

***Case No COMP/M.6403 -  
VOLKSWAGEN/ KPI POLSKA/  
SKODA AUTO POLSKA/  
VW BANK POLSKA/  
VW LEASING POLSKA***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 19/12/2011

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## EUROPEAN COMMISSION

Brussels, 19.12.2011  
C(2011) 9867 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.6403 - VOLKSWAGEN/ KPI POLSKA/ SKODA AUTO POLSKA/ VW BANK POLSKA/ VW LEASING POLSKA Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

1. On 14 November 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Volkswagen AG ("Volkswagen", Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of KPI Polska Sp. z o.o. ("KPI Polska", Poland), Skoda Auto Polska S.A. ("Skoda Auto Polska", Poland), Volkswagen Bank Polska S.A. ("VW Bank Polska", Poland) and Volkswagen Leasing Polska Sp z o.o. ("VW Leasing Polska", Poland) by way of purchase of shares.<sup>2</sup> KPI Polska, Skoda Auto Polska, VW Bank Polska and VW Leasing Polska are hereinafter collectively referred to as the "Target Business." Volkswagen is designated hereinafter as the "notifying party".

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<sup>1</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation"), OJ L 24, 29.1.2004, p. 1. 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.

<sup>2</sup> OJ C 339, 19.11.2011, p. 20.

## I. THE PARTIES

2. Volkswagen is a German publicly traded company engaged primarily in the development, manufacturing, sale and distribution of motor vehicles (including spare parts and accessories). In addition, Volkswagen provides financial services relating to the distribution and financing of its vehicles.
3. The Target Business consists of four entities:
  - KPI Polska: the *de facto* exclusive importer and wholesale distributor of Volkswagen passenger cars (with the exception of Skoda), light commercial vehicles ("LCVs"), and related spare parts and accessories in Poland.<sup>3</sup>
  - Skoda Auto Polska: the *de facto* exclusive importer and wholesale distributor of Skoda passenger cars and LCVs in Poland. Skoda Polska supplies its products only to retailers in Poland, including KPI Polska.
  - VW Leasing Polska: a provider of financial services (namely fleet leasing and management, financial leasing for vehicles, and operative leasing for vehicles) and procurement services for vehicle insurances in relation to vehicles distributed by the Target Business to Polish customers.
  - VW Bank Polska: a provider of retail and corporate banking services in Poland mainly to the Target Business's vehicle customers and dealers.

## II. THE OPERATION

4. The proposed transaction will be brought about by means of the following transactions.
  - (i) *Acquisition of 100% of the shares of KPI Polska*
5. All shares in KPI Polska are currently held by Kulczyk Pon Investment B.V. ("KPI B.V.").<sup>4</sup> As part of the proposed transaction, KPI B.V. will sell its entire shareholding in KPI Polska to Volkswagen International Finance N.V., a subsidiary of

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<sup>3</sup> KPI Polska has four wholly-owned operative subsidiaries: (i) Kulczyk Tradex Sp. z o.o. ("Kulczyk Tradex"), (ii) KPI Sports Cars Sp. z o.o. ("KPI Sports Cars"), (iii) KPI Retail Sp. z o.o. ("KPI Retail") and (iv) KPI Business Services Sp. z o.o. ("KPI Business Services"). Kulczyk Tradex and KPI Sports Cars are both active in the importation and wholesale distribution of Volkswagen passenger cars and LCVs, related spare parts and accessories in Poland. KPI Retail is active in the retail sale of new passenger cars of the brands: Volkswagen Passenger Cars, Audi, Bentley, Porsche and Skoda as well as LCVs of the brand Volkswagen Light Commercial and related spare parts and accessories and used cars of all brands in Poland. KPI Business Services is an internal business service unit that provides back office services such as accounting, controlling, legal, treasury, real estate, IT and human resources services.

<sup>4</sup> Currently the shares of KPI B.V. are held by Kulczyk Investments S.A. ("Kulczyk Investments") ([...])% and Pon Holding B.V. ([...])%.

Volkswagen.<sup>5</sup> Volkswagen will therefore acquire sole control over KPI Polska and its subsidiaries.

*(ii) Acquisition of a 49% shareholding in Skoda Auto Polska*

6. Currently Volkswagen, through its subsidiary Skoda Auto a.s. ("SKODA"), together with Kulczyk Holding S.A. ("Kulczyk Holding"), a wholly-owned subsidiary of Kulczyk Investments S.A. ("Kulczyk Investments"), jointly control Skoda Auto Polska.<sup>6</sup>
7. As part of the notified operation, Volkswagen intends to acquire an additional 49% shareholding in Skoda Auto Polska from Kulczyk Holding. This will result in a change of control in Skoda Auto Polska from joint control, exercised by Volkswagen and Kulczyk Holding, to sole control, exercised by Volkswagen.

*(iii) Acquisition of a 40% shareholding in VW Bank Polska*

8. At present, VW Bank Polska is jointly controlled by Volkswagen, through its wholly-owned subsidiary Volkswagen Financial Services AG ("VWFS") and KPI B.V.<sup>7</sup> As part of the notified operation, Volkswagen will acquire an additional 40% shareholding in VW Bank Polska. This acquisition will result in a change from joint control over VW Bank Polska (exercised by KPI BV and VWFS) to sole control (exercised by VWFS).

*(iv) Acquisition of a 40% shareholding in VW Leasing Polska*

9. VW Leasing Polska is currently jointly controlled by Volkswagen (through VWFS) and KPI B.V.<sup>8</sup> The proposed acquisition by Volkswagen of the remaining 40% shareholding in VW Leasing Polska will therefore result in a change from joint control (exercised by KPI B.V. and VWFS) to sole control (exercised by VWFS).

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<sup>5</sup> Alternatively, the four operating subsidiaries of KPI Polska will be transferred to KPI Polska 3 B.V., a Dutch company which will be established as a subsidiary of KPI B.V. Volkswagen will then acquire all shares in KPI Polska 3 B.V.

<sup>6</sup> Volkswagen (via SKODA) holds 51% of the shares of Skoda Auto Polska whereas Kulczyk Holding owns the remaining 49%. Kulczyk Holding has direct influence on the activities and operations of Skoda Auto Polska in particular by way of its power to appoint one of the two board members who are in charge of negotiating and determining all affairs of the company, including its budget, jointly and in mutual agreement.

<sup>7</sup> VWFS holds 60% of the shares of Volkswagen Bank Polska whereas KPI B.V. owns the remaining 40%. Volkswagen and KPI B.V. have joint control over Volkswagen Bank Polska since the adoption of the budget, the business plan and the investment program as well as the appointment and dismissal of the members of the supervisory board require a resolution of the general shareholders' meeting and the quorum for such resolution is the presence of at least 75% of the share capital.

<sup>8</sup> VWFS holds 60% of the shares of Volkswagen Leasing Polska whereas KPI B.V. owns the remaining 40%. Volkswagen and KPI B.V. have joint control over Volkswagen Leasing Polska since the adoption of the budget, the business plan and the investment program as well as the appointment and dismissal of the members of the management board require a resolution of the general shareholders' meeting and the quorum for such resolution is the presence of at least 75% of the share capital.

### III. CONCENTRATION

10. By means of the proposed transaction Volkswagen will vertically integrate the vehicle distribution of its brands and the related financing business in Poland. As described in the preceding section, this operation involves the acquisition by Volkswagen of 100% of the share capital of KPI Polska which is currently wholly owned by KPI B.V. as well as the acquisition from the latter of all of the shares that Volkswagen does not already own in Skoda Auto Polska, VW Bank Polska and VW Leasing Polska.
11. Accordingly, the Memorandum of Understanding signed by Volkswagen and KPI B.V. relates to all four acquisitions. These acquisitions were also presented to the board of Volkswagen for approval as one single project, namely the full integration by Volkswagen of the Target Business. Subsequent to the granting of approval by the Volkswagen board, the four share purchase agreements relating to the notified operation were all signed on the same day.
12. According to paragraph 43 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("the Jurisdictional Notice") where transactions are not linked by mutual conditionality (*de jure*) they may nevertheless be treated as a single concentration provided that *de facto* conditionality can be satisfactorily demonstrated which requires an "*economic assessment of whether each of the transactions necessarily depends on the conclusion of the others.*" In addition, the simultaneous conclusion of the relevant agreements may be a further indication of the interdependence of several transactions where such transactions are not linked *de jure*.<sup>9</sup> Paragraph 44 of the Jurisdictional Notice goes on to note that several transactions may also be treated as a single concentration provided that "*the result is that control of one or more undertakings is acquired by the same person(s) or undertaking(s).*" According to the notifying party, the proposed transaction represents an opportunity for Volkswagen to vertically integrate its wholesaling, retailing and related financing activities in Poland and thereby provide enhanced potential for supply chain synergies. As noted above, the Memorandum of Understanding signed by Volkswagen and KPI B.V. concerned all four acquisitions and the proposed transaction was presented to the Volkswagen board as one transaction. In addition, the four share purchase agreements by means of which it is intended to bring about the proposed transaction were all signed on the same day. Moreover, the ultimate acquirer in this case (Volkswagen) intends to acquire sole control of the four undertakings that constitute the Target Business.
13. In light of these circumstances, the above-mentioned acquisitions are considered to constitute one single concentration pursuant to Article 3(1) of the Merger Regulation.

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<sup>9</sup> OJ C 95, 16.4.2008, p. 1.

#### IV. EU DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>10</sup> (Volkswagen: EUR 127 000 million; Target Business: EUR [...]). Each of them has an EU-wide turnover in excess of EUR 250 million (Volkswagen: EUR [...], Target Business: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

#### V. COMPETITIVE ASSESSMENT

##### Introduction

15. The proposed transaction involves the vertical integration by Volkswagen of the importation, wholesale and retail distribution in Poland relating to its VW, Audi, Porsche, Bentley and Skoda new passenger cars and Volkswagen LCVs, and related spare parts and accessories for such vehicles, as well as related financial and insurance procurement services.
16. Given that within the EEA the Target Business is active in Poland only<sup>11</sup>, the scope of any horizontal overlaps or vertical relationships is limited to Poland. The proposed transaction will result in horizontal overlaps in the following areas (i) retail distribution of new passenger cars and LCVs; (ii) trade in used cars and LCVs; (iii) repair and maintenance services; (iv) short term car rental; (v) full fleet leasing and management; (vi) financial leasing for vehicles; and (vii) insurance procurement services.<sup>12</sup> However, in all instances, none of these overlaps results in an affected market.
17. The proposed transaction gives rise to a vertical relationship as Volkswagen manufactures and supplies the vehicles and related spare parts and accessories which are imported and distributed by the Target Business (*i.e.* KPI Polska Group and Skoda Auto Polska). The remainder of this section therefore assesses the effects on competition arising from this vertical relationship.

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<sup>10</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

<sup>11</sup> KPI Retail made a limited number of export sales of new vehicles in 2010.

<sup>12</sup> There is no horizontal overlap with respect to (i) the wholesale distribution of passenger cars and LCVs and related spare parts and accessories given that Volkswagen is not active on these markets in Poland; and (ii) the retail distribution of spare parts given that Volkswagen supplies spare parts at the retail level in Poland only for vehicles that do not belong to the Volkswagen group. Also, there is no overlap with respect to (i) operative leasing for vehicles; and (ii) banking services, given that Volkswagen (in particular VWFS and LeasePlan, a joint venture with Fleet Investments) is not active in these areas in Poland.

(i) ***Manufacturing and supply of passenger cars and LCVs (upstream market)***

***Relevant product and geographic market***

18. In previous cases, the Commission has defined separate markets for the manufacture of new passenger cars and the manufacture of new LCVs. The Commission further considered a possible segmentation of the market for passenger cars into the following classes: (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 and (J) sports utility cars (SUVs, including off-road vehicles).<sup>13</sup>
19. The Commission in its previous decisions considered the market for manufacture and supply of passenger cars and LCVs as EEA-wide or national.<sup>14</sup> The parties consider the geographic market for the manufacture and supply of passenger cars and LCVs is at least EEA-wide in scope since the production of vehicles takes place on an international or even worldwide level and the competitive conditions are largely homogeneous throughout the EEA.
20. For the purposes of the present decision, however, the precise product and geographic market definition can be left open since the transaction does not lead to any competition concerns irrespective of the definition of the relevant market considered.

(ii) ***Wholesale distribution of new passenger cars and light commercial vehicles (intermediate market)***

***Relevant product and geographic market***

21. At the wholesale level distributors or importers distribute vehicles to dealers (retailers). The wholesale function is often carried out by subsidiaries of the vehicle manufacturers themselves or by independent distributors. In most cases, a car manufacturer has a single importer / wholesale distributor for a specific country such as KPI Polska / Skoda Auto Polska in this case.
22. The Commission has in previous decisions distinguished between the wholesale and retail distribution of new passenger cars and LCVs.<sup>15</sup> The Commission has further distinguished between the wholesale and retail distribution of new passenger cars on the one hand and of new LCVs on the other hand.<sup>16</sup> In *Inchcape/IEP*, the Commission considered that the distinction between the distribution of passenger cars and LCVs was sufficient and that it was not necessary to analyse distribution channels by narrower product market segments in particular for cars (e.g. mini cars, small cars,

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<sup>13</sup> Case COMP/M. 5219 – VWAG / OFH / VWGI.

<sup>14</sup> Case COMP/M. 5219 – VWAG / OFH / VWGI.

<sup>15</sup> Case No COMP/M.182 – *Inchcape/IEP*, para. 7; Case No COMP/M.2832 – *General Motors/Daewoo Motors*, para. 20; Case No COMP/M.5061 – *Renault / Russian Technologies / Avtovaz*, para 12. Case No COMP/M.5219 – VWAG / OFH / VWGI, para. 10.

<sup>16</sup> Case No COMP/M.3888 – *Ford Motor Company LTD / Polar Motor Group LTD*, paras 7 and 13.

medium cars, etc) and LCVs because manufacturers normally distribute a model range which covers different market segments under the same distribution channel.<sup>17</sup>

23. In a more recent decision, however, the Commission considered whether the segmentation of the market of passenger cars into narrower segments could be a possible basis for defining the relevant product market.<sup>18</sup>
24. The Commission has considered in previous decisions concerning the motor vehicle sector that the geographic scope of the wholesale distribution market for new passenger cars and LCVs is at least national.<sup>19</sup>
25. For the purposes of the present decision, however, the precise product and geographic market definition can be left open since the transaction does not lead to any competition concerns irrespective of the definition considered.

**(iii) Retail distribution of new passenger cars and light commercial vehicles (downstream market)**

26. At the retail level dealers sell vehicles to final customers. These dealers also usually have to ensure consistency with the central marketing strategies developed by the car manufacturers and distributors.
27. As noted above in paragraph 22 the Commission has in previous decisions distinguished between the wholesale and retail distribution of new passenger cars and LCVs. The Commission has further distinguished between the wholesale and retail distribution of new passenger cars on the one hand and of new LCVs on the other hand.
28. In its previous decisions the Commission left open whether the retail distribution market for new passenger cars and LCVs is European wide, national or even regional.<sup>20</sup>
29. In this respect the parties submitted that the geographic market should be considered as at least national in scope due to the continuous harmonization of the market conditions for the retail distribution of passenger cars throughout Europe.
30. However, for the purposes of this decision, the exact product and geographic market definition can be left open since the transaction will not give rise to any concerns under any alternative market definition.

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<sup>17</sup> Case No COMP/M.182 – *Inchcape/IEP*, para. 9; Case No COMP/M.2832 – *General Motors/Daewoo Motors*.

<sup>18</sup> Case COMP/M. 5219 – *VWAG / OFH / VWGI*. The segments considered were: 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 and (J) sports utility cars (SUVs, including off-road vehicles).

<sup>19</sup> Case No COMP/M.5709 – *Volkswagen/Mahag*, para 20.

<sup>20</sup> Case No COMP/M.5709 – *Volkswagen/Mahag*, para 20.



## Assessment

### *(i) Manufacturing of passenger cars and LCVs – Wholesale of passenger cars and LCVs*

31. Volkswagen is active in the manufacture of passenger cars and LCVs in the EEA and Poland with the following market shares:

*Table 1 – Volkswagen market shares for the manufacture and supply of passenger cars and LCVs in the EEA and Poland in 2010, source: Form CO*

Volkswagen (including Porsche)	Market shares EEA	Market shares Poland
All passenger cars	[20-30]%	[20-30]%
Category A	[0-5]%	-
Category B	[10-20]%	[20-30]%
Category C	[30-40]%	[30-40]%
Category D	[30-40]%	[20-30]%
Category E	[10-20]%	[20-30]%
Category F	[20-30]%	[90-100]%
Category S	[10-20]%	[50-60]%
Category M	[10-20]%	[10-20]%
Category J	[30-40]%	[10-20]%
LCVs	[10-20]%	[10-20]%

32. The Target business is active downstream on the market for the wholesale distribution of passenger cars and LCVs in Poland. Based on a total market size that comprises the estimated supplies by wholesale distributors to third parties (i.e. excluding sales to own dealers) the Target business would have a share on the wholesale distribution market in Poland of approximately [20-30]% for passenger cars and [10-20]% for LCVs.
33. However, the change brought by this transaction to the competitive structure of the market is not significant since the notified operation consists in the vertical integration of the exclusive importation and wholesale distribution activities of Volkswagen in Poland. The lack of any significant change to the structure of the market has been confirmed by the respondents in the market investigation.
34. In light of the above, it is concluded that the proposed transaction does not raise serious doubts as regards the manufacturing and wholesale of passenger cars and LCVs.

*(ii) Wholesale distribution of passenger cars and LCVs – Retail distribution of passenger cars and LCVs*

35. As explained above, the Target business is active in wholesale distribution of passenger cars and LCVs in Poland with market shares of approximately [20-30]% and [10-20]% respectively.
36. The Target business and Volkswagen are both active in the retail distribution of passenger cars and LCVs in Poland which is downstream to the market for the wholesale distribution of passenger cars and LCVs.
37. The retail distributors belonging to each of the parties, however, trade different brands of the cars. While the retail distributors owned by Volkswagen in Poland deal in BMW, Peugeot and Mercedes vehicles, the dealerships owned by the Target business sell Volkswagen, Audi, Porsche and Bentley vehicles.
38. The parties' market shares in the retail distribution of passenger cars in Poland are limited to less than [0-5]% and only [0-5]% in the case of LCVs. If regional markets were to be considered, the only overlaps would occur in the Warsaw and Poznań regions. Even in these regions, however, the combined market share of the parties would remain relatively modest and are not of a level that would raise concerns.<sup>21</sup> This has been confirmed by respondents to the market investigation who did not raise concerns with regards to the transaction or its possible impact on competition in Poland.
39. Therefore, it is concluded that the transaction does not raise serious doubts as regards the retail distribution of passenger cars and LCVs in Poland or any region thereof.

**VI. CONCLUSION**

40. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*

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<sup>21</sup> The combined market shares in the Warsaw region would be [0-5]% and [0-5]% for passenger car and LCV sales respectively. In the region of Poznań, the combined market shares would be [10-20]% and [10-20]%.