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# *Case No COMP/M.6718 - TOYOTA TSUSHO CORPORATION/ CFAO*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/11/2012

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PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.6718 – TOYOTA TSUSHO CORPORATION/ CFAO Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004**[1]

1. On 5 October 2012**,** the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Toyota Tsusho Corporation ("TTC", Japan) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of CFAO (France), by way of a public bid[2] (TTC and CFAO are designated hereinafter as the "parties to the proposed transaction".)

## (1) THE PARTIES

2. TTC is active in distribution and logistics services for the automotive industry and trading of metals, machinery, chemicals, foodstuffs, electronics and other products. TTC was originally established to act as an independent trading company for the Toyota Group companies. Today, TTC's Automotive division is still a core business. However, TTC does not form part of the Toyota Group for the purposes of the Merger Regulation, as it is not controlled by any Toyota Group company or companies, whether directly or indirectly.

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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 Publication in the Official Journal of the European Union No C308, 12.10.2012, p. 16.

Commission européenne, 1049 Bruxelles, BELGIQUE / Europese Commissie, 1049 Brussel, BELGIË. Tel.: +32 229-91111.

3. CFAO (previously known as Compagnie Française de l'Afrique Occidentale) is active in trading of vehicles, pharmaceuticals, machinery, consumer goods, technological products and other products principally in Africa and in the French overseas territories.

## (2) THE OPERATION AND THE CONCENTRATION

4. The proposed transaction results from TTC's decision to launch a voluntary public tender offer for the remaining shareholding of CFAO[3], to which PPR has agreed to tender its remaining stake of 12.19% in CFAO, unless a more competitive offer is issued.

5. The public tender offer was initiated on 14 September 2012 with the filing of a draft tender offer and launched by TTC on 19 October 2012 following approval by the French Autorité des marchés financiers. Pursuant to Article 4(1) of the Merger Regulation, the proposed transaction was timely notified.

6. In this tender offer[4]—which is irrevocable—TTC commits to acquire the remaining shares in CFAO which are not in its possession. The parties submit that the public tender offer should result in TTC holding at least 41.99% of CFAO's share capital, the most likely scenario being however that TTC will hold more than 50% of CFAO shareholding at the closing of the public tender, and thus would have sole control over CFAO.

7. The parties submit that, even based on 41.99% shareholding, TTC should have the ability to exert *de facto* sole control over CFAO in light of the attendance rate history at CFAO's shareholders meetings and that a 41.99% stake generally would grant TTC a majority of voting rights at shareholders meetings. In practice, CFAO was controlled by PPR with the same 41.99% stake. This is true for 2010 and 2011 where such stake yielded a ratio of voting rights amongst all the shareholders in attendance at the AGM of respectively 52.87% and 50.57%. However, in 2012, it only yielded a ratio of 46.94%. Yet, a further factor is that CFAO's shareholding is dispersed[5], there are no structural, economic or family links between shareholders and most of the other shareholders have a purely financial interest in CFAO. Thus, it is likely that, even with a 41.99% shareholding, TTC should have a stable majority of the votes at shareholders' meetings and therefore will have *de facto* sole control of CFAO[6].

8. Therefore, the proposed transaction consist in an operation of concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## (3) EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[7] (TTC: EUR 53 887 million; CFAO: EUR 3 123 million). Each of them has an EU-wide turnover in excess of EUR 250 million (TTC: EUR […] million; CFAO:

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3 On 2 August 2012, TTC already acquired from PPR a non-controlling stake of 29.80% of the share capital of CFAO.

4 The publication of the launch of the tender offer is available on the Autorité des marchés financiers' website as http://www.amf-france.org/inetbdif/viewdoc/affiche.aspx?id=77006&txtsch.

5 As of 28 March 2012, the ownership structure of CFAO was the following: (i) PPR group: 41.99% (29.80% having subsequently being sold to TTC on 25 July 2012); (ii) Oppenheimer Funds (USA): 7.5%; (iii) Lazard AM (USA): 5.5%; (iv) M&G (UK): 3.6%; (v) Billie Gifford (UK): 3.0%; (vi) others: 38.4%.

6 Commission consolidated jurisdictional notice on the control of concentrations between undertakings, paragraph 59.

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

EUR […] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## (4) COMPETITIVE ASSESSMENT

10. The proposed transaction only gives rise to vertical relationships with regards to the markets for the sale of vehicles, automotive spare parts and automotive repair and maintenance services. The only territory in which both parties are active is French Guiana.

### (a) Sale of vehicles

***Relevant product and geographic market***

11. In previous decisions, the Commission has made a distinction between the wholesale market and the retail market for the sale of vehicles[8]. Within the retail market, the Commission has considered a further distinction between the retail distribution of passenger cars and the retail distribution of commercial vehicles[9]. Within the commercial vehicles, the Commission has considered a distinction between Light Commercial Vehicles (LCVs) and heavy commercial vehicles[10]. In all these segments, the Commission has considered a distinction between used and new vehicles[11].

12. In its previous decisions, the Commission has left open whether these markets are regional, national or European-wide in scope. A tendency towards a more European market can be considered due to the effects of the block exemption for vertical agreements in the motor vehicle sector[12]. At the same time, previous cases have not ruled out the existence of markets that are narrower than national, specifically for the retail sale of vehicles to end customers[13].

13. The market definition for the purposes of the present case can be left open since, even under the narrowest possible market definition, the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

***Assessment***

14. Within the EEA, CFAO only sells vehicles at a retail level in the French overseas territories. CFAO automotive division imports and distributes vehicles in French Guiana and Reunion.

15. Horizontal overlaps only arise at national (i.e. France) or at EEA-wide level. However, the proposed transaction does not give rise to any horizontally affected markets, as the parties' combined market shares for sale of vehicles, whether new or used, passenger cars or LCVs, at both wholesale and retail level, do not exceed [0-5]% both at national and at EEA-wide level.

16. In French Guiana, TTC acts as a wholesaler of Toyota vehicles (upstream) whilst CFAO acts as a retailer of vehicles to end customers under the Toyota, Chevrolet, Opel and Ford brands

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8 Cases COMP/M.1825 *Suzuki Motor/Suzuki KG/FAFIN*; COMP/M.2831 *General Motors/Daewoo Motors*; COMP/M.3388 *Ford Motor Company Ltd/Polar Motor Group Ltd*.

9 Cases IV/M.1031 *Jardine/Appleyard*; IV/M.1435 *Ford/Jardine*.

10 COMP/M.3388 *Ford Motor Company Ltd/Polar Motor Group Ltd*.

11 COMP/M.5347 *Mapfre/Salvador Caetano/JV's*.

12 Commission Regulation 461/2010 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 in the motor vehicle sector.

13 COMP/M.3388 *Ford Motor Company Ltd/Polar Motor Group Ltd*.; COMP/M.3352 *Volkswagen/Hahn + Lang*.

(downstream). There, TTC only sells new vehicles, at a wholesale level; it does not sell used vehicles. CFAO is the exclusive reseller of Toyota vehicles in French Guiana and TTC is its supplier.

17. However, the transaction does not give rise to vertically affected markets, as even under the narrowest product and geographic market definition, the market share of the merged entity will systematically remain below 25% both in the upstream and downstream markets (for new passenger vehicles in French Guiana[14]: TTC [10-20]% at wholesale level, CFAO [10-20]% at retail level).

(b) Automotive repair and maintenance services

***Relevant product and geographic market***

18. Repair and maintenance services have been considered by the Commission in past decisions to constitute a distinct relevant market[15]. The question of whether a further segmentation between light repair and maintenance and full repair and maintenance has been left open[16]. As regards the relevant geographic dimension of this market and its sub-segments, the Commission has left open whether it is local or national in scope[17]. In any case, the market definition for the purposes of the present case can be left open since, even under the narrowest possible market definition, the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

***Assessment***

19. The proposed transaction does not give rise to any horizontally affected markets, as the parties' combined market shares for automotive repair and maintenance services do not exceed [0-5]% irrespectively of the geographic market.[18] With regard to possible vertical relations between automotive repair and maintenance services (downstream) and the distribution of automotive spare parts (upstream), the assessment is carried out under paragraphs 30 and following.

(c) Automotive spare parts

***Relevant product and geographic market***

20. The Commission has previously identified the market for the manufacture and supply of spare parts as a separate relevant product market[19]. Following the different layers of the manufacture and distribution of passenger cars, the Commission has further distinguished the market levels of (i) the manufacture and supply, (ii) the wholesale distribution, and (iii) the retail distribution of spare parts. Due to the virtually non-existent demand-side substitutability of spare parts for one specific car brand with those for another brand, the Commission has considered separate brand-specific markets

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14 TTC does not distribute new commercial vehicles or used vehicles in French Guiana, thus no vertical relationship exists between TTC and CFAO as regards new commercial vehicles and used vehicles.

15 Case COMP/M.1526 *Ford/Kwik-Fit*.

16 Cases COMP/M.1526 *Ford/Kwik-Fit*; COMP/M.2087 *Feu Vert/Carrefour/Autocenter/Delauto*; COMP/M.2948 *CVC/Kwik-Fit*; COMP/M.6063 *Itochu/Speedy*.

17 Cases COMP/M.1526 *Ford/Kwik-Fit*; COMP/M.2087 *Feu Vert/Carrefour/Autocenter/Delauto*; COMP/M.2948 *CVC/Kwik-Fit*.

18 In French Guiana, CFAO estimates it captures [5-10]% of both light and complex repair services but no horizontal overlap as TTC does not provide repair and maintenance services in this territory

19 See for example cases COMP/M.3198 *VW-Audi/VW-Audi Sales Centres*; COMP/M.3352 *Volkswagen/Hahn + Lang*; IV/M.1452 *Ford/Volvo*.

for the manufacture and (wholesale and retail) distribution of spare parts. The Commission has further distinguished between the market for (i) Original Equipment (OE) spare parts manufactured and/or sold under the car manufacturers' brands and (ii) the Independent Aftermarket (IAM)[20].

21. With regards to spare parts, the parties are active at different levels of the supply chain. Thus, the following product markets are considered for the purpose of the competitive assessment in the present case: (i) wholesale of Toyota spare parts; (ii) retail of Toyota spare parts.

22. With respect to the geographic scope of the wholesale and retail distribution of spare parts, the Commission has in previous cases considered both markets to be national, but a sub-national geographic scope (i.e. French Guiana) is also addressed given that the Commission found—without reaching a final conclusion—that the market could be regional.[21]

23. In any case, the market definition for the purposes of the present case can be left open since, even under the narrowest possible market definition, the proposed transaction does not raise serious doubts as to its compatibility with the internal market.

***Assessment***

24. At national level (i.e. France), or at EEA-wide level, the proposed transaction does not give rise to any horizontally or vertically affected markets, as the parties' combined market shares for Toyota spare parts at both wholesale and retail levels are well below 15% (for France, around [5-10]% combined market share both at wholesale and retail levels; for the EEA, around [0-5]% combined market share both at wholesale and retail levels).

25. However, as regards French Guiana, as a result of the proposed transaction, TTC, which is the main exporter of Toyota spare parts into French Guiana, will vertically integrate NCCIE[22], a wholly-owned subsidiary of CFAO, which is the sole Toyota Authorized Dealer in French Guiana, acting as a wholesaler of Toyota spare parts and as one of the two Toyota Authorized Repairers in French Guiana[23].

26. Therefore, at the <u>wholesale level</u>, the question arises as to whether the proposed transaction leads to a risk that, post-transaction, the merged entity will refuse to sell Toyota spare parts to other rivals present on the wholesale market (input foreclosure) or if, conversely, the merged entity will refuse to purchase Toyota spare parts from other rivals present on the export market (customer foreclosure).

27. TTC estimates that its market share in the market for the export of Toyota spare parts into French Guiana may be in the region of [60-70]%, which is an indication of potential market power. However, there is no risk of input foreclosure in the case at hand. Indeed, TTC does not currently supply Toyota spare parts to any wholesalers, car dealers or independent repairers in French Guiana other than NCCIE. The TTC's distribution chain of Toyota spare parts is organized in such a way that TTC will only sell Toyota spare parts to the official Toyota Authorized Dealer in each region, which is NCCIE for French Guiana. As the Commission concluded in a previous case[24], a material impact on the market can be excluded, as the proposed transaction will only lead to the vertical integration of TTC's exclusive importer and wholesale distributor for Toyota spare parts.

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20 Case COMP/M.3198 *VW-Audi/VW-Audi Sales Centres*, paragraph 12.

21 Case COMP/M.3198 *VW-Audi/VW-Audi Sales Centres;* COMP/M.5250 *Porsche/Volkswagen.*

22 Nouveau Comptoir Caraïbe Import Export.

23 The other Toyota Authorized Repairer in French Guiana being Val'auto.

24 Case COMP/M.5219 *VWAG/OFH/VWGI*, paragraph 17.

28. Similarly, as regards customer foreclosure, NCCIE probably has a market share of [70-80]% in the market for the wholesale of Toyota spare parts in French Guiana. It can therefore be considered as an important customer for exporters of Toyota spare parts to French Guiana. NCCIE currently only sources Toyota spare parts from TTC (for […]% of its needs) and Toyota France directly (for […]% of its needs). Should NCCIE decide, post-transaction, no longer to source its Toyota spare parts from Toyota France, Toyota France could supply directly other local independent repairers with these parts or may even appoint another wholesaler in a position to satisfy the local demand. The parties further add that such a decision would lead to potential tensions with Toyota France—and in turn the Toyota Group—and that TTC would not put in jeopardy its good relationship with the Toyota Group for a market that represents only […]% of its total turnover.

29. At retail level, the question is whether the proposed transaction will lead to a risk that, post-transaction, the merged entity will refuse to sell Toyota spare parts to other repairers (input foreclosure) or if, conversely, the merged entity will refuse to purchase Toyota spare parts from other wholesalers (customer foreclosure). The customer foreclosure scenario can be excluded, since, in practice, NCCIE has been sourcing its products not from wholesalers but from exporters (i.e. TTC and Toyota France). The same reasoning as in paragraph 28 on the absence of risk of customer foreclosure at the wholesale level thus also applies to this scenario.

30. As regards input foreclosure, it must be noted that the target, NCCIE, was already active, prior to the proposed transaction, on the upstream market for the sale of Toyota spare parts at wholesale level and on the downstream market for the repair of Toyota vehicles and sale of spare parts to end customers in French Guiana. Therefore, the risk of foreclosure at the retail level pre-existed and the proposed transaction will not change the competitive situation.

31. Pursuant to a Toyota Authorized Dealer agreement entered into with TTC, NCCIE has been given the ability to appoint Toyota Authorized Repairers in French Guiana. To date, NCCIE has appointed one other Toyota Authorized Repairer in French Guiana (in Kourou), to which it sells Toyota spare parts. NCCIE and the other Toyota Authorized Repairer in Kourou also sell Toyota spare parts to other independent repairers in French Guiana. The parties submit that there are about 30 independent repairers in French Guiana[25]. A foreclosure scenario would involve terminating the other Toyota Authorized Repairer and no longer supplying Toyota spare parts to the independent repairers in French Guiana.

32. Yet, should the merged entity decide to raise its prices or cut back on supplies of Toyota spare parts to independent repairers, it is unlikely that it would capture a high-enough part of the repair services in the downstream market to be profitable. Indeed, the most likely scenario is that independent repairers would source Toyota spare parts from other channels than the official Toyota distribution network formed by TTC and NCCIE, such as either from Toyota France directly or other Toyota Authorized Dealers located elsewhere in Europe, or even for members of franchised networks such as Speedy or Midas through their central purchasing units. During the Commission's market investigation, independent repairers also confirmed that they often source Toyota spare parts from neighbouring countries, in particular Suriname and the Caribbean countries, but also Brazil or the United States.

33. Finally, the parties submit that any foreclosure strategy leading to an increase in the price of Toyota spare parts would negatively impact the brand image of Toyota, because Toyota cars would acquire the reputation of being expensive to maintain and this could lead owners of Toyota vehicles to buy

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25 The parties estimate that NCCIE's market share for the sale of Toyota spare parts at retail level in French Guiana should be in the region of [50-60]%, the rest of the market being divided between the other Toyota Authorized repairer and all the independent repairers using Toyota spare parts.

a vehicle of another brand when considering replacing their vehicle. The Toyota Group would therefore not allow an independent third party such as TTC to capture extra profits on repair services if this involves a risk of tarnishing Toyota's brand image and ultimately a risk of losing sales of vehicles. Any such foreclosure strategy by the merged entity would therefore most likely be immediately countered by other Toyota Authorized Dealers located elsewhere in Europe which would sell Toyota spare parts directly or indirectly to the aftermarket in French Guiana.

34. It follows that the proposed transaction does not raise serious doubts in the French Guiana, and *a fortiori* in the EEA, as to the compatibility with the internal market.

## (5) CONCLUSION

35. For the above reasons, the 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*