable to the target.

Table 1: Market Shares for the EEA and for Ireland (manufacture and supply of passenger cars)

VWAG	Market Shares EEA	Market Shares Ireland
All passenger cars	[10-20]%	[10-20]%
Category A	[0-5]%	[10-20]%
Category B	[10-20]%	[10-20]%
Category C	[20-30]%	[20-30]%
Category D	[20-30]%	[20-30]%
Category E	[20-30]%	[10-20]%
Category F	[30-40]%	0%
Category S	[10-20]%	[10-20]%
Category M	[10-20]%	[5-10]%
Category J	[5-10]%	[0-5]%
LCV	[10-20]%	[10-20]%

Source: Parties' best estimates based on Global Insight data.

16. As can be seen from Table 1, only the markets for the manufacture and supply of passenger cars in the categories C, D both in the EEA and in Ireland and the market for the manufacture and supply of passenger cars in the category F in the EEA are affected. As the target is not active in the wholesale of competitive brands, the market shares are at the highest a function of VWAG's upstream positions. As the proposed transaction

¹⁰ See Commission Decision of 23.7.2008, COMP/M.5250 Porsche/Volkswagen, recital 39 – 47.

¹¹ See Commission Decision of 22.7.2002, COMP/M.2832 General Motors/Daewoo Motors, recital 24 – 25.

simply amounts to the vertical integration of VWAG's exclusive importer and wholesaler distributor, there will be no material impact on the market. In the market investigation, OEMs who compete with VWAG on the Irish market confirmed that the transaction will not change current supply patterns. Accordingly, the transaction does not raise serious doubts on this market.

17. Traditionally, car manufacturers have strong positions on the markets for the manufacture and (wholesale) distribution of brand specific original spare parts produced by car manufacturers or the car manufactures' suppliers.¹² However, the transaction is unlikely to have any influence on the market position of VWAG. Again, a material impact on the market can be excluded, as the transaction will only lead to the vertical integration of VWAG's exclusive importer and wholesale distributor for original spare parts. Accordingly, the transaction does not raise serious doubts on this market neither.

Overall conclusion

18. The transaction does not raise serious doubts as to its compatibility with the common market.

VI. CONCLUSION

19. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(*signed*)
Siim KALLAS
Member of the Commission

¹² See most recently Commission Decision of 23.7.2008, COMP/M.5250 Porsche/Volkswagen, recital 90.