



EUROPEAN COMMISSION
DG Competition

Case M.9070 - EUROCAR / VICENTINI

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

Article 6(1)(b) NON-OPPOSITION
Date: 10/09/2018

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EUROPEAN COMMISSION

Brussels, 10.9.2018
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

Subject: Case M.9070 – EUROCAR / VICENTINI
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 14 August 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Eurocar Italia S.r.l. ("Eurocar"), controlled by Volkswagen AG ("VW", Germany) acquires sole control over the whole of Vicentini S.p.A. ("Vicentini", Italy), within the meaning of Article 3(1)(b) of the Merger Regulation, by way of a purchase of shares (the "Proposed Transaction").³ Eurocar and Vicentini are designated hereinafter as the 'Parties'.

1. THE PARTIES

- (2) Eurocar is active in the retail distribution of new and used passenger cars and light commercial vehicles, as well as retail distribution of Original Equipment ("OE") spare parts of VW brands in Italy and related repair activities. Eurocar is active in a number of provinces in Italy, its focus being the provinces of the Friuli Venezia Giulia region in North-Eastern Italy, the Tuscany region in Central Italy and Lombardia in North-Western Italy. Eurocar is part of the VW Group ("VW") and ultimately controlled by VW AG. VW is active worldwide, including in Italy,

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). 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.

² OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 296, 22.8.2018, p.5.

in the development, manufacture, marketing and sale of passenger cars, light commercial vehicles, trucks, buses, coaches, chassis for buses and diesel engines, motor bikes, each including spare parts and accessories. VW also engages in vehicle distribution. VW includes the vehicles brands Volkswagen Passenger Cars, Volkswagen Light Commercial, Porsche, Audi, Skoda, Bentley, Bugatti, Lamborghini, SEAT, MAN, Scania and Ducati.

- (3) Vicentini is active in the retail distribution of new and used passenger cars and light commercial vehicles, as well as in the retail distribution of OE spare parts of VW brands in Italy and related repair activities. Vicentini's activities are limited to the province of Verona in the Veneto region.

2. THE CONCENTRATION

- (4) Pursuant to a share sale and purchase agreement signed on 1 August 2018, Eurocar will, in a first tranche, acquire shares representing 35% of the share capital of the Target. This transfer will be accompanied by the adoption of new by-laws according to which Eurocar will solely operate the Target's daily business and solely determine the ordinary and extraordinary management of the Target. The other shareholders will only have typical minority shareholders' rights, which are accorded in order to protect their financial interests as investors. Vicentini will therefore be solely controlled by Eurocar.⁴
- (5) The Proposed Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (VW: EUR 231 007 million; Vicentini: EUR [...]).⁵ Each of them has an EU-wide turnover in excess of EUR 250 million (VW: EUR [...]; Vicentini: EUR [...]) and 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.

4. MARKET DEFINITION

- (7) The Parties' activities horizontally overlap in a number of markets in Italy, namely: (i) retail distribution of new passenger cars; (ii) retail distribution of new light commercial vehicles ("LCVs");⁶ (iii) retail distribution of used motor vehicles⁷; (iv) retail distribution of OE spare parts for passenger cars and LCVs;⁸

⁴ Eurocar, in the context of the same Transaction, will acquire additional shares in Vicentini in two additional tranches (2019 and 2023). However, the change of control will already occur with the transfer of the shares in the first tranche.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁶ Cases COMP/M.7747 – *PGA/MSA*; COMP/M.5061 – *Renault/Russian Technologies/AvtoVaz*; COMP/M.2832 – *General Motors/Daewoo Motors*.

⁷ Case COMP/M.6958 – *Cd&R/We Buy Any Car*.

⁸ Cases COMP/M.5709 – *Volkswagen/MAHAG*; COMP/M.5250 – *Porsche/Volkswagen*; COMP/M.3198 – *VW-Audi/VW-Audi Sales Centres*.

(v) retail distribution of non-OE spare parts for passenger cars and LCVs;⁹ and
(vi) car repair and maintenance of motor vehicles.¹⁰

- (8) The Proposed Transaction also gives rise to four vertical relationships in Italy through the activity of Eurocar's parent company VW, namely: (i) wholesale distribution of new passenger cars and retail distribution of new passenger cars; (ii) wholesale distribution of LCVs and retail distribution of LCVs; (iii) wholesale distribution of used motor vehicles and retail distribution of used motor vehicles; and (iv) wholesale distribution of OE spare parts for passenger cars and LCVs and retail distribution of OE spare parts for passenger cars and LCVs. However, only one of those vertical relationships involves an affected market, that is VW's activity on the upstream market for the wholesale distribution of VW-branded OE spare parts for passenger cars and LCVs and Vicentini's activity on the downstream market for the retail distribution of such parts.

4.1. Product market definition

4.1.1. Wholesale distribution of OE spare parts for passenger cars and LCVs

- (9) In its previous decisional practice, the Commission found that there are separate markets for the wholesale distribution of OE spare parts and of non-OE spare parts. In particular, according to the Commission, the wholesale distribution of OE spare parts is brand-specific. Therefore, the relevant product markets are determined by the brand of the OE spare parts which are distributed.¹¹ The Commission further considered a distinction of the market for the wholesale distribution of automotive components between categories of vehicles, i.e. light vehicles (passenger cars and LCVs) and heavy vehicles,¹² but without any sub-distinction by product.¹³
- (10) The Notifying Party does not contest the above market definition, which will be retained for the purposes of this case. In any event, there is no need to close the market definition as the Proposed Transaction will not lead to serious doubts under any alternative market definition.

4.1.2. Retail distribution of OE spare parts for passenger cars and LCVs

- (11) In previous decisions, the Commission has distinguished between the retail distribution of OE spare parts and non-OE spare parts. As at the wholesale level, the Commission found that the retail distribution of OE spare parts is brand-specific, thus defining the market according to the brand of a given spare part, and distinguished between light vehicles and heavy vehicles.¹⁴

⁹ Idem.

¹⁰ Cases COMP/M.6063 – *Itochu/Speedy*; COMP/M.2948 – *CVC/Kwik-Fit*; COMP/M.2087 – *Feu Vert/Carrefour/Autocenter Delauto*.

¹¹ Cases COMP/M.6063 – *Itochu/Speedy*; COMP/M.5250 – *Porsche/Volkswagen*; COMP/M.3198 – *VW-Audi/VW-Audi Sales Centres*.

¹² Cases COMP/M.8198 – *Alliance Automotive Group/FPS Distribution*; COMP/M.7401 – *Blackstone/Alliance BV/Alliance Automotive Group*; COMP/M.5250 – *Porsche/Volkswagen*.

¹³ Case COMP/M.8198 – *Alliance Automotive Group/FPS Distribution*.

¹⁴ Cases COMP/M.5709 – *VW/MAHAG*; COMP/M.5250 – *Porsche/Volkswagen*; COMP/M.3198 – *VW-Audi/VW-Audi Sales Centres*.

- (12) The Notifying Party does not contest the above market definition, which will be retained for the purposes of this case. In any event, the precise market definition can be left open as the Proposed Transaction will not lead to serious doubts under any alternative product market definition.

4.2. *Geographic market definition*

- (13) In previous decisions, the Commission has considered that the wholesale distribution of OE spare parts could be either EEA-wide or national, but ultimately left open the exact definition.¹⁵
- (14) In previous decisions, the Commission has considered that the retail distribution of OE spare parts could be either national or sub-national, but ultimately left open the exact definition.¹⁶
- (15) The Notifying Party submits that there is no need to decide on the exact geographic market definition as the Proposed Transaction does not raise any doubts as to its compatibility with the internal market under any plausible market definition.
- (16) The Commission considers that the precise market definition can be left open as the Proposed Transaction will not lead to serious doubts under any alternative geographic market definition.

5. **COMPETITIVE ASSESSMENT**

5.1. *Horizontal effects*

- (17) The Proposed Transaction does not lead to horizontally affected markets.
- (18) Based on the narrowest plausible geographic market, being provinces in Italy, the Parties overlap in relation to the following markets: (i) retail distribution of new passenger cars; (ii) retail distribution of new LCVs; (iii) retail distribution of used motor vehicles. However, on all these markets the combined market shares of the Parties remain below 20%.
- (19) Based on a broader geographic market definition, i.e. national, the Parties overlap in relation to the following additional markets: (iv) retail distribution of OE spare parts for passenger cars and LCVs; (v) retail distribution of non-OE spare parts for passenger cars and LCVs; and (vi) car repair and maintenance of motor vehicles. However, on all these markets the combined market shares remain below 20%. If the geographic market definition retained is narrower, i.e. provinces in Italy, there would be no overlap on these markets.

5.2. *Non-horizontal effects*

- (20) The Proposed Transaction gives rise to an affected vertical relationship with regard to the upstream market for the wholesale distribution of VW-branded OE

¹⁵ Cases COMP/M.7401 – *Blackstone/Alliance BV/Alliance Automotive Group*; COMP/M.6718 – *Toyota Tsusho Corporation/CFAO*; COMP/M.5250 – *Porsche/Volkswagen*.

¹⁶ Cases COMP/M.6718 – *Toyota Tsusho Corporation/CFAO*; COMP/M.5250 – *Porsche/Volkswagen*.

spare parts for passenger cars and LCVs, where VW is active, and the downstream market for the retail distribution of such parts where Vicentini is active.

5.2.1. Market structure

- (21) On the upstream market for the wholesale distribution of VW-branded OE spare parts, VW – the ultimate controlling entity of Eurocar – has a monopoly.
- (22) On the downstream market for the retail distribution of VW-branded spare parts, the market shares of Vicentini are estimated in the Table below:¹⁷

Market share for retail distribution of VW-branded OE spare parts for passenger cars and LCVs

2017	VW	Vicentini	Combined
Italy	[5-10]% ¹⁸	[0-5]%	[5-10]%
Verona	[0-5]%	[50-60]%	[50-60]%

Source: Form CO

5.2.2. Input foreclosure

- (23) In light of the monopolistic position of VW on the upstream market, inherent in the fact that it is the manufacturer of VW vehicles, there is no scope for customer foreclosure.
- (24) As to the possibility of input foreclosure, the Commission takes that view that the merged entity, albeit having the ability to foreclose its downstream competitors, will lack the incentive to do so and therefore is unlikely to reduce effective competition.

Ability to foreclose

- (25) As the merged entity enjoys a monopoly on the upstream market, there are no alternative suppliers on this market. Accordingly, the merged entity has the ability to foreclose.

Incentive to foreclose

- (26) The Notifying Party claims that the merged entity will lack the incentive to foreclose its downstream competitors as:
 - (a) [VW's distribution system is set up in such a way that customers have the possibility to source from different suppliers, also located in different geographic areas]¹⁹;
 - (b) In the province of Verona, [Supply sources of spare parts in Verona]: it would make no commercial sense for the merged entity to engage in a

¹⁷ Vicentini is only present in the province of Verona in Italy.

¹⁸ The only other companies/dealers to be considered in this respect are two Porsche dealers located respectively in Milan (in North-Western Italy) and Padua (in North-Eastern Italy).

¹⁹ [Confidential information].

foreclosure strategy and stop supplying these VW service partners. Should this be the case, those other VW service partners, competing downstream with Vicentini could still buy from [other sources in various geographic areas]. The Notifying Party claims that engaging in foreclosure behaviour would not constitute a commercially viable or sensible strategy;

- (c) [Independent repair shops have ways to access VW's-branded spare parts], and therefore it has no incentive to engage in a foreclosure strategy.
- (27) The Commission considers that the merged entity is unlikely to have an incentive to foreclose downstream competitors of Vicentini given the limited geographic presence of Vicentini and the nature of VW's distribution strategy.
- (28) First, the Commission takes the view that given the low market share of the merged entity in the downstream market on a national level ([5-10]% combined), most of which is pre-existent to the Transaction, it would not be profitable for the merged entity to engage in a foreclosure strategy.
- (29) In light of the limited geographic presence of the merged entity in the downstream market, in order to maintain its distribution in all of Italy, VW will in any event continue to directly supply VW-branded parts to its service partners in regions where Vicentini is not active (including in neighbouring provinces). Hypothetically, VW could thus only engage in a foreclosure strategy in a limited region in Italy.
- (30) Second, the Commission further understands that the contracts in force between VW and each of its service partners provides for their right to cross-supply VW-branded spare parts across the (European-wide) network. This is also compliant with the Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. Hence, downstream competitors of the merged entity will continue to have access to spare parts from other service partners located in regions where the merged entity is not active.
- (31) Accordingly, the Commission takes the view that a foreclosure strategy not to directly supply Vicentini's competitors limited to a few specific regions (i.e. the area where Vicentini is active) would likely fail as those downstream competitors will retain the ability to source spare parts from service partners located in other (neighbouring) regions.
- (32) The Commission considers that the information provided by the Parties concerning the sourcing preferences of service partners in the province Verona, further supports the conclusion that service partners do source from entities other than VW ([Confidential information]).
- (33) The market investigation also supported this conclusion. A competitor of Vicentini indicated that it does not expect to have difficulties in obtaining access to VW-branded OE spare parts. To the contrary, this competitor indicated that it does not expect any change in VW's behaviour on the wholesale market and

believes that VW will continue to operate fairly with respect to its service partners.²⁰

Overall likely impact on effective competition

- (34) Therefore, in view of the merged entity's lack of incentive to foreclose downstream competitors, the Commission considers that the Proposed Transaction is unlikely to reduce effective competition in the market for the retail distribution of VW-branded OE spare parts for passenger cars and LCVs in any relevant geographic market.

5.2.3. Conclusion

- (35) Given the lack of incentive to foreclose downstream competitors, the Commission considers that the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market as a result of non-horizontal effects.

6. CONCLUSION

- (36) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission

²⁰ Minutes of the call with a competitor on 13 August 2018.